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I. Introduction

Refer to LIOH key principles and comment on draft law

Land In Our Hands (LIOH) is a multi-ethnic network made up for more than 60 local farmers organizations, supportive community based organizations, allied local civil society organizations and ethnic rights activists from all fourteen States and Regions in Myanmar. LIOH's mission is committed to promoting, protecting, respecting, and fulfilling the land tenure rights of small-scale land users, ethnic minority, women, and marginalized vulnerable groups. LIOH played an active and key role in the public consultation for a new national land use policy.

LIOH is against the treatment of land as a commodity, and we oppose land concentration and land speculation. We believe in land redistribution to the landless and in land restitution to people had previously lived and worked on the land but were forced out because of conflict, militarization, mega projects, land grabbing and land speculation. We advocate for a land use policy in a federal system that is suitable and appropriate for the diverse traditional practices of ethnic people and other customary communities in the context of democratic principles and social justice for all. LIOH tries to engage with every level of Government, Parliament, and Ethnic Armed Groups, in order to achieve this.

Last 17-18 July, 90 representatives of the LIOH network from 14 states and regions met in Yangon to analyze the proposed Farmland Law amendments and discuss our response. This paper is the result of this discussion.

As is well known, in 2011 the Myanmar Government embarked on rapid economic liberalization, courting a wider range of foreign business interests and trying to attract big investments for export oriented large-scale extractive industry, large-scale agribusiness, large-scale energy production, and mega infrastructure projects, not only but especially in ethnic border areas. To facilitate this, in 2012 the Thein Sein Government enacted the Farmland Law and the Vacant, Fallow and Virgin Land Law. The Farmland Law allowed land to be bought, sold and transferred on a land market with land use certificates. The Vacant, Fallow and Virgin Land Law established that all land not formally registered with the government could now be reallocated to domestic and foreign investors.

The experience of LIOH members is that that these two laws from 2012 have worked together and are being used by powerful elements across the country to deprive many rural working people -- farmers, fishers, forest dwellers -- of their right to land. Large numbers of people actually tilling the land experienced great and overwhelming difficulties in trying to obtain the land use certificates created by the Farmland Law, and many more had their applications rejected outright. Large numbers of people under customary tenure systems have seen their lands allocated to others, mainly those with business interests and ties to local, regional and national elites and authorities. LIOH research has documented many cases of land grabbing since 2012. About half of cases involved people who had an official land use certificates, clearly showing that these are no guarantee against land grabbing¹.

¹ "Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar." Report published by LIOH in December 2015.
https://www.tni.org/files/article-downloads/lioh_research_report_eng_0.pdf

In our direct experience, neither law takes into account the aspirations, interests and rights of rural working people – those who actually have been living and working on and caring for the land (or who once did before being deprived), often for generations. Both laws are in need of substantial and serious revision, if not a complete overhaul. Our key concerns and recommendations are outlined below. While we also refer to some specific articles that need to be removed or significantly revised, however, this is not an exhaustive list.

Thus, while we welcome any initiative to revise the current Farmland Law, we feel very strongly that the nature and character of the currently proposed amendments are not what is needed. They fail to address the true weaknesses of the existing law and at the same time they move regulation of land even further in the wrong direction.

II. Key LIOH Concerns and Recommendations on Amendment of the Farmland Law

Right to Land

LIOH believes that land belongs to those who actually live and work on and care for it. The people and communities who actually live and work on the land and care for it are the backbone of Myanmar society. They comprise 70 percent of the population. They are the key to a peaceful, prosperous and sustainable future, and they are among those who ought to be given priority in policy and law. In light of this, in order for the Farmland Law to be acceptable, it would have to include the following issues.

1. The State and the sovereign power of the State are derived from the people. Thus, the people are the original owners of all the land. In paragraph (5) of sub-article (a) of article 6, the person, who will be issued the certificate to use the farmland, shall only be a citizen. But to prevent land concentration, land inequality and landlessness, the land shall belong to those who actually live and work on it. Therefore these key points should be added:

- Both men and women shall be given equal opportunities in land resources, land rights and decision-making.
- Landless people, whose livelihood is agriculture, shall have the right to own land.
- Farmers who are under 18 years of age have right to land and this shall be recognized.
- For displaced ethnic nationalities, who come back to resettle in their communities, after having to leave their land due to conflict, militarization, land grabbing, natural disasters or any other reasons, shall have the right to use the farmland and to live on the land as they want to. The (administrative body of farmland) shall arrange systematically so that the ethnic nationalities shall have land tenure and right to live on the land when they resettle after having left their land due to land conflict, militarization, land grabbing, natural disaster or any other reasons.
- If land acquisition is inevitable, the government should provide quality land as replacement with fairness, accountability and responsibility to ensure that the farmers do not face losses. The government should also issue specific and transparent guarantees to ensure the sustainability of the (social, economic, education and health) life of the farmers. For stable life and livelihood of the farmers, who are victims of land confiscation, they shall have the right to replacement farmland, compensation for farmland and land, indemnities and other benefits.
- There shall be a highest land ceiling to limit the highest access to land both individually and by economic activity. The land ceiling should be set transparently with public consensus/agreement based on local land use.

