



Source: World Bank, 'Myanmar and the World Bank: Reengaging through community driven development, to tackle poverty in rural villages', 2012.

LAND REFORM IN MYANMAR

AND LESSONS LEARNED FROM
SOUTHEAST ASIA

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LIST OF ABBREVIATIONS

IID	Institute for International Development
SLORC	State Law and Order Restoration Council
GDP	Gross Domestic Product
MFA	Myanmar Farmers Association
TLTP	Thailand Land Titling Project
MLMUPC	Ministry of Land Management, Urban Planning and Construction
BKL	Boeung Kak Lake
LMAP	Land Management and Administration Project

EXECUTIVE SUMMARY

Land tenure security dominates contemporary discourses in land reform, and formal land titles with advanced system of land registration are generally seen as the best way to achieve such a goal. However, landlessness in Myanmar is not a result of a lack of formal land titles alone. Issues of inequalities in Myanmar have become far too entrenched over decades of conflicts, violence and corruption. There is a fundamental lack of legitimacy and coherence in the system of land tenure in Myanmar as a result of colonialism, post-independent conflicts and military ruling. Current land laws are geared towards the interests of minority elites and the lack of land records has been exploited by state authorities so that income and property are systematically transferred from the rural poor to the urban elites. Therefore, the processes of land titling will only formalize existing inequalities if these issues of inequality in Myanmar are not addressed.

The conclusion derived in this report is based on research which traced the causes of dispossession in the history of Myanmar. These causes of dispossession are reflected upon with current model of land titling program with the aim of land tenure security in mind. Thailand and Cambodia¹ were selected as case studies as they provide a good contrast where causes of success and failure in land titling can be clearly identified. Cambodia was found to resemble more closely the circumstances facing Myanmar in regards to land tenure security. Hence, a lot can be learned from the experiences of Cambodia as far as land titling is concerned.

The information gathered in this report are sourced from academic literature, official documents and as well as personal communication with John Leake, a director at IID. The sole reliance on second-hand resources meant that information can be flawed by the interpretation and reinterpretation of ideas.

¹ J Leake, personal communication, 28 November 2014.

RECOMMENDATIONS

- State legitimacy in the governance of land needs to be strengthened. This can be achieved with the rule of law, improved transparency and equitable land laws.
- The opportunity cost of dismissal must be higher than the benefits of corruption for staff in the public sector. This can be achieved with adequate pay, increased competitiveness with performance bonus and a career structure.
- Recognition of existing customary land tenure.
- Adequate financial services.
- Adequate provision of basic infrastructures and irrigation systems.
- Improved system of land records.
- The registration of identity cards needs to include all citizens in Myanmar.
- Adequate compensation to those who agreed to relocate as a result of development projects.
- Revision of economic development policies to provide employment opportunities for the landless.

INTRODUCTION

Social order in Myanmar has for many centuries been organized around agriculture.² Today, over 70% of the population resides in the rural areas and agriculture remains their main source of livelihood.³ However, the relationship between man and land has changed as the country traversed the course of colonialism, post-independent civil wars, military ruling and the recent political transition to democratic governance. Landlessness became an increasingly important issue with the consequences of widespread food insecurity and poverty. Although not much has been said about a plan for land reform in Myanmar, it has come the time where there is an increasing concern for the landless and the issues of land reform can no longer be ignored.

Nevertheless, there has been much discussion between Myanmar and prospective donors in how best they can assist Myanmar in its more urgent need to strengthen its institutional capacity in the governance and administration of land. However, the formulation and implementation of such a plan are hinged upon the outcome of the upcoming election in 2015, which is hoped to take Myanmar to the next level in its transition to democratic governance.⁴

This report aims to provide a theoretical framework for land tenure security, which forms much of the discourses in contemporary land reform as dispossession increases with capitalist development.⁵ It will draw a historical landscape in the governance and administration of land from the colonial era to the present day, which together has resulted in the incidence of landlessness in Myanmar today. Institutional capacity will be assessed and compared to those of Thailand and Cambodia where land titling project has been undertaken to secure land tenure. The lessons learned from these countries will be highlighted in the recommendations to indicate how institutional capacity can be strengthened to improve land tenure security for farmers in Myanmar.

² N Hudson-Rodd & M Nyunt, *Control of land and life in Burma*, Tenure Brief, vol. 4, no. 3, Land Tenure Center, University of Wisconsin, Madison, 2001.

³ COHRE, *Displacement and dispossession: Forced migration and land rights*, Country report, COHRE, 2007.

⁴ J Leake, personal communication, 19 September 2014.

