

**Land In Our Hands (LIOH) Network**

# **National Land Use Policy of Myanmar: Our Response and Recommendations**

"The land use policy will have significant impacts on all land use types in the whole country including small-scale to large-scale land users. It is important to balance land use for country's economic development and promote social justice with equitable tenure rights and control of land, forests, fisheries, water and associated natural resources, for all, with special emphasis on women, youth, poor, vulnerable and marginalized peoples"

**29 January 2015  
Rangoon, Myanmar**

# Table of Contents

<b>National Land Use Policy of Myanmar: Our Response and Recommendations</b> .....	1
I. EXECUTIVE SUMMARY .....	3
II. Key Findings from the Myanmar National Land Use Policy (Draft).....	5
III. OVERALL RESPONSE .....	7
a. Introduction .....	7
b. Background .....	8
c. Context .....	9
d. National Situation .....	10
IV. GENERAL FINDINGS .....	11
a. Policy Process .....	11
b. Policy Content.....	12
V. RECOMMENDATIONS .....	14
a. Preliminary: Overall Goals and Objectives.....	14
b. Basic Principles of Implementation .....	15
c. Who Gets To Decide .....	16
VI. LAND USE MANAGEMENT .....	17
a. National Land Use Council .....	17
b. Land Classification .....	17
c. Who should take part in land classification .....	17
d. Survey and assessment needs.....	18
e. What should be included in land classification .....	18
f. Zoning (spatial planning).....	18
g. Information Management.....	19
h. Land Use Rights of Ethnic Nationalities.....	20
i. Equal Rights of Men and Women.....	21
j. Planning and Changing Land Use.....	22
k. Safeguard in relation to land use changes .....	22
l. Land Disputes .....	23
m. Formation of special court to solve land problems (Independent and selected).....	24
n. Monitoring & Evaluation.....	24
VII. CONCLUSIONS .....	24

# I. EXECUTIVE SUMMARY

This report analyzes and provides feedback on the draft National Land Use Policy (NLUP) of Myanmar made public on October 18, 2014. It is based on eight consultation workshops organized across the country by Land in Our Hands (LIOH). LIOH is a farmer network of more than 60 community based organizations (CBOs) and civil society organizations (CSOs) dedicated to promoting, protecting, respecting, and fulfilling the land tenure rights of small-scale farmers and fisherfolks, particularly rural women and ethnic communities. LIOH welcomes the unprecedented opportunity to take part in this very crucial land policy making process at time when Myanmar is at a crossroads.

The success of Myanmar's reform process is tied to resolving the country's land crisis, and at the same time, there is a need to protect communities' lands from confiscation in this climate of increased foreign investment. The NLUP will play an important role in addressing both of these concerns, and the current draft contains several promising aspects. However, LIOH has also identified many serious flaws in the policy-making process and the policy itself, and this report is our way of offering a sincere and forthright response to the draft NLUP, including specific recommendations.

Of the utmost concern is the undemocratic process by which the NLUP has been drafted. Although drafting of the policy began in late 2013, it was not made publicly available until October 2014. At this time, the Myanmar government planned to collect feedback in just 17 consultations of 3 hours each within 18 days in 14 states and regions. The short time frame meant local communities were ill prepared to provide feedback on a long, and technical document. It is this flawed consultation process that prompted LIOH to hold its own consultations, analyze the draft policy, and provide its own feedback. We recommend that the government of Myanmar further extends the deadline for public comment and publicizes the draft NLUP widely in local languages online and through the media, both independent and state-owned.

The content of the draft NLUP also falls short of following international norms and best practices as outlined in the United Nations Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. It does not prioritize small-scale farmers, minority ethnic peoples and other poor, vulnerable and marginalized sectors of society, nor does it provide sufficient measures to prevent them from being dispossessed of their land and livelihoods. Instead, the policy prioritizes and gives special privileges to business investors, which could spark more land grabs and create more land problems within the country.

LIOH recommends that the policy must be re-drafted to reflect the overarching principles of human dignity, non-discrimination, gender equality, holistic and sustainable approach, rule of law, good governance, and free prior and informed consent. Furthermore, the policy should detail clear answers to the following questions: Whose rights, what rights, what purpose, and who gets to decide?

Specifically, the NLUP must respect ethnic land policies, outline a dispute mechanism with local participation, include a mechanism for redistributive land reform, and recognize the right of returning refugees to restitution of their land and property. Furthermore, the land classification system must be revised, and the people using the land must be involved in the classification process. The categories of "vacant, fallow, virgin land" and "permanent taungya" are unacceptable to people in ethnic territories. The NLUP must also include truly bottom up decision-making and participation in survey assessment,

zoning, and information creation and management. It must protect the specific rights and needs of women, and protect the right of ethnic communities to practice shifting cultivation. The policy must also implement safeguards to protect the land tenure rights of communities threatened by project concessions, following the UN Guidelines on Development Related Evictions and Displacement. Lastly, the NLUP should provide for a clear, impartial, and independent monitoring process to evaluate the policy and recommend improvements.

Time should be taken for the National Land Use Policy to be re-drafted with the full inclusion and meaningful participation of representatives of small scale farmers, ethnic groups, women, youth and other people and communities who will be most effected, as well as parliamentarians and independent experts.

## II. Key Findings from the Myanmar National Land Use Policy (Draft)

1. The current draft of the policy makes references to the “national interest”, without any further clarification of how “national interests” are defined and who is responsible for defining them.
2. Ultimately, land is treated solely as a commodity, and the policy prioritizes mechanisms to secure foreign investment, including measures aimed at facilitating large-scale transfers of tenure rights while avoiding land disputes, court cases and social protests.
3. This policy does not prioritize the rights of small scale farmers, minority ethnic peoples and other poor, vulnerable and marginalized sectors of society. Instead, the policy gives special privileges to business investors.
4. There are no measures to address the land problems in the country especially previous military government’s land grabs.
5. The National Land Use Council’s structure is too ‘top-down’ and narrow to be able to consider the interests of everyone in country.
6. This policy ignores or does not reference international human rights principles contained in the FAO Land Tenure Guidelines, United Nation Declaration of Human Rights, United Nation Declaration of Indigenous Rights, and the Convention on the Elimination of Discrimination Against Women.
7. The current policy draft does not take full and significant measures to ensure respect of tenure and rights by business enterprises, nor does it ensure protection against such abuses by business enterprises that are owned or controlled by Government, or that receive substantial support and service from Government agencies.
8. The policy does not mention the need to provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises.
9. Zoning processes are not clearly identified, and the roles of local people in these are not clearly stated. There currently appears to be no chance for all local people, including the most vulnerable and marginalized, to participate in the final decision-making.
10. It assumes that through the creation and management of “up-to-date, complete, precise and correct information relating to official land use right” (Art. 22(a)), all land tenure security and dispute problems can be solved. Missing from this explanation is the ‘who’- who will be in charge of creating information, under what terms, how it will be created (i.e. co-created with communities or top-down knowledge creation), and who will manage that information.