Some comments on specific articles:

- Under the chapter on rights to use the farmland, in article 9, the rights of the farmers have been restricted. These rights to use the farmland support the wealthy persons to get more rights than the rights of the smallholder farmers.
- In chapter 1 of the Farmland Law, the sub-article 3(e), article 4 and 5 providing the definitions of the key expression “farmer” shall be deleted in Chapter 1 of the Farmland law. This expression does not include a person who capitalizes or supervises or produces and sells seedlings and seeds. In the proposed amendment provision of sub-article 3(e), omission of the expression “continuously” is unacceptable.
- The expression “livestock breeding” in paragraph (2) of sub-article (e) of article 3 shall only cover a small-scale livestock breeding of a farmer.

2. Farmers shall have the right to freedom of association and to organize themselves, as well as the right to participate, discuss and decide in the decision making of land use and land administration.

- The expression “farmer organization” in sub-article (j) of article 3 shall support the interest of farmers instead of supporting the development of rural economy. If farmer organization means the farmer organization formed in accord with any law, then it is necessary to clarify which laws are referenced here.
- Article 38, the expression “the farmer organization may be formed” shall be substituted with “the farmer unions may be formed independently.”

3. Farmers shall have the right to cultivate independently any crop on their farmland.

4. The agreements related to land use shall be implemented according to international standards (Free, Prior and Informed Consent - FPIC) and farmers shall have the right to observe, analyze and evaluate these agreements. If land use is necessary for any project, the consent of the original farmer who has been using the land shall be obtained without using pressure or forcing them.

- In the Farmland Law sub-articles (a) and (b) of article 42, the following provision shall be added: “the farmers shall receive all relevant information in a transparent way and their agreement should be obtained before implemented”
- Farmers shall have the right to easy and transparent access to information related to agreements related to land use.

5. If the interests of the farmers and those of the private companies become competitive in decision making of land use, the priority shall be given to the interests of the farmers.

6. Some other key issues

- In article 39, although the provision states that “the members assigned in various levels of Administrative Body of Farmland under this Law shall be deemed as civil servants”, the farmers who participate in those bodies as members are not civil servants, remunerated by the State. They shall have the right not to be under the influence of the Government and to stand independently.
- Article 40 shall be substituted with “Any proceedings shall be filed at any court in any matter carried out in accord with this Law or rules made under this Law to the members of various levels of Administrative Body of the Farmland. The expression “in good faith” has a broad meaning and it can be manipulated to interpret as anyone wants to.

Customary Land Management

Land, water, fisheries and forests across the country have long been occupied, used, managed and protected by local people and customary communities according to diverse practices based on agro-ecological conditions, customary practices and customary laws. The internationally agreed the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), to which the Myanmar Government is a willing signatory, clearly call for full and meaningful recognition of customary tenure systems including shifting cultivation which is part of customary systems. This principle is supported by other international human rights instruments as well, including International Labor Organization Convention 169 and The United Nations Declaration on the Rights of Indigenous (UNDRIP). In light of these facts, in order for the Farmland Law to be acceptable, it would have to include the following points:

1. There shall be full recognition of and guaranteed respect and protection for customary land tenure, land rights and independent customary land management for the land of ethnic nationalities in line with their customs, traditions and practices. The following provisions are in contradiction to this and should be removed:

- The process of application of the right to use the farmland by the person who has the right to use the farmland under Articles 4 and 5 of Chapter 2 is in contradiction to customary land rights.
- Sub-article (b) of Article 6 and Sub-article (a) of Article 7 encourages farmland acquisition and it is contrary to the customary land tenure.
- In ethnic nationality area, there is no vacant, fallow and virgin. All the land are either communal land or commons. It is contrary to the provision in Article 34.

2. Customary land practices, inheritances, sharing land use and decisions made in accordance with local community traditions shall be recognized, protected and promoted by government policies and legislation.