⁵ C Lund, 'Fragmented sovereignty: Land reform and dispossession in Laos', *The Journal of Peasant Studies*, vol. 38, no. 4, 2011, pp. 885-905.

CHAPTER 1

CONTEMPORARY LAND REFORM

The single most important element which defines conventional land reform has been the redistribution of land by the State, acquired by means of a compulsory take-over from the largest land holders.⁶ Such exercise was motivated by a lack of improvement in the living standard of the most marginalized, despite impressive records of economic growth.⁷ Hence, land redistribution was aimed to reduce inequality as poverty was believed to be the result of unequal distribution of land and resources.⁸

However, dispossession became rife as a result of agrarian transition into large scale agricultural production.⁹ In developing countries where markets are increasingly liberalized and integrated into global capitalist economy, large scale agricultural production is increasingly encouraged. Such primitive accumulation under capitalist development comes at a cost of exposing those who are most vulnerable and without formal land titles to dispossession.¹⁰ While there are economists such as Chayanov who argued for small scale agricultural production as an alternative to capitalist development, land tenure security dominates discourses in contemporary land reform.¹¹

1.1 LAND TENURE SECURITY

Dispossession as a result of a lack of formal land titles has led to discourses in land tenure security.¹² The formalization of land rights and land tenure, often by means of land titling programs, was emphasized as a crucial element in land tenure security.¹³ Debates in regards to such formalization have highlighted the advantages and disadvantages of formal land titles.

1.1.1 ADVANTAGES OF FORMAL LAND TITLES

The formalization of land rights and land tenure is first and foremost, believed to minimize land disputes, and thus enhanced land tenure security and prevents further dispossession.¹⁴ Such formalization is also argued to have the twin effects of poverty reduction and economic growth. Farmers with formal land

⁶ M Lipton, 'Towards a theory of land reform', in D Lehmann (ed), *Agrarian reform and agrarian reformism: Studies of Peru, Chile, China and India*, Faber and Faber Ltd, Great Britain, 1974, pp. 269-315.

⁷ Ibid.

⁸ Ibid.

⁹ See note 5 above.

¹⁰ TNI, *Pro-business or pro-poor? Making sense of the recently unveiled Draft National Land Use Policy*, Preliminary assessment, TNI, 2014.

¹¹ H Johnson, 'Chapter 8: Survival and change on the land', in B Crow, M Thorpe et. al. (ed), *Survival and change in the Third World*, Polity Press, Great Britain, 1988, pp. 147-162.

¹² See note 10 above.

¹³ Ibid.

¹⁴ C Bowman, *Thailand Land Titling Project*, Case studies in scaling up poverty reduction, AusAID, 2004.

titles are more motivated to invest in land development.¹⁵ This is because formal land titles endow farmers with exclusive ownership, which gives them an incentive to improve efficiency and productivity, and thus the acquisition of new knowledge and technology. With better efficiency and productivity, farm income and land value are expected to improve.¹⁶ As such, not only will credit be more accessible to farmers from lending institutions, but it will also be more favourable.¹⁷ With formal records of land titles, it will provide the States with a more accurate collection of fees and taxes, and thus increasing State revenues.¹⁸ Also, distortion in land prices is expected to decrease with formal land titles, and thus improving land valuation.¹⁹

1.1.2 DISADVANTAGES OF FORMAL LAND TITLES

While formal land titles are generally seen as the best way to improve land tenure security, for those who argued against formal land titles holds that such formalization will only formalize existing inequality.²⁰ Arguments against the formalization of land rights and land tenure are heavily informed by human rights and social justice.²¹ They are aimed at promoting sustainable social development to achieve the goals of improving food security for all and reducing poverty.²² They emphasize the social functions of land, which is not just an economic commodity purely for the use and exploitation of capitalist development.²³ Existing land rights often do not accommodate traditional or customary land use such as shifting cultivation, nor do they acknowledge the rights of women to inherit, own or transfer land.²⁴ Hence, the formalization of land rights will only formalize existing inequalities. On top of that, the term “land tenure security” is increasingly captured by elites instead of serving to protect the most vulnerable and marginalized. Formal land titles are devised to provide security to the banks for their loans made in the case of default, and to the large companies for their capital invested in large scale agricultural production.²⁵ Hence, the formalization of land tenure will only formalize insecurity in highly unequal societies. On top of that, land tenure issues often result in conflicts and violence.²⁶ Thus, land titling is not merely a technical exercise but a political act.²⁷

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ TNI, *Access denied: Land rights and ethnic conflict in Burma*, Burma policy briefing, TNI, The Netherlands, 2013.

²¹ See note 10 above.

²² Ibid.