11. According to the policy, current land use maps on the ground would be drawn by the Government using highly technical methods such as satellite imagery. This is problematic because top-down highly technical methods are not always accurate. There is great concern that Government will not be able to acknowledge or record the historical and social realities of land use on the ground.
12. Although the draft policy appears to recognize customary land tenure and land use practices, it does not explicitly state how it will recognize, protect and promote those customary land use and management practices. It does not specify how it will trace past history of customary land ownership and use, so as to record and recover tenure rights that were lost due to past and ongoing land confiscations, natural calamity, and armed conflict.
13. It is vitally important to recognize and protect customary and traditional land use, practices, management, and decision making; therefore, this section should be placed much earlier in the policy document. The policy gives recognition to the customary tenure rights of all ethnic nationalities, but the policy does not support the practice of shifting cultivation, which continues to be widely practiced in the ethnic areas.
14. There are no explicit measures giving minority ethnic peoples decision-making power and control over questions of land ownership, land use and land management, which could further delay the peace building and national reconciliation process, while creating new land conflicts.
15. Part VIII of the policy outlines women's rights in land tenure and land management. While this section references international standards (Convention on Elimination of Discrimination Against Women), the points do not clearly demonstrate how women's rights will be respected and actively promoted. The policy should recognize and respect women's distinct land use needs and rights, and women should be represented in the decision-making bodies concerning land use practices.
16. The draft policy mentions a 'bottom-up' submission approach for developing land use plans. However, the draft policy's proposed process of first informing the public and then asking for comments is not a 'bottom-up' approach. Art. (27) only mentions 'official existing land users rights', without providing protection for those without 'official existing land user rights'.
17. In the policy, the National Land Use Council will carry out the monitoring and evaluation of the implementation process which is a conflict of interest. It should have a clear monitoring and evaluation process, including how to handle instances of unethical behavior (to correct, discipline, and improve upon it).
18. According to the land policy monitoring groups will be appointed along with clear and impartial dispute mechanisms. It is not clear who will appoint these monitoring groups and how impartial they can be. Elected community representatives must be included in the dispute mechanisms and bodies.

19. The draft policy states that the large-scale investment projects need to be suspended (in dispute zones) while impartial environmental and social impact assessments are carried out. This is a good start, but human rights assessments must be included, and these assessments should not be paid for by the applicant.
  
20. In general, the wording of this policy is unclear, inconsistent and could create misunderstanding for ethnic and ordinary people in Myanmar. It contains sections referring to registration, consultation, participation, and ‘bottom-up’ manners. However, these words do not clearly and explicitly establish meaningful guarantees on how processes would proceed to ensure farmers, ordinary people, and smallholder land users have land tenure security and protection for their livelihood.
  
21. The document must be explicit and about how it will improve governance of tenure of land “for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development” (Art.1.1 CFS-TG).
  
22. In light of the ongoing armed conflict, the policy will be widely accepted only once it explicitly and clearly addresses the *root causes* of that conflict which are integrally related to the use and management of land and natural resources, to the satisfaction of those vulnerable and marginalized groups most adversely affected by this situation. The national land use policy will have to clearly and explicitly aim to promote peace building and national reconciliation as parts of solving the lasting ethnic political conflicts, as well as legally recognize the land tenure rights of indigenous/ethnic communities.

### III. OVERALL RESPONSE

#### a. Introduction

On October 18, 2014 the Government of Myanmar released a draft National Land Use Policy and announced that seventeen (17) public consultations would be conducted in States and Regions across the country during the month of November 2014. The Government also indicated that these official public consultations would be organized on the basis of open participation such that Representatives of all stakeholders would be allowed to participate in them.

Land In Our Hands (LIOH) was founded in February 2014 in response to the growing demand of farmers for national representation in their efforts to reclaim land tenure rights. We are a network of local farmers organizations and supportive community based organizations and allied CSOs, comprised of more than 60 groups from 14 States and Regions across the country. Among them, the LIOH coordination body consists of 15 representatives from farmers, land activists, CSOs, Youth groups, ethnic communities, and lawyers from Kachin, Kayah, Kayin, Chin, Mon, Rakhine, Southern Shan, Northern Shan, Mandalay, Magway, Sagaing, Yangon, Bago, Irrawaddy regions, Tanintharyi division.

LIOH believes that in striving for durable peace and genuinely equitable and sustainable development in the country, and within the spirit of current democratic reforms, it is very vital that the Government, the Congress and the Judiciary of the Union of Myanmar Republic work to promote, protect, respect, and fulfill the land tenure rights of small-scale farmers and fisherfolks, and particularly of rural women and ethnic communities.

Our core aim is to facilitate a form of the land use policy in Myanmar that is also suitable and appropriate for traditional customary practices of indigenous/ethnic people under the context of democratic principles and social justice for all. The network is trying to engage every level of Government, Parliament, and Ethnic Armed Groups, in order to produce the best practices of land using policy, laws, regulations in which protection of the local people especially farmers, small-scale land users, ethnic minority, and women land tenure rights is ensured. As a network, we also link our members to activists and local and international land rights experts to provide farmers with the training and information they need. We also assist farmers who are facing land grabbing currently in a legal framework. Additionally, we try to formulate, along with other farmers and ethnic groups, problem solving mechanisms and processes in response to land grabbing issues, in order to participate, become well informed, and enhance our capacity to deal with this big problem.

LIOH considers itself to be a key stakeholder in this process. One of the core reasons for being of the LIOH network is directly related to the challenge of addressing the serious land issues gripping the country. Among our other core tasks, we believe that we, as citizens of Myanmar and as members of the LIOH network, have a great responsibility to directly contribute to the formulation and implementation of a democratic land policy. We hope that the Government appreciates our perspective as grounded in the everyday realities and welcomes our participation and contributions as thoughtful and sincere.

