



Brief Analysis on Legal Frameworks of Myanmar for Shifting Cultivation

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Land in Our Hands (LIOH) is multi-ethnic national platform for land rights movements organized with civil society organizations, land rights defenders and allies throughout the country. LIOH is actively & positively contributing to Myanmar's land reform, since 2014.

Shifting cultivation is popular & widespread around the world and Myanmar rural working peoples from many areas are continuing the shifting cultivation as their major livelihood activity for generations. It is essential that the government acknowledge the legitimacy of shifting cultivation livelihoods and recognize different systems of shifting cultivation with legal frameworks.

Existing land related laws in Myanmar are failing to clearly recognize and protect customary land systems including shifting cultivation and even criminalizing these systems and users.

The Law amending to the 2012-Farmland Law was adopted during February 2020, with an additional land type namely "shifting cultivation land". This addition brings both potentials and concerns for shifting cultivation.

Analysis

- ❖ Shifting cultivation is the main livelihoods for many families of rural working peoples and it is inter-connected with cultures, beliefs, conserving forest & environment, resource allocation & sharing and land governance within their territories.
- ❖ Indigenous communities & rural working peoples are at the center of shifting cultivation operated by connecting the dots between the different uses of complex and intertwined natural resources, coordinating diverse approaches and rights, and overseeing whole regions; which is the core value of different customary land management systems. Customary land management system including shifting cultivation is the local tenure system with authority, thus the basic of federal system too.
- ❖ Shifting cultivation is more than technical practice and it is embedded within social system of rural communities, which means just making additional land type is not enough. It would make worse if adding this land type is meant for granting land use certificate (like form-7), which is opposite to land ownership rights within customary land management systems.
- ❖ Existing land related laws and land administrations in Myanmar are still conflicting with actual land use & practices. The Farmland Law (FLL), the Vacant, Fallow & Virgin Land Management Law (VFVL), and the Forest Law are forcing for land titling, criminalizing customary land users and making dispossessions of their ancestral lands. Within these legal frameworks, a lot of unjust land cases are happening such as different forms of land grabbing, largescale land application or land grants, and suing the customary land users.
- ❖ The myths about and illogical accusations to shifting cultivation such as – it is inefficient, it causes air pollution, it contributes to climate change, it causes poverty & it degrades forest – are barriers to the development of policy & legal frameworks protecting shifting cultivation & its users.
- ❖ Customary land management systems including shifting cultivation are related with agriculture, forest, natural resources, environment & ecology, traditions & cultures, and ethnic & indigenous issues. A critical question is that who (which department) would govern these complex & important systems by what (which principles) and how (which legal frameworks).

Recommendations

- ❖ Customary land management systems including shifting cultivation need specific legal protection and administration.
 - All the processes of legislation and development for the administration must ensure the representation of affected communities, potentially vulnerable communities, IDPs & refugees, customary communities, concern civil societies and ethnic armed groups.
 - The legal frameworks must respect the following articles:
 - The UN Convention of Human Rights – the article 17.1 & 17.2 and the article 25.1.
 - The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) – the article 10, 11.1, 25, 26.1, 26.2 & 26.3.
 - The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) – the article 28, 17.1, 17.3 & 17.4.
 - The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (CFS-TG) – the Chapter 9.

- ❖ A federal land law that ensures the peoples' rights to land of peasants, rural working peoples and customary communities, is required.
 - Until the federal land law can be established, there must be NO activity related to forcing for land registration, largescale land allocation or accepting largescale land applications, grabbing the land of and legal proceedings to peasants & customary communities.
 - The legal framework & effective mechanisms must be established & implemented to restitute & provide remedies for the sufferings of the people (including IDPs and victims of evictions) who have lost their land by either of armed conflicts, mega projects or existing laws; the people who are facing trials or have sent to prison for defending their land; and landless peoples.

- ❖ Peace building in Myanmar is the equivalent of land reform processes and genuine federal land governance is the only solution for both processes.
 - As a nation that needs federal democratic reform, there must be revision of policies & laws relating to customary land systems including shifting cultivation, land use and livelihoods of rural working peoples.
 - The Vacant, Fallow & Virgin Land Management Law must be abolished as it is hostile to shifting cultivation and customary land systems.

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