²³ Ibid.

²⁴ A Xanthaki, ‘Land rights of indigenous peoples in South-east Asia’, *Melbourne Journal of International Law*, vol. 4, 2003, pp. 467-496.

²⁵ See note 10 above.

²⁶ NL Peluso & C Lund, ‘New frontier of land control: Introduction’, *The Journal of Peasant Studies*, vol. 38, no. 4, 2011, pp. 667-681.

²⁷ See note 20 above.

CHAPTER 2

A HISTORICAL LANDSCAPE

Myanmar is the largest country in Southeast Asia, covering a land area of 676, 578 square kilometres.²⁸ It is one of the least densely populated countries in the region with a population of 52-55 million, which is made up of a Bamar majority, constituting roughly two-thirds of the population and 135 officially recognized ethnic minority groups.²⁹ Social order in Myanmar has been centred around agriculture for centuries. Today, over 70% of the population resides in the rural areas and agriculture remains their main source of livelihood. The geographical landscape in Myanmar is amongst the most unique in Southeast Asia.³⁰ The mountainous hill region bordering Bangladesh, India, China, Laos and Thailand is home to the vast diversity of ethnic minority groups, while the Bamar majority is concentrated in the main Irrawaddy valley.³¹

2.1 THE COLONIAL ERA

The incident of landlessness in Myanmar began during the colonial era. Local population was sidelined to a large extent during colonization, as the British Empire brought in thousands of labourers from India for the construction of facilities and infrastructures to enable increased production for profit and taxes.³² Small scale agricultural production was largely dominated by the Chinese and Indians.³³ On top of that, many farmers lost their lands to the Indian money lenders and had to compete with Indian labourers for manual work.³⁴ Hence, these Indian money lenders, known as the Chettiars were blamed for their exploitative interest rates which dispossessed farmers of their lands.³⁵

2.1.1 THE CHETTIARS

The Chettiars belong to a caste in Tamil Nadu, specializing in finance since the 18th century.³⁶ Their first overseas operation was in Ceylon, which brought them much higher returns than their operations at home.³⁷ The Chettiars first arrived in Myanmar with the Indian troops and labourers brought in by the British Empire during the first Anglo-Burmese war in 1826.³⁸ However, their

²⁸ See note 2 above.

²⁹ See note 3 above; I Holliday, 'National Unity struggles in Myanmar: A degenerate case of governance for harmony in Asia', *University of California Press*, vol. 47, no. 3, 2007, pp. 374-392.

³⁰ M Callahan, 'Myanmar's perpetual Junta: Solving the riddle of the Tatmadaw's long reign', *New Left Review*, vol. 60, 2009, pp. 27-63.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ S Turnell & A Vicary, 'Parching the land? The Chettiars in Burma', *Australian Economic History Review*, vol. 48, no. 1, 2008, pp. 1-25.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

operations in Myanmar were quite petty until the rise of paddy and land prices, which were the results of two contributing factors. The first was the opening of the Suez Canal in 1869, which halved shipping time between Europe and Southeast Asia.³⁹ This facilitated rice exports to European markets and as well as the distribution of foreign goods in Myanmar. The second contributing factor was the establishment of the Burma Land and Revenue Act in 1876.⁴⁰ However, it was only after the third Anglo-Burmese war in 1885 that the law was successfully enforced to the rest of the country.⁴¹ This British land title law confers ownership title with rights to permanent tenure, transfer and inheritance of lands.⁴² Such formal land titles were aimed to be used as securities on lands which would provide farmers the access to the much needed credit to increase productivity and thus, the exports of rice.⁴³ Hence, the opening of the Suez Canal and the enforcement of the first land title law in Myanmar increased the demand for rice and land, which subsequently saw an increase in prices. However, there was a lack of financial institution to provide the much needed credit in Myanmar at that time, as European financial institutions were unable to service Myanmar's small scale agricultural economy with a profit.⁴⁴ As a result, the Chettiars took the role of a bridge between European financial institutions and Myanmar's small scale agricultural economy.