For our part, LIOH welcomes the unprecedented opportunity to take part in this very crucial land policy making process and appreciates the efforts that have been made by the government to make such an opportunity possible. LIOH also recognizes the inclusion of certain provisions in the draft policy as an effort to reach out and respond positively to address concerns that in the past have been expressed by community based organisations and civil society groups on land issues.

It must be stressed that LIOH takes the land problems besetting our members and impacting on the country at large, as well as the opportunity to voice our concerns and perspectives, very seriously. Myanmar's land problem is most fundamental and especially urgent right now. It is a very serious problem and a most crucial public consultation at this moment in the country's history. The country stands at a difficult historical crossroads. LIOH would not be fulfilling its role and responsibility and obligations to its own members and constituencies if it did not respond sincerely, forthrightly, and profoundly to the NLUP draft and process and offer serious recommendations.

## **b. Background**

To prepare this response and recommendations, LIOH organized a series of eight consultation workshops in different parts of the country so as to be able to capture the opinions and voices of its different member constituencies. It is important to note that these self-organized LIOH workshops were undertaken under less-than-favorable conditions and circumstances.



More generally, the public had only just been made aware of the existence of this drafting process that had been going on for quite some time, and was given only days (not months) to react to a document that had been already a long time in development. It must be stressed that Myanmar's Land Use Allocation and Scrutinizing Committee, chaired by MOECAAF and includes representatives from Government ministries and agencies directly involved in land use administration and management, started the process of developing the draft policy in late 2013. But we were only allowed to be aware of it in October 2014. Although the draft policy is also released in the Ministry of Environmental Conservation and Forestry's (MOECAAF) website publicly at this time, it was not make widespread use of media to inform the public. In many instances, our self-organized workshops were the first time that many participants had an opportunity to even know about, much less see the draft NLUP document.

This makes us wonder what would have been the situation if LIOH (and of course other organisations that also did their own self-organized pre-consultation workshops) had not decided to undertake these self-organized workshops. It seems clear that without our presence and decision to engage with this process that our constituency would have been automatically excluded by default due to the government's own very limited outreach in this matter.

Despite the relative unfairness of the situation, we consciously decided to react as quickly as we could to access, obtain, study, analyse, discuss and develop own responses and recommendations before the official public period started.

In many instances, in addition to laboring under the constraints of an extremely short time frame and extremely limited outreach by the government, many of the participants in our workshops had to travel long distances. There were also monitoring and uninvited presence by military intelligence operatives in most of the workshops. In addition, LIOH members reported instances where local people including farmers were not allowed to join the official public consultation workshops. In the case of Dawei, around 20 local farmers were not allowed to enter into the consultation room by giving them reason that they were not invited or couldn't show the invitation letter from the Government. Our persistence despite such obstacles is an indication of how fundamentally important we believe a National Land Use Policy is for the all the people across the whole country.

And as such, the official consultation process, in spite of what efforts were made by the government and non-government actors to make it a good one, and however well intentioned, remains impaired. In our pre-consultation workshops alone, participants repeatedly expressed big concerns over the fact that the announcement of an official consultation process entailing just 17 consultations of 3 hours each within 18 days in 14 states and regions was at the same time the first moment of informing the public about the draft policy. The 90-page document (in Burmese) and 40-page document (in English) is in many ways a technical land governance document that is difficult for many ordinary people to know and understand, and doing so requires time, translation into local languages, and other enabling factors.

## **c. Context**

Many of the authoritative standards pertaining to the improvement and development of land related policy, legal and organizational frameworks regulating the range of tenure rights that exist over resources are set down by the United Nations (UN) Committee on World Food Security (CFS) in its Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the

Context of National Food Security ([www.fao.org/nr/tenure/voluntary-guidelines/en/](http://www.fao.org/nr/tenure/voluntary-guidelines/en/)). Most relevant ones are: Art.1.1 (Objectives) and the articles under 3B (Principles of Implementation), especially Art.3B6 (on consultation and participation), 3B7 (on rule of law), and 3B8 (on transparency).

Set against this international standard, the official public consultation process to date, although welcome, nonetheless falls short. As it stands now it absolutely cannot get the fair and real aspirations and feedback from all the people especially most likely to be most affected. This also makes people feel as though they are not taken into consideration and are even neglected in the consultation process. Without a much fuller consultation process, it is likely to miss and ignore the concerns, desires, aspirations and voices especially of those small-scale farmers and ethnic minorities most likely to be most affected. The government should provide not only enough time for people especially small-scale farmers and ethnic minorities to engage but also meaningfully participate in the process of making the country's land use policy.

The process of the development and formulation of this draft national land use policy, especially in its earlier (pre-consultation) phase, has not been transparent to the public and we have only gotten a look when the fifth draft of policy was released publicly with very short time for consultation process. We have not gotten any information about which representatives from ethnic nationalities, women's organizations, CSOs, the academy, or political parties, especially representatives of those who are likely to be most affected by this policy, were involved in the writing of the policy. From this perspective, one can see that policy making in this case got underway in an undemocratic way and the draft itself did not adequately reflect the views of all the peoples of Myanmar.

Such situations and conditions necessarily have a discouraging and chilling effect on real processes of consultation, and obviously run counter to the normative standard set out in the Universal Declaration of Human Rights ([www.un.org/en/documents/udhr/](http://www.un.org/en/documents/udhr/)), especially Articles 1, 2, 3, 7, 13, 18, 19, 20, and 28. The restrictions placed on the current consultation process in practice are not easy or simple to overcome. Yet in spite of this, we have persisted in continually pushing aside our fears, frustrations, ire and resentment, and sought to channel and draw upon our individual and collective dignity, conscience and aspiration in order to make our voices heard. We hope the Government appreciates the significance of our effort in this regard.

Accordingly, we carried on with our own pre-consultation workshops, with an average of 100 participants per workshop. Despite the pressures -- easing but still inhospitable -- on us and on the public at large to respond relatively quickly and in a constructive manner to a document that will undoubtedly have profound impacts on our lives, livelihoods and ways of life, we persisted. We carefully studied the NLUP draft in a short time and collectively came up with analysis of the document and collectively agreed upon a series of recommendations, which we outline here.

## **d. National Situation**

Myanmar's Land has long been occupied, used and managed by local people across the country according to diverse practices based on their areas. Land is currently being used in diverse ways as plantation taungya, garden land, shifting taungya cultivation land, paddy land, farmland, alluvial island town or village used for premises and public-owned land, etc. Through a land use certificate and registration system, the Government has been creating a private land property market, where people have rights to sell, mortgage, exchange, inherit, and lease land. Some people in ethnic (border) areas

mainly manage the land by their customary practices without having any legal documents. They have long done so, under increasingly dire economic, social, political and militarized conditions.