Administration of Farmland

In LIOH's view, different levels of farmland management committee must be established with the real stakeholders, such as farmer organizations, ethnic nationalities, CSOs and experts on farmland. The members of the committee shall select and appoint the secretary of the committee.

Some comments on specific articles of Farmland law:

- "Shifting cultivation Land" shall be included in Sub-article (a) of Article 3. There shall be a definition like that of "Alluvial Land".
- Heads of household who are under 18 years of age shall be recognized in Sub-article (g) of Article 3.
- In Sub-article (h) of Article 3, the definition of the "guardian", the court shall recognize the person appointed by the village.
- It is concluded that the definition of the term "repair to gain progress by building" is not intended for small holder farmers but for wealthy persons in Sub-article (h) of Article 3.
- The person who is under 18 years of age shall be recognized in Paragraph (iv) of Sub-article (a) of Article 6.
- Sub-article (b) of Article 7 is not in line with the provision of the Constitution.
- Article 8 gives priorities to wealthy persons. In reality, the common farmers do not receive equal opportunities as cronies while applying for vacant, fallow and virgin land.
- Provisions related to alluvial land in Sub-article 10 and 11 of Article 8 are inconsistent with the Farmland Law so a specific law shall be drafted.

- The provision in Article 14 stating that the person who has the right to use the farmland “shall not” sell, mortgage, lease, exchange or gift on the whole or part of the right to use the farmland “without permission of the Government” to any foreigner or any organization in which the foreigner is included, is in contradiction with Sub-article (f) of Article 9 and it may lead to bias and corruption.
- Articles 15 and 16 create only a centralized system. There shall be at least 50% of farmer representatives in every level of administrative body of farmland.
- Articles 17 and 18 create a centralized system so it shall be decentralized. An independent monitoring and evaluation committee shall be established to promote a system without bias.
- Articles 29 and 30 do not include the opinion, desire and decision of the farmers so it does not meet Free, Prior and Informed Consent (FPIC) standards. These laws are arbitrarily oppressive laws against smallholder farmers.
- It is necessary to comply with the provisions in Articles 32 and 33 in a systematic way, indicating that “in confiscating the farmland for the projects of the State interests, only the required minimum area shall be confiscated. [...] when the project is not carrying out, it shall be returned to the person or organization which has the original right to use the farmland” and “[...] continue to keep not to damage pastures and communal land of the village”.

Farmland dispute resolution

The land disputes should be resolved transparently and fairly without corruption, bias and favoritism. In LIOH’s view, representatives from genuine farmer organizations should participate at every level of dispute resolution processes as a safeguard for the protection and development of the farmer interests. If the decisions are not right, the person or organization should have the right to sue the different levels of committees/ commissions within the farmland dispute resolution mechanism, according to the law. Therefore, the following key points should be added to the law:

- A monitoring and evaluation committee should be established to promote a fair system without bias or favoritism.
- Tripartite arbitration processes consisting of government agencies and organizations, farmers and private sector shall be established to settle land disputes.
- A field team shall be established only with academia, land experts and local farmers to settle the land disputes.

Some comments on specific articles:

- The chapter on “Offences and Penalties” shall be deleted.
- Articles 19, 20 and 21 under the Chapter “taking action for the failure to comply (with the terms and conditions)” shall be entirely deleted. These provisions are arbitrary and oppressive for the farmers.
- There shall be more farmer representatives in Articles 22, 23, 24 and 25 under the Chapter on “Settlement of Dispute on the Right to use the Farmland land Appeal”. Every relevant provision of laws shall be complied with systematically.
- The implementation of Articles 26 and 27 is not in harmony with the situation of the farmers in the field. The opinion and decision of the farmers have not been taken into consideration at all.
- Article 35, 36 and 37 under the chapter on “Offences and Penalties” shall be deleted. These provisions are arbitrarily oppressive to the smallholder farmers. The proposed amendment to Articles 35 and 37 as well as the addition of Sub-article (a) of Article 37 are more oppressive for the farmers and thus shall be deleted.
- Article 41 under the Chapter on “Miscellaneous” and the proposed amendment provision shall be deleted.

Ensuring Market Security

In LIOH's view, the main objective of the Farmland law should NOT be to ensure market security. The main objective of the Farmland Law instead should be to ensure the well-being and dignified livelihood of rural working people – small scale farmers, fishers, herders and forest dwellers – who constitute the majority of the population of this country, and ensure their ability to stay on the land that they live and work on and care for in dignity, for themselves and their children and for the good of their communities and the whole nation. Market relationships should be regulated in order to serve the majority of small farmers and other rural working people who contribute to the food sovereignty of the country, whose small scale and customary practices do not hurt the environment or the climate, and who are the back bone of a healthy rural economy where people can actually live in dignity and ways of their own choosing.