2.1.2 GLOBAL DEPRESSION

The largest Chettiars' operation was in Myanmar, which constituted two-thirds of all their lendings.⁴⁵ Two-thirds of those lendings in Myanmar were given to farmers and land titles were used as a security for the loans. However, less than 10% of the loans given to farmers were actually used for agricultural purposes.⁴⁶ Nevertheless, the loans were given and repaid every year. It was widely believed that Chettiars' capital was largely from their own pockets with only one-third acquired from deposits taken.⁴⁷ However, this was contested by Anthropologist David Rudner and the percentages of proprietors' capital and deposits were subsequently changed with substantial implication.⁴⁸ The percentage of lending which constituted proprietors' capital were only 10-20% instead of the original 65-85%, while the deposits taken constituted as high as 90% of total lending instead of the original 10-20%.⁴⁹ This change in

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

landscape indicated that the Chettiars were creating real financial resources on the scale as high as modern banks.⁵⁰

However, the operation of the Chettiars was disrupted by the onset of the global depression in 1930 with significant consequences to the livelihood of farmers.⁵¹ The near collapse of paddy prices meant that farmers were unable to repay their loans. 87% of Chettiars' liquid cash was transformed into solid land and houses while land prices plummeted, comprising only a fraction of what was worth before the depression.⁵² Nevertheless, it was argued that the Chettiars' interest rates remained high despite of depression, causing farmers to lose their lands.

2.1.3 INTEREST RATES

The analysis of the interest rates charged by the Chettiars was put into the perspectives of the costs in working capital and administration, the risk involved and a comparison of interest rates charged by other Burmese money lenders, in order to determine whether the interest rates charged by the Chettiars were indeed exploitative.

The cost of working capital which was the interest paid for deposits taken, was at an average of 10%.⁵³ This was 2-3% higher than the bank rates set by the Imperial Bank on advances made against the securities of the colonial government of India.⁵⁴ However, no new deposits were available during the global depression and funds from deposits had subsequently dried up from the mid-1930s. On top of that, few banks were willing to lend their money at that time. The average administrative cost incurred by the Chettiars was 5%.⁵⁵ This was due to a low level of formality in transactions as administrative cost increases with the level of formality. According to the World Bank, the average administrative cost for an efficient agricultural credit institution to small farmers is 7-10%.⁵⁶ The risk of lending in Myanmar was perceived to be highly risky, even with land as security. According to a report in 1923 by Dawson's Bank, the only formal major bank lending to farmers at that time stated that, the absence of records makes the investigations of titles a long and laborious process.⁵⁷ However, the Chettiars were willing to lend to farmers at a

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

rate which seldom goes beyond 25% per annum for loans without a collateral, compared to the 150-220% charged by Burmese money lenders.⁵⁸

While Myanmar's small scale agricultural economy was exposed to the global market and made vulnerable in the face of the global depression in 1930, there was a lack of financial resources and as well as a lack of adequate land records of titles held by farmers. Hence, the incident of landlessness in Myanmar during the colonial era was not so much due to the seemingly exploitative interest rates charged by the Chettiars.

2.2 POST-INDEPENDENCE

The Chettiars fled from Myanmar during the Japanese invasion in 1942 and few had attempted to return.⁵⁹ Lands with absentee landlords, which included lands previously owned by the Chettiars as a result of farmers' default on their loans, were to be redistributed.⁶⁰ However, the process of such redistribution was not one without abuses and corruption.⁶¹

2.2.1 LAND NATIONALIZATION ACT

The Land Nationalization Act was established after independence in 1948, and then revised in 1953 which stipulates state ownership of all land.⁶² As such, land is owned by the state and leased out to farmers, and leases can be inherited with the approval of local state authorities. Although it prohibits the sale and transfer of land, such activities do exist at an informal level.⁶³ Farmers are conferred the rights to cultivation and these rights can be revoked if farmers do not conform to the terms of land use dictated by the state. For example, farmers who are given permission to grow paddy have the duty to produce paddy harvests to the fullest capacity of the field, and a set quota must be sold to the government,⁶⁴ sometimes below market prices or at a loss before other cash crops can be grown.⁶⁵ Thus, farmers are forced to grow crops which are not suited to local soil and conditions. The nationalization of land also allows the state to confiscate lands in lieu of debt, when state security is threatened, or if it decides to lease the land to someone else.⁶⁶

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² See note 3 above.

⁶³ See note 2 above.

⁶⁴ Ibid.

⁶⁵ See note 30 above.

⁶⁶ See note 3 above.

2.3 ECONOMIC LIBERALIZATION

General Ne Win was succeeded by Senior General Saw Maung after his resignation in 1988.⁶⁷ The history of military ruling in Myanmar began with General Ne Win in 1962.⁶⁸ His isolationist foreign policy during his long reign had proved to be disastrous, resulting in the steady decline of what was once “the rice bowl of Asia” to one of the least developed countries in the world.⁶⁹ When Senior General Saw Maung took power with the establishment of his ruling party, the State Law and Order Restoration Council (SLORC), the closed economy was now opened to foreign investments.⁷⁰ Hence, some private ownership of agricultural land was recognised with restrictions on the sale and transfer of land. However, as described by the opposition Burma Lawyers Council that “the only law...is what the generals from day to day decide it to be”.⁷¹