Since 2011 the Myanmar Government has passed new laws and undertaken a rapid liberalization process, and at the same time started ceasefire negotiations with different ethnic groups. It has enabled business people to have more accessible environment for their investments and commercial interests in ethnic areas, which are areas of the country that remain rich in natural resources. During this transitional period, the Government's primary focus appears to be on enabling the economic development of the country largely through foreign direct investment, and we hear of many investors who are planning to invest in the country.

Meanwhile, however, many land conflicts and different types of land conflicts are happening across the country. Previously, military and related people confiscated large amount of lands with no clear public purposes. Currently, large-scale development projects are being undertaken that involve different powerful stakeholders confiscating massive areas of land, and summarily dislocating and dispossessing the occupants in the process.

Small holders of land including small farmers are every day unwillingly and too often forcibly losing their lands. In addition, whenever business and development projects are implemented, local people are normally excluded from the planning and implementation of these projects. Across the country, many land confiscations and forced displacements have happened and are continuing to happen without any prior meaningful consultation, without notification, and/or without recognition of the right to restitution. These processes are unfolding in a way that is totally inconsistent with existing international human rights law, specifically the UN Guidelines on Development Related Eviction and Displacement. ([http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf); see also [http://www.hic-sarp.org/documents/Handbook%20on%20UN%20Guidelines 2011.pdf](http://www.hic-sarp.org/documents/Handbook%20on%20UN%20Guidelines%202011.pdf))

## **IV. GENERAL FINDINGS**

### **a. Policy Process**

Of fundamental and vital importance for all farmers, land users, women, ethnic leaders and representatives of civil society is to have real opportunities to be fully involved and to meaningfully participate in the land policy making process. This is the intent of Art.3B6 of the CFS Tenure Guidelines, which calls for the participation of the most affected people and the free prior informed consent (FPIC) of indigenous peoples. At stake are their very lives, livelihoods, identities, rights and ways of life, individual and collective.

The Government has not yet fulfilled its obligations under international human rights law in this regard. Even now the Government could still take important steps to rectify this situation, initially by extending further the deadline for public comment and also by publicizing the draft NLUP document more widely and in local languages in both state owned and independent newspapers, journals, radios, television, online, websites and other accessible media outlets.

Additionally, there are big questions about who will have the final decision in revising and finalizing making all these important sections in the draft policy. The current lack of clarity on how comments

from the public are to be processed and considered is a major concern that should be addressed in a way that satisfies basic human rights principles as mentioned earlier.

Since the national land use policy is very vital for all of Myanmar, rushing to approve it before the 2015 election period risks not giving the land problem the high importance and careful attention it warrants and needs. A swift implementation of this policy will create more conflicts. Moreover, it can damage the national-wide ceasefire and peace process.

In summary, time should be taken for the National Land Use Policy to be re-drafted with the full inclusion and meaningful participation of representatives of small scale farmers, ethnic groups, women, youth and other people and communities who will be most effected, as well as parliamentarians and independent experts.

## **b. Policy Content**

The land use policy will have significant impacts on all land use types in the whole country including small-scale to large-scale land users. For this reason it is important to balance land use for country's economic development and promote social justice with equitable tenure rights and control of land, forests, fisheries, water and associated natural resources, for all, with special emphasis on women, youth, poor, vulnerable and marginalized peoples.

The current draft of the policy makes references to “national interest”, but without explaining what it means or how it gets defined and by who. Ultimately, land is treated solely as a commodity, and the policy is mainly oriented to prioritizing what is needed to attract and secure foreign investment, which includes introducing some measures aimed at facilitating large-scale transfers of tenure rights while avoiding land disputes, court cases and social protest. The current draft of the national land use policy does not prioritize small scale farmers, minority ethnic peoples and other poor, vulnerable and marginalized sectors of society, nor does it provide sufficient measures to prevent them from being dispossessed of their land and livelihoods. Instead, the policy prioritizes and gives special privileges to business investors, which could spark more land grabs and create more land problems within the country.

It does not yet give sufficient consideration to the problems, issues, needs or aspirations of small scale food producers and land users, to poor, vulnerable and marginalized working people, or to those who have been dispossessed in the past and would like to return to the land in a safe and secure manner and environment. There are no measures mentioned in the current national land use policy draft that address the land problems in the country especially previous military government’s land grabs and the current land problems. This bias in favor of encouraging more foreign investment and large-scale transfer of tenure rights is reinforced by the way of forming the National Land Use Council according to the policy draft, which is top-down and too narrow to consider the interests of everyone in country.

The current policy draft ignores or has no references to the international human rights principle such as FAO Land Tenure Guidelines, United Nation Declaration of Human Rights, United Nation Declaration of Indigenous Rights, Convention on the Elimination and Discrimination Against Women.

Nor does the current draft take full and significant measures to ensure respect of human rights and socially-legitimate tenure rights by business enterprises; to ensure that businesses are not involved in abuse of human rights or undermining socially-legitimate tenure rights; to ensure protection against such abuses by business enterprises that are owned or controlled by Government, or that receive substantial support and service from Government agencies; and to provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises.

Meanwhile, land disputes are happening across the country, the government has no clear mechanism in place to solve land problems in the country. There have been several efforts by the government to solve land problems but they have failed due to top-down or one-sided approaches to the land solving mechanism. Involving communities themselves in solving land disputes is the key towards land disputes solutions. It is important to identify the root causes of current land problems and put in place a proper mechanism to solve land problems with meaningful participation from all relevant stakeholders.

One of the good points in the draft policy that the large-scale investment projects need to be suspended (in dispute zones) while impartial environmental and social impact assessments are carried out. However, we have doubts about the impartiality of such assessments if paid for by the applicant, and additionally, we think that the independent assessment should also include a thorough assessment of projects on human rights as well.

Finally, the current draft of the policy is unclear, inconsistent and could create misunderstanding for ethnic and ordinary people in Myanmar. There are words description in sections referring to registration, consultation, participation, and ‘bottom-up’ manners. However, these words do not clearly and explicitly refer to establishing meaningful guarantees on how processes would proceed in order to ensure farmers, ordinary people, and smallholder land users have land tenure security and protection for their livelihood.

More generally, the policy process cannot be considered concluded -- to the satisfaction of especially those whose lives and livelihoods are most affected – until the document is explicit, clear and widely acceptable with regard to how it will improve governance of tenure of land “for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development” (Art.1.1 CFS-TG).