IF “ensuring market security” means in practice -- support for highly mechanized and chemical based industrial agriculture, large-scale monocultures, and other kinds of practices that have already been proven in other countries to be extremely harmful to customary systems, practices and ways of life, to the climate, the local environment and biodiverse ecosystems, and to local food production systems and local markets -- then this is not supportable and moves the Farmland Law in the wrong direction.

Therefore, the following key points should be added to the law:

- The Government shall adjust and manage prices and the market to ensure that the farmers do not face losses.
- The Government shall take the responsibility and buy any crops produced from the farmland at a price that is not less than the costs of the farmers.
- The Government shall take the responsibility to ensure that there shall not be a monocrop system or project crop system.
- The Government shall develop and adopt farmland produce insurance system, crop mortgage system, climate/ natural disaster insurance system etc.
- The Government shall take the responsibility to carry out the technologies, investment and produce guarantees that will not negatively impact the natural environment, ecosystems and local agricultural systems.
- The Government shall provide accessible processing technologies and good agricultural techniques to the farmers in order to conserve the soil and to ensure safety of the workers and consumers
- The Government shall ensure to create opportunities for farmers to link directly with the market by sharing the necessary market information with them so that they can appropriately understand the market system.

Some comments on specific articles:

- Although the Government bank or other banks recognized by the Government is provided in Sub-article (e) of Article 12, no bank has provided any “pawning” yet. Sub-article (g) is not in line with the current situation in the field. As provided in Sub-article (h), farmers shall have the right to grow crops independently without the need to ask for permission as provided in Sub-article (h). The proposed amendment to sub-article (h) is still keeping the restriction without any significant differences. The expression “sufficient reasons” in Sub-article (i) needs to be defined clearly. All of Article 12 is not compatible with the current context.
- Sub-articles (a) and (b) of Article 28 restricts the rights of farmers to independently select crops for cultivation. The amendment bill also does not propose any significant changes but instead continues to restrict this.

III. Fundamental LIOH Principles and Definitions

The Farmland Law is problematic by nature. It is built around narrow definitions, assumptions and views of what land means to people, which lands matter and in what ways, who counts as a farmer and thus has rights to land, which kinds of organizations support the interests of the farmers, and more generally, what role the countryside plays in the life of the whole country.

LIOH has the following key principles and definitions that should be reflected in the country's Farmland Law and other related land laws:

Farmland

For LIOH, farmland includes low land (paddy land), upland (Ya), silty lan (Kaing Kyun), hillside cultivation land (Taungyar), perennial crops land, nipa palm land (Dhani), garden land or horticultural land, alluvial land and shifting cultivation land (Shwe Pyaung Taungyar).

Farmer

For LIOH, farmer is a person who personally and continuously lives on and works the agriculture or agriculture and livestock breeding (small scale livestock breeding of smallholder farmers) or both as his/her main livelihood. This includes shifting cultivators.

Farmer organization

For LIOH, farmer organization means an organization that has been formed in accord with article 354 of the Constitution to support the development of interests and opportunities of farmers.

Landless

Landless persons are farmers who do not have land although they depend on agriculture for their livelihood.

Land

Land means the actual land and all water, air, soil and natural resources attached to the land within the territory of the State. Land, water, forest and natural resources mean the life, livelihood, dignity, history, culture, natural environment and resources of the people who live and work on that land.

I. Conclusion

This comment and feedback on the Farmland Law and the Proposed Amendment contains our key concerns and recommendations. We have added some concerns related to specific articles, but these are not exhaustive.

The 2012 Farmland law does not protect either smallholder farmers or real farmers. Moreover, it cannot resolve the current land disputes. It is a law that encourages businessmen, companies and land confiscation. The Bill to amend the 2012 Farmland law will neither protect the farmers nor be effective at all. The current lands laws do not respect customary right to land in ethnic areas at all. Thus, a new farmland law must be developed instead of amending the 2012 Farmland law, that respects, protects and promotes the rights of small-holder farmers across the country.

Thus, while we welcome any initiative to revise the current Farmland Law, we feel very strongly that the nature and character of the currently proposed amendments are not what is needed. They fail to address the true weaknesses of the existing law and at the same time they move regulation of land even further in the wrong direction.