2.3.1 CEASEFIRE AGREEMENTS

Following economic liberalization, ceasefire agreements with ethnic armed forces from the hill region were pursued. The proposal for a federalist constitution after independence by ethnic minority groups was viewed as a threat to national unity.⁷² As a result, the Burmese armed forces were faced with well-equipped ethnic minority groups, each fighting for their own autonomy against the central government.⁷³ Consequently, Myanmar suffered the longest running civil war in the world which characterized much of its history since independence.⁷⁴ Nevertheless, ceasefire agreements had been reached with 10 out of 11 major ethnic armed forces as of 2012.⁷⁵ However, each ceasefire agreement had different terms for each ethnic minority group and none of these agreements have been made public.⁷⁶ These ceasefire agreements had given the military regime access and control to the wealth of natural resources deposited in the hill region. Military officials cashed in on resource extractions and established joint ventures with foreign investments for their own personal wealth, without appropriate compensations and job opportunities for the local communities.⁷⁷ Such economic engagements with

⁶⁷ See note 30 above.

⁶⁸ Ibid.

⁶⁹ See note 3 above.

⁷⁰ See note 30 above.

⁷¹ See note 3 above.

⁷² I Holliday, ‘National unity struggles in Myanmar: A degenerate case of governance for harmony in Asia’, *University of California Press*, vol. 47, no. 3, 2007, pp. 374-392.

⁷³ See note 30 above.

⁷⁴ See note 3 above.

⁷⁵ MIMU, *Desktop review of needs and gaps in conflict-affected parts of Myanmar*, MIMU, 2013.

⁷⁶ M Smith, ‘Ethnic politics in Myanmar: A year of tension and anticipation’, *Institute of Southeast Asian Studies*, 2010, pp. 214-234.

⁷⁷ See note 20 above.

foreign investors are accompanied with increasing development projects to support these activities in the area. Hence, landlessness as a result of land confiscations are increasingly linked to these development projects.⁷⁸

2.3.2 LAND CONFISCATIONS

The focus of the military regime has historically been on the expansion of its armed forces. Nearly half of the state budget was allocated to the security sector in the 1990s, with soft loans from China, India and Thailand.⁷⁹ In 2000, the defence constitutes the largest percentage of GDP at 31%.⁸⁰ Large tracts of confiscated land were allocated to the construction of military bases.

There is also an increasing report of military confiscated land used to build permanent housing and sell it to third parties for private profits.⁸¹ Land ownership is subsidized by the government for its employees, which are forcibly purchased at below market prices.⁸² Land ownership titles can also be transferred with a bribe to land records officials.⁸³ Land used for grazing which was provided by existing laws as traditional rights was changed for agricultural use instead, from which cultivation rights were sold.⁸⁴

2.4 ECONOMIC REFORM

The inauguration of President Thein Sein in 2011 marks the beginning of political transition in Myanmar, from an authoritarian military regime to a democratic government.⁸⁵ However, when the 2010 election was pledged by the ruling military regime, it was decided that the regime will continue its leading role in national politics and positions will be reserved for military personnel in both parliament and government.⁸⁶ During his inauguration speech, President Thein Sein announced a plan for economic reform in a bid to reduce poverty.⁸⁷ The strategy for such a plan is focused on stimulating industrial agricultural production through foreign investments.⁸⁸ Hence, new laws were implemented to foster a friendly environment for foreign investors. However, these new laws subsequently saw a new wave of land confiscations and an increase in landlessness.⁸⁹

⁷⁸ K Woods, 'Ceasefire capitalism: Military-private partnerships, resource concessions and military-state building in the Burma-China borderlands', *The Journal of Peasant Studies*, vol. 38, no. 4, 2011, pp. 747-770.

⁷⁹ See note 30 above.

⁸⁰ See note 78 above.

⁸¹ See note 3 above.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ See note 76 above.