In addition, in light of the ongoing armed conflict, the policy will be widely accepted only once it explicitly and clearly addresses the root causes of that conflict which are integrally related to the use and management of land and natural resources, to the satisfaction of those vulnerable and marginalized groups most adversely affected by this situation. To be finally acceptable, the national land use policy will have to clearly and explicitly aim to promote peace building and national reconciliation as parts of solving the lasting ethnic political conflicts, as well as legally recognize the land tenure rights of indigenous/ethnic communities.

# V. RECOMMENDATIONS

## a. Preliminary: Overall Goals and Objectives

**The policy should explicitly aim to achieve the following;**

### Whose Rights

- To prioritize the recognition, protection, and promotion of the tenure rights of all people, but with special emphasis on the occupation and use rights of especially the poor, marginalized and vulnerable and with special attention to the rights of women and youth. This objective is supported by Article 1.1 of the Committee on World Food Security’s Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereafter “CFS-TG”), to which the Myanmar Government is a signatory.

### What Rights

- To support legal recognition and allocation of tenure rights in duties in a way that is fully consistent with Part 3 of the CFS-TGs.
- To support different types of tenure arrangements, including individual and collective systems of tenure use and management, and their related rights, rules, duties and restrictions on ownership, occupation, use and management practices in the context of the justice and peaceful development and welfare of human society.
- To recognize, protect and promote customary tenure rights and practices and to ensure the sustainable occupation, use and enjoyment of communal land and related rights especially by the poor, marginalized and vulnerable peoples and long-standing resident village communities, free from encroachment or unauthorized occupation or use by others.
- To recognize and promote ethnic land policies in their respective areas.
- To recognize, respect and fulfil the right of meaningful participation of farmers, civil societies, lawyers, and elected representatives from ethnic groups in decision making related to land use policy making and implementation, monitoring and evaluation, research and development, and continuous improvement.

### Which Purposes

- To promote a genuine national development that tackles social and environment injustice and is in line with basic and core democratic principles.
- To prioritize and promote a sustainable environment and sound ecological agricultural and aquacultural practices
- To solve the current land disputes and prevent future land problems
- To ensure recognition, protection and promotion of the land tenure rights and land use system of (indigenous) ethnic people including the land ownership, use, practice and management.
- To recognize the twin problems of landlessness and land concentration, and to commit to setting up an effective system and mechanism for land redistribution. According to the CFS-TGs Art.15.1 ,15.2 and 15.3, where a high degree of concentration is combined with a significant level of rural poverty

attributable to lack of access to land, forests, fisheries, water and related natural resources, redistributive reform can be a crucial measure toward fulfilment of the basic vision and objectives of land policy. Redistribution will be undertaken and carried out in a way that protects, respects and fulfils human rights and is consistent with international human rights standards. Redistribution will prioritize rural working poor and landless and near-landless, marginalized and vulnerable people and communities, and will guarantee equal treatment of men and women and their equal access to land, forests, fisheries, water and related natural resources. Government will ensure that any land redistribution it undertakes will provide the full measure of support required by beneficiaries, such as access to arable lands, credit, crop, inputs, markets, technical assistance in rural extension, farm development and housing.

- To recognize, prioritize and promote the rights of restitution of refugees and displaced persons who have been forced from their lands, livelihoods and homes. According to the CFS-TGs Art.14, States should consider providing restitution for the loss of legitimate tenure rights to land, fisheries and forests. This is particularly relevant in situations of conflict (CFS-TG, Article 25). Where possible, the original parcels or holdings will be returned to those who suffered the loss, or their heirs. Where the original parcel or holding cannot be returned, the government, in close consultation with the land management body, will decide on an appropriate alternative with consensus from local authorities and village community of those impacted. The government will develop gender-sensitive, clear, transparent processes for restitution. In keeping with its duty as a signatory to the CFS-TGs, the land policy should explicitly align itself with CFS-TG Art.14 and Art.25 in their entirety. This provision should also be consistent with the Pinheiro “Principles on housing and property restitution for refugees and displaced persons” ([http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)).
- Government with representatives from civil societies, farmers and independence land experts will monitor and evaluate the outcomes of its redistribution and restitution programs and initiatives, including associated support policies and their impacts on access to land, forests, fisheries, water and related natural resources, on food security of both men and women, on human rights, and on environmental health and biodiversity.

## b. Basic Principles of Implementation

OVERARCHING PRINCIPLES – the land policy should explicitly align with the relevant CFS-TGs Articles – namely, Art.3A and 3B, Art.4, and Art.5. These principles should be applied in all sections and matters throughout the document.

- **Human Dignity** -- The Government shall recognize the inherent dignity and the equal and inalienable human rights of all individuals. The government shall ensure the dignity and rights of all its citizen is uphold in areas of particular the use of land related to cultural, religious or environmental significance, or where the land, forest, fisheries, water and related natural resources are significantly important to the livelihoods of the poor, marginalized or vulnerable.
- **Non-Discrimination** -- No one should be subject to discrimination under law and policies as well as in practice.
- **Gender Equality** -- Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.
- **Holistic and sustainable approach** -- Government shall recognize that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.

- **Rule of law** -- The government shall adopt a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- **Good Governance** -- In line with international human rights standards, this policy supports good governance through meaningful participation, consultation, transparency, and accountability. The government shall define and widely publicize policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all. Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law. The Government shall engage with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes. The government shall ensure the public participation throughout the process of any project implementation, analysis of scenarios that take into account the accumulation of possible impacts, means for the affected public to voice their concerns and opinions throughout the steps of the process and transparent and accountable for project implementation stages. Prior to the initiation of any change in tenure rights, the government will ensure that independent environmental, social, health and human rights impact assessments are conducted and concluded and their results taken into account in accordance with the rights, responsibilities and requirements of this policy.
- **Free, Prior, Informed and Consent (FPIC)** -- Whenever any reallocation or transfer of the tenure rights, the Government shall undertake full and meaningful consultation with all those whose tenure rights could be affected, to gain their FPIC before initiating any project, or before adopting and implementing legislative or administrative measures. Consultation and decision-making processes will be organized without intimidation and be conducted using clear and accountable procedures and based on international human rights principles of implementation.

## c. Who Gets To Decide

- To establish the respective duties and roles for all of the relevant and appropriate departments and agencies.
- To establish an independent and effective land monitoring body to oversee the land use and management.
- To establish a land management body with participations from farmers, civil societies, lawyers and elected representatives from ethnic groups at national, regions and states.

## How

- Government shall uphold the international human rights standards, to promote the welfare of its citizens, to protect local food production systems and ecosystems throughout the country.
- To uphold international principles on free, prior, informed, and consent when implementing land use policies and laws.
- To establish an affordable and accessible land registry system that accurately records and certifies the socially legitimate tenure rights including customary tenure practices of resident peoples and village communities.
- To establish an appropriate, accessible and effective system for addressing and remedying tenure-related current grievances and disputes with participation.



## **VI. LAND USE MANAGEMENT**

### **a. National Land Use Council**

In the current draft policy, the land management mechanism is structured as a centralized and top-down decision-making process. The draft policy outlines the different levels of management committees as from the Union Government to National Land Use Council to the Region/State Land Use Committee to the District Land Use Committee. Meanwhile, the responsibilities and duties of each level are based upon highly technical aspects, such as precise maps, management and registration systems, information sharing, land classification systems etc. There are no explicit measures giving communities, including minority ethnic peoples, decision making power and control over questions of land ownership, land use and land management, which could delay further the peace building and national reconciliation process and could create new land conflicts.

The land use administration structure should adopt a people's centered approach towards land use decision making and management, and farmers, ethnic people and women should be represented in all levels of land use and management councils or committees. Additionally, only representatives who are voted or selected by people in their own areas in democratic ways should take responsibilities and implement the land use management.

### **b. Land Classification**

Land classification should reflect how the land is used by the community. It's vital for individuals as well as for the community as a whole. There are 10 types of land classified in the draft policy. However, some types of land definition are unclear, others are unacceptable, decision-making process for classifying the land are not clearly stated, and some important types of land uses by communities in practice on ground are missing.

The ten classifications of land use considered in this policy draft do not include and clearly state the holy and sacred places of the ethnic people. The category of "vacant, fallow, virgin land" is unacceptable especially in ethnic territories where shifting cultivation is prevalent and even so-called "fallow" land is still being used by shifting cultivators. The meaning of National security and defense areas are unclear. In the current situation, land conflicts between the community and military are happening and it's so complicated. The military/Tatmadaw is confiscating massive amounts of land using different reasons, but in reality land conflicts happen when the lands are taken over and used by other actors such as leasing or selling to business people especially to cronies.

### **c. Who should take part in land classification**

People who are using the land in the community should be included in the process of decision-making for classifying the land. They should not just only participate in the process but also should have rights to make decision over the types of land that they use. This is because the local people who can give the most accurate and legitimate information about which lands are being used in which ways in their community. Moreover, involving local land users in classifying land can reduce the potential for conflicts both within the community and between the community and outside interests by identifying the types of land use most accurately.

## **d. Survey and assessment needs**

If the way of identifying types of land on the ground is by using satellite (highly technical), there will be discrepancies between the results and how the land is used in reality. For example, you can identify the forest through satellite but cannot identify how local people are using the forest practically, such as hunting grounds, reserve forest for community harvesting of wood and bamboo, or herbal plants areas. Therefore, it is very important that the details survey and assessment of land classifications should be conducted hand in hand with all the people in local communities.

## **e. What should be included in land classification**

The policy should clearly state and defined the following types of land:

- Under the protected areas, it should clearly include and recognize the cultural and historical heritage land, related to environmental, forestry, water, land, wildlife, biodiversity. ‘Holy lands’ of communities including ethnic peoples and different religious people/groups should be included under the protected areas.
- In Indigenous Peoples or ethnic nationalities areas, Taungya or farm land, Communal Land should recognize, encompass and protect areas such as community maintained forests which they rely on for their livelihoods in terms of collecting bamboo or wood, community maintained forests for water, pasture land, water areas especially lake, ponds and rivers which communities rely on for their livelihood, hunting land areas, cultural heritage areas, religious or spiritual land, etc.

## **f. Zoning (spatial planning)**

In the draft policy, zoning processes are not clearly identified, and the roles of local people in these are not clearly stated. There currently appears to be no chance for all local people, including the most vulnerable and marginalized, to participate in the final decision-making. If zoning or spatial planning is needed, there should be clear procedures which clearly state how all local people in the communities can participate at each step, as well as how their tenure rights will be recognized, protected and promoted in the face of (re) zoning initiatives. Alongside individual lands, community owned and collectively managed areas/zones need to be recognized, protected and promoted clearly especially in urban and rural land management systems. Ethnic minority groups should be clearly and explicitly safeguarded from losing their individual and collective lands by zoning. The CFS-TGs calls for safeguards to be established where land consolidation and other readjustment approaches are used (Art.13.6).

The land policy should support and promote measures to protect the right of community land use and management of natural resources. The right of all local people and communities to participate in the drawing of maps for their own village and in determining precise boundaries should be recognized and fulfilled. Official maps should clearly and accurately recognize and reflect how all local people and ethnic peoples use land in practice. Special recognition should be given to agro-ecology as an approach for sustainable land use management (CFS-TGs Art.20).

Including for environmental conservation activities (identifying the forest land, protected areas), if the Government proposes to undertake projects and investments in the above mentioned areas, they should

get the free, prior and informed consent from all those who will be affected including the local indigenous or ethnic peoples. The indigenous or ethnic people have the right to say “YES” or “NO” to investment, the Government must abide by this decision, and this should be clearly stated in the national land policy and law.

## **g. Information Management**

Chapter V is concerned with information management as a solution, presenting the act of information management as an objective reality. It is assumed that through the creation and management of “up-to-date, complete, precise and correct information relating to official land use right” (Art. 22(a)), all land tenure security and dispute problems can be solved. Missing from this explanation is the who: who will be in charge of creating information, under what terms, how it will be created (i.e. co-created with communities or top-down knowledge creation), and who will manage that information. How information is created and how information will be accessible is just as important a consideration as how that information will be managed, because ultimately information is not an objective, truth/reality, but rather things like map boundaries etc are constructed by someone.

According to the draft policy, current land use maps on the ground would be drawn by the Government, while the approaches to do this rely heavily on highly technical methods such as satellite imagery. But top-down highly technical methods are not always or necessarily accurate. There is great concern that Government will not be able to acknowledge or record the historical and social realities of land use on the ground. Even if land is not in a documented record of land use, or even if people do not have a registered title, they still use it and want to continue to use it. Although the draft policy appears to provide for recognition of customary land tenure and land use practices, it does not clearly and explicitly state how it will recognize and especially protect and promote customary land use and management practices. It does not make clear how it will trace past history of customary land ownership and use, so as to record and recover tenure rights that were lost due to past and recent land grabs and land confiscations as well as due to natural calamity and armed conflict, which is necessary to address many current land conflicts.