⁸⁶ *Ibid.*

⁸⁷ See note 20 above.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

2.4.1 NEW LAND LAWS

As a contrast to the Land Nationalization Act in 1948, land can now be “legally bought, sold and transferred on a land market with land use certificates” under the Farmland Law implemented in 2012.⁹⁰ The Farmland Law was established to complement the Vacant, Fallow and Virgin Land Law which reallocates land, including those with existing occupants to domestic and foreign investors.⁹¹ Most farmers do not have a formal land title for land which they already owned.⁹² Within the Land Record and Settlement Department, land records system inherited from colonial times is still in operation and land registration only covers areas settled by the colonial state, which excludes the contested hill regions.⁹³ This and the lack of recognition for existing customary and communal tenure system have led to the presumption that there are large amount of wastelands or non-used lands, ready to be allocated to domestic and foreign investors. According to one ethnic MP, “the government sees the map of the country mostly as a vacant land”.⁹⁴ On top of that, the Foreign Investment Law restricts some sectors, which include agriculture to large scale investment.⁹⁵ These changes are made without the consultation of affected farmers, as even the regional governments are by-passed in the decision to approve these large scale investments. Further incentives are provided to foreign investors under the Special Economic Zone Law. The incident of dispossession occurs where Special Economic Zones are established.⁹⁶ It has been argued that these Special Economic Zones have proved to have no real economic benefits to the country, except environmental degradation and industrial pollution.

Following increased protests by dispossessed farmers, the Myanmar Farmers Association (MFA) was established to represent the interests of farmers. However, the MFA is backed by the same group of elites who helped push the new land laws, which caused widespread dispossession in the first place.⁹⁷ On top of that, the Farmers’ Protection Act is geared towards the interests of middle and high income households, when the majority of farmers are poor smallholders.⁹⁸

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² See note 78 above.

⁹³ See note 3 above.

⁹⁴ See note 20 above.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

2.4.2 DRAFT NATIONAL LAND USE POLICY

The Draft National Land Use Policy was published on 18 October 2014 and it was opened for public review and comments for 3 weeks.⁹⁹ It was the first step as part of an overall plan to improve land administration in Myanmar, which will be followed by the establishment of a new National Land Law, harmonization of existing legislations, compilation of land resource inventory, national land use planning and sectoral policy and land use planning.¹⁰⁰

The Draft National Land Use Policy was generally assessed as lacking in explicit pro-poor language. It was seen as a further attempt in securing large scale foreign investments at the expense of the poor, vulnerable and marginalized. There were concerns that key injustices such as issues of past land grabbing and widespread landlessness were not addressed.¹⁰¹ The commitment to protect and strengthen customary, collective and women's land rights was also questioned.¹⁰² Although the draft stipulates that land disputes will be addressed "transparently" and in accordance with the "rule of law", it should not be confused with what is "just" and "legitimate".¹⁰³

2.5 CUSTOMARY LAND TENURE

In some places, customary land law is the only rule governing land tenure for many centuries. This is especially true in the hill region where the administration of land by the central government has not been possible due to conflict. The mountainous landscape and sparse population in the hill region have made centralized governance difficult even for the British colonials.¹⁰⁴ Hence, the people from the hill region have always been distanced from direct governance up until ceasefire agreements were pursued in 1988. By the turn of the millennium in 2000, the military regime under the leadership of Senior General Than Shwe had greater control over the country than any previous regime, including the colonial administration.¹⁰⁵ However, the land records system inherited from colonial times is still in use today, and land registration only covers areas settled by the colonial state, which excludes the hill region. Hence, the risk of dispossession for farmers in these areas is much higher in the wake of extensive resource extractions and economic development, compounded by a severe lack of recognition for customary land tenure in existing land laws. Besides, most

⁹⁹ See note 10 above.

¹⁰⁰ Ibid.

¹⁰¹ Landesa, *Commentary on the Draft National Land Use Policy (Full version)*, Seattle, USA, 28 October 2014, viewed 1 November 2014, <http://www.mylaff.org/document/download/2446>.

¹⁰² Ibid.

¹⁰³ See note 10 above.

¹⁰⁴ See note 30 above.

¹⁰⁵ See note 3 above.

citizens in the hill region are without identity cards, which make it impossible for them to register their land titles.¹⁰⁶

On top of that, the practices of shifting cultivation and opium farming are most prevalent in the hill region.¹⁰⁷ Fallow lands are treated as vacant, which are then allocated to domestic and foreign investors for industrial agricultural production. Following the opium substitution program, poppy farms were replaced by large scale rubber plantations. Opium farmers were not compensated or given the opportunity to replace poppy with other crops. On top of that, Chinese companies brought in their own labourers instead of using local workers for their rubber plantations.¹⁰⁸ As a result, opium farmers lost 80% of their income since the program was implemented.¹⁰⁹

¹⁰⁶ See note 20 above.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ See note 78 above.

CHAPTER 3

INSTITUTIONAL CAPACITY

It can be seen from the previous chapter, landlessness in Myanmar is attributed to political and economic policies gearing towards the interests of minority elites and their pursuits in capitalist development. Formalization alone will not be able to overcome widespread landlessness in Myanmar, as formalizing land rights and land tenure will only formalize existing inequalities. It requires political will from the state to address these underlying inequalities so that the benefits of formal land titles can be realized.

3.1 LAND GOVERNANCE AND ADMINISTRATION

Land laws currently governing land tenure in Myanmar are inadequate in protecting the most vulnerable and marginalized from dispossession. Farmers whose lands have been governed under customary land laws and as well as those who practice shifting cultivation are highly susceptible to dispossession. Also, households headed by women are particularly vulnerable to landlessness.¹¹⁰ These incidents of landlessness have created surplus in labours which resulted in livelihood problems.

Myanmar is ranked 157th out of 177 countries in Corruption Perception Index with a score of 21 out of 100, where 0 being highly corrupt and 100 being very clean.¹¹¹ There is a severe lack of transparency and the rule of law is weak. Bribery and rent-seeking behaviours are widespread amongst state officials. Farmers often found themselves dismayed at the realization that the formal land tax paid to local agriculture officers to secure their land was actually an informal bribe.¹¹² It thus necessitates the creation of innovative methods at the grassroots level to circumvent rules and regulations in the face of poverty, as most of these rules and regulations are often the sources of economic hardships.¹¹³ As such, it reflects a lack of public confidence in the ability and willingness of the state to implement policies which will benefit the majority of the population.

The lack of secure land tenure in Myanmar is also attributed to the poor system of land records. Few farmers, even those in the valley have land titles. Many farmers in the hill region do not even have an identity card which confers citizenship rights, let alone land titles.

¹¹⁰ See note 3 above.

¹¹¹ Transparency International, *Corruption Perception Index (2014)*, Corruption by country/territory, viewed 27 October 2014, www.transparency.org/country#MMR.

¹¹² See note 78 above.

¹¹³ AM Thawngmung, 'The politics of everyday life in twenty-first century Myanmar', *The Journal of Asian Studies*, vol. 70, no. 3, 2011, pp. 641-656.

3.2 ECONOMIC DEVELOPMENT

Development projects attributed to economic development had come at a cost of widespread landlessness in Myanmar. Despite of the prevalence in dispossession and the loss of livelihood as a result of its recent economic reform, Myanmar is still eager to pursue economic development as a priority at all cost. However, such a decision is not unique to Myanmar as “Southeast Asian states have repeatedly stressed the value of economic development as a priority over human rights”.¹¹⁴

The Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land was established in 1991.¹¹⁵ It was given the power to allocate large land holdings to state enterprises where the land was deemed fallow. Non-citizens are allowed to apply for land allocation once they are approved by Myanmar Investment Commission.¹¹⁶ By 2001, more than 1 million acres of land were allocated to 100 enterprises and associations.¹¹⁷ Between 1993 and 2003, large land holdings acquired by private companies as a percentage to total land area have increased by 325% and they are not even fully utilized, while 20-50% of households in Wa areas of Northern Shan state are landless.¹¹⁸ With over 70% of the population relying on small scale farming as their main source of livelihood, the adoption of large scale agricultural production had seen an adverse effect on social stability and poverty levels, as income and property are transferred from the rural poor to the urban elites.

The adoption of large scale agricultural production as a strategy for economic development was also based on the belief that small scale farming is less conducive to poverty reduction and economic growth.¹¹⁹ However, measures were not in place to support the agricultural production of small scale farmers. The yields of many crops have fallen since 1985 as a result of environmental degradation.¹²⁰ The delta area where it was once the centre of Myanmar’s rice economy is now in scarcity of fresh water, crabs, fish, firewood and vegetables.¹²¹ The lack of basic infrastructures such as irrigation systems meant that a vast majority of small farmers had to rely on rain-fed agriculture, which led to volatile incomes.¹²² As a result of underdeveloped financial services and a lack of access to credits, farmers had to resort to informal money lenders with exploitative interest rates.

¹¹⁴ See note 24 above.

¹¹⁵ See note 3 above.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ See note 78 above.

¹¹⁹ See note 20 above.

¹²⁰ See note 2 above.

¹²¹ See note 3 above.

¹²² Ibid.