The information management regarding how land is being used (and has been used as noted above) by communities should be precise and correct in order to avoid land conflicts in the communities. Additionally, however, a systematic land use and information management system should not be established and implemented for the purpose of large-scale business investments. It should be done with the primary aim to protect and promote how communities use and aspire to use their lands.

In the process of information management, there should be rights for community to participate in the decision-making process for drawing maps and deciding how land ought to be use by the community. Local people have the best knowledge on history of the land, how they use the land currently, and tenure practices in community. It is important to collect the information not just based on current landholders but also trace the history of land records, who are the actual land owners, what types of land, how the current land holders acquire land, etc, Therefore, the information management process should lead by community, and the information management approach should focus more upon the methods of information-creation and recording and less on its technical aspects.

All people in local communities should be able to access to land related information freely. There should be a proper mechanism in place for public to have access to accurate land related information.

## **h. Land Use Rights of Ethnic Nationalities**

It is vitally important to recognize and protect Customary and traditional land use, practices, management, decision making in land use. This Part should be moved from where it currently is in the draft policy document, to come much earlier and in any case before any discussion of changes in land use. Moreover, this part of the draft policy needs revising in order to address some contradictions and weaknesses in how it is currently written and framed. While it gives recognition to the customary tenure rights of all ethnic nationalities, using the term “traditional land use practices, at the same time the policy seems to suggest or anticipate bringing to an end practice of shifting cultivation which many people in most of the ethnic areas are practicing. There are no explicit measures giving minority ethnic peoples decision making power and control over questions of land ownership, land use and land management, which could delay further the peace building and national reconciliation process and could create new land conflicts. The Government should recognize and promote ethnic land policies in their respective areas.

In ILO Convention No.169 on indigenous peoples ([http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_100897.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf)) Art.13-16 which also says that the rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy, shall be recognized.

### **In our view, the national land use policy should aim to:**

- Fully protect the ethnic nationalities rights including the customary practices of shifting cultivation, as well as their customary practices in land tenure security, self-administration, social justice, and culture.
- Legally recognize and protect the ethnic customary land tenure systems, including ownership, freedom of use, management and decision-making.
- Promote the peoples-centered sustainable development in ethnic areas, social justice, land tenure, and livelihoods especially for the indigenous/ ethnic peoples.
- Eradicate poverty, protect smallholder farmers, and prioritize the diverse and plural needs and aspirations of the ethnic minority peoples, to have peace and fair investment in the community.

Art. 69 gives an outline for decentralizing the processes of mapping and records to the ward, village, and township levels. However, the process is unclear and does not explicitly or clearly consider the existing decision-making power and land tenure management practices of ethnic people in light of the environment and culture they value. The policy mentions the reclassification of ancestral land and will temporarily suspend granting concessions during this time (Art 72). However, there is no clear mention of how the process will be carried out. In terms of Land use maps and record of the ethnic communities, the community should lead the process and should have the rights for mapping their villages/areas by themselves rather than just for consultation and participation.

Even though the policy mentions the protection of customary land practices of ethnic groups, it does not legally recognize and guarantee freedom of customary collective land ownership, land use and land management of ethnic groups. The term “permanent taungya” appears to ignore the social, cultural and ecological value of customary shifting cultivation practices, and to encourage instead a transition away from customary shifting cultivation practices to permanent agriculture. The policy should allow, protect and legally recognize ethnic communities to have freedom in customary land tenure rights, customary collective land ownership, management, use, practices and decision-making power and promote the preservation of their natural environment, tradition, culture that they value as well as have the power to effectively decide ("Yes or No") to any investments that are coming into their areas. The changing of

shifting "Taungya" cultivation practices to "permanent Taungya" should be decided by the ethnic communities themselves, they should not be forced to change it. The policy needs to be explicit about this.

Concerning the rights of refugees and IDPs affected by civil war in Myanmar, there are no provisions in the policy draft to address issues of land distribution, restitution, and the right to return. The draft policy totally disregards the guarantee of land tenure rights for IDPs and the refugees, which are found in the CFS Tenure Guidelines, especially Art.14, along with the UN Pinheiro "Principles on housing and property restitution for refugees and displaced persons".

Concerning land problems in ethnic territories, the policy should recognize ethnic groups' land policy, which allows them to decide on their own. In the ethnics/indigenous regions, the customary judicial system settles land disputes/conflicts, not the government's law court. This must be recognized officially along with the appointment of a jury board by the public to settle the issues. Communities should select the representatives of the customary jury board in democratic ways.

## **i. Equal Rights of Men and Women**

The draft policy part VIII outlines about the women's rights to the land tenure and land management. This section is also the first to reference international standards (Convention on the Elimination of All forms of Discrimination Against Women) in this draft policy. However, points are neither clearly nor properly stated in the specific section where they are mentioned such as how women's equal rights will be respected and actively promoted. The CFS Tenure Guidelines state that States should ensure a gender balanced approach for access to tenure rights, including the redistribution of community land (Art.4). The policy should recognize and respect women's distinct land use needs and rights, and women should be represented in the decision-making bodies concerning land use practices.

The government shall recognize the distinct right of women to claim effective access to land, as peasants, rural laborers, forest dwellers or pastoralists, and as women. As farm workers, (part-time) farmers, herders, and firewood gatherers, rural poor women have their own connections to land resources, independent of the men within the household, thereby entitling them to their own distinct land use rights. The government should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, the government should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights. Such actions should be consistent with their existing obligations under relevant national law and legislation and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

The government shall consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced. This recognition should be systematic and not superficial, and its provisions should be clearly and explicitly integrated throughout the document. This Part should be moved from where it currently is in the draft policy document, to come much earlier and in any case before any discussion of changes in land use.

## **j. Planning and Changing Land Use**

Planning and changing land use should promote poverty eradication in the country and investments should prioritize, strengthen and promote the people and farmers' existing farming practices and activities. The national land use policy should include the approaches that promote land access and control for rural working people and those who have been driven from land in previous times. People are losing their land regardless of having documents or not in the country. It should be clearly stated that the land distribution, redistribution and restitution for people are especially for IDPs, refugees, landless or near-landless people and other vulnerable groups, so that they may be included in and move forward with the sustainable economic development in the country.

The process for drawing land use plan in the draft policy mentions a 'bottom-up' submission manner for land use plans, but the decision-making power is not clearly laid in the hands of all people in the local community. The draft policy's proposed process of first informing the public and then asking for comments is not a 'bottom-up' approach and it excludes the bottom from decision-making powers. Art. (27) mentions the 'official existing land users rights', but people are currently struggling with land tenure security and facing with land confiscation problems, and so this wording is potentially dangerous and counter to people-centered development objectives.

Regarding the changing land use, it should be a comprehensive, consultative, and participatory process for deciding what is or is not suitable. The process should not affect the land rights of marginalized people and smallholder land users. The decision-making for land use changing should take place at local community and district level. There also should be the approaches to deal with current land confiscation problems and should include the redistributive reforms process of land. In terms of changing land use, it should prioritize the undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure.

## **k. Safeguard in relation to land use changes**

There should be a process and procedure of identifying all existing tenure rights holders, whether formally recorded or not. Indigenous peoples and other village communities with customary tenure systems, smallholders and anyone else who could be affected must be included in the consultation process. Government must provide access to justice if people believe their tenure rights are not recognized or respected. The CFS Tenure Guidelines provide clear and explicit guidance in how legal recognition and allocation of tenure rights and duties must be done, covering the key aspects of safeguards (Art.7.1-7.6), public land, fisheries and forests (Art.8.3), indigenous peoples and other communities with customary tenure systems (Art.9 and especially Art.9.9 on free, prior and informed consent (FPIC)), and informal tenure (Art.10). It bears stressing that these provisions are internationally agreed upon by the governments of the world, which makes them special and significant. The policy should take them fully on board.

Farmers and local communities that have traditionally used the land, forests, fisheries, water and related natural resources. Policies must take into account the tenure rights of others and anyone who could be affected must be included in the consultation, participation and decision-making processes. Such policies must clearly show and ensure that the allocation of tenure rights does not threaten the livelihoods of people by depriving them of their socially-legitimate access to these resources.

Carry out allocation of formal occupation and use rights in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all. Information in applicable languages should be provided to all potential participants.

Establish safeguards to avoid infringing on or extinguishing the occupation and use rights of others, including socially-legitimate tenure rights and subsidiary tenure rights, such as gathering rights, even when these are not currently protected by Government or customary law. Ensure that women and men enjoy the same rights in allocating land use rights.

With regard to “Granting Concession on or the Lease of State-Owned Land”, and also with regard to “Land Acquisition, Compensation, Resettlement and Rehabilitation”, the policy should align itself exactly with and apply fully and vigorously the relevant and existing international human rights standards. These include the UN Guidelines on Development Related Evictions and Displacements ([http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf); see also [http://www.hic-sarp.org/documents/Handbook%20on%20UN%20Guidelines 2011.pdf](http://www.hic-sarp.org/documents/Handbook%20on%20UN%20Guidelines%202011.pdf)).

## **Additionally, the policy should align itself with the CFS-TGs, which establish that:**

- (i) the main investors are small-scale producers and therefore states should strengthen them (Art.12.2);
- (ii) responsible investments should “do no harm” to people or the environment, but should promote and secure local food production systems, rural development, and support of local communities (Art.12.4);
- (iii) policies should prevent large-scale investment, e.g., by introducing land investment ceilings and submitting investment plans for parliamentary approval (Art.12.6);
- (iv) states should ensure that independent impact assessment of large-scale investments on tenure rights, the right to food, and the environment be carried out before any plan is approved and change occurs (Art.12.10);
- (v) extraterritorial states obligations when investing abroad (Art.12.15).

## **I. Land Disputes**

In the policy draft, there is no clear mechanism to solve current land disputes and problems in the country, and it does not meaningfully empower farmers groups to have a voice within dispute settlement or appeal processes. There should be an alternative disputes solution mechanisms or center at village, township, state and national levels where farmers and communities have easily accessed to. The land disputes solving mechanisms should also consider for refugees and IDPs return as one of its priorities.

A land dispute solving committee should be established with a long-term mandate to address all issues related to land policy and its implementation. Representatives of respective ethnic leaders should be included in the land dispute solving committee. Local farmers groups/associations should be involved in the land disputes committees and able to solve the disputes.

In Part (V)- Art 45 (a), though it mentioned the space for empowering farmers associations to handle land disputes ‘between their members’, it is unclear and weak. Local farmers should have a meaningful role within the disputes resolution process. Civil society should facilitate and support the dissemination of accessible and accurate information in a timely manner. Local farmers should be guaranteed their rights according to international norms, including access to information about their case, access to a lawyer, and a just and independent judicial system.

In terms of monitoring land disputes, Art.46 mentions that there will be an appointed monitoring group and if necessary there will be an establishment of clear and impartial dispute mechanisms. The questions are who will appoint these monitoring groups and how impartial they can be. To monitor the land disputes, there should be an establishment of clear impartial dispute mechanisms and bodies in the community with representatives elected democratically by the local community. To ensure accessibility and that class-based discrimination does not occur, the state should pay for all costs or fees related to the rights of appeal.

## **m. Formation of special court to solve land problems (Independent and selected)**

An independent and respected body, with effective decision-making power, should be established to solve previous, current and future land disputes and problems in the country. The land dispute solving committee at different levels such as townships, states/regions, and national, should have the decision-making power. The land dispute committees should also be formed in a democratic way at every level, and not be assigned or selected with a top-down approach.

## **n. Monitoring & Evaluation**

According to the current draft policy, the National Land Use Council will carry out the monitoring and evaluation of the implementation process. The fact is that there is no impartial, independent body set up to monitor these processes. Thus this creates a conflict of interest: the council tasked with evaluating its own activities will be unlikely to do so with the necessary critical lens. Instead, the NLUP should implement a clear monitoring and evaluation process, with many responsibilities, including how to handle instances of unethical behavior (to correct, discipline, and improve upon it). There should be the independent respective bodies at the States/ Regions and township level to monitor and improve upon the policy.

## **VII. CONCLUSIONS**

In order to prevent this scenario, the Government of Myanmar must take time to redraft the NLUP, following the recommendations of local communities, CBOs, CSOs, and experts – and aligning the policy with international norms and best practices. A truly inclusive, bottom-up policy process is the only path to a progressive, socially just, and legitimate policy. Creating a successful land policy and is key for the government to win the trust of the people during this time of transition for the country.