CHAPTER 4

CASE STUDIES

The case studies examined in this chapter showcase the experiences and outcomes of land titling projects undertaken by Thailand and Cambodia. The aim of these land titling projects for both Thailand and Cambodia was to improve land tenure security by issuing formal land titles to eligible land owners, developing a modern land registration system and strengthening institutional capacity in land administration.¹²³

The land titling project implemented in Thailand was one of the largest operations in the world, with a life-span of 20 years, from 1984 to 2004.¹²⁴ A total of US\$ 35 million was committed to the project by the World Bank and the fund was managed by the Thai Department of Lands.¹²⁵ The Thailand Land Titling Project (TLTP) was highly successful and received the World Bank Award for Excellence in 1997.¹²⁶ Hence, it was subsequently used as a model for other land titling projects in the region. However, the land titling project implemented in Cambodia fell short of satisfactory. The project began in 2002 and it was expected to have a life-span of 15 years.¹²⁷ A total of US\$ 33.9 million was allocated to the Ministry of Land Management, Urban Planning and Construction (MLMUPC) by the World Bank, but only US\$ 24.3 million was committed, as the project came to a halt in 2009 after a dispute between the World Bank and the government of Cambodia, in regards to the forced eviction of residents from the Boeung Kak Lake (BKL) area.¹²⁸

4.1 THE SUCCESS AND FAILURE OF LAND TITLING

Although both Thailand and Cambodia shared a common problem in the lack of land tenure security, which was largely identified as attributed to a lack of formal land titles and poor system of land records, they differed vastly in terms of historical context, capacity and needs in order to achieve the same goal.

Colonialism was recognised as an important factor in today's land tenure problems. Countries like Myanmar and Cambodia which were once under colonial ruling tend to have complicated plural land tenure systems, as systems of customary land tenure were ignored when private ownership was introduced. This is compounded with incomplete land records where some parts of the country were excluded from administration. These incomplete land records were then inherited and used after independence without much improvements made to its inadequacy. Hence, conflicts arose when such lack of land records was exploited by authorities and elites for their

¹²³ See note 14 above; World Bank, *Cambodia-Land Management and Administration Project*, World Bank, Washington DC, 2011.

¹²⁴ See note 14 above.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ World Bank, *Cambodia-Land Management and Administration Project*, World Bank, Washington DC, 2011.

¹²⁸ Ibid.

own personal wealth, and many were left landless and reduced to poverty as a consequence. However, Thailand was an exception in this case as it has never been colonized.¹²⁹ Although the legal and administrative system was borrowed extensively from the West, it was appropriated within their own system of customary land tenure. Hence, such existing framework provides an adequate foundation conducive to a successful outcome in the exercises of land titling.

The failure of the Land Management and Administration Project (LMAP) in Cambodia was largely due to a weak analysis of its political and economic dynamics in the environment of land governance and administration.¹³⁰ Cambodia was colonized by the French from 1864 to 1953.¹³¹ Like Myanmar, over 70% of the population in Cambodia relies on agriculture as their main source of livelihood, and the land records system inherited from the French was not sufficient to protect the land tenure of these farmers, as some places were not even surveyed, mapped or titled.¹³² On top of that, all land records were destroyed during the ruling of Khmer Rouge.¹³³ As a result of colonization and conflicts, the rule of law in Cambodia was inherently weak. The extent of corruption was overlooked until credits had to be suspended by the Bank to resolve fiduciary matters. Disbursement was resumed in 2007 but only to be cancelled in 2009 as requested by the government of Cambodia following an investigation in BKL.¹³⁴ Cambodia was said to have violated the agreement with the Bank as 20, 000 residents were forcibly evicted from the BKL area, where a 99-year lease was given to a private developer.¹³⁵

Land titling programs such as those implemented in Thailand and Cambodia were designed to provide technical assistance, which was sufficient for the needs of Thailand to improve land tenure security. However, Cambodia needed more than just technical assistance to achieve the same goal. Rule of law and transparency need to be enhanced to strengthen state legitimacy in the governance of land. Only then can a foundation capable of supporting land titling projects be laid. However, the old habits of rent-seeking and corruption require as much political will as technical assistance for them to be replaced with the rule of law and transparency.

¹²⁹ See note 14 above.

¹³⁰ See note 127 above.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ COHRE, 'Cambodia: World Bank investigates land titling project', *COHRE*, 1 June 2010, viewed 25 November 2014, <http://www.cohre.org/news/press-releases/cambodia-world-bank-investigates-land-titling-project>.

CHAPTER 5

CONCLUSION

This report began with a theoretical discussion on contemporary land reform. The approach towards land reform has changed over time, from equal redistribution of land to the improvement of land tenure security with a better land titling system. However, the aim of these approaches has remained in reducing poverty levels of the most marginalized. The report then provided a historical landscape from the colonial period to the present day, and identified key events which led to the incidence of landlessness in Myanmar. From there, institutional capacity is assessed and compared to those of Thailand and Cambodia, where land titling projects were undertaken. The aim of this exercise is to determine whether the problem of landlessness in Myanmar is indeed attributed to a lack of formal land titles alone, and whether a land titling program is sufficient to overcome such issues. Also, it aims to identify strategies where institutional capacity can be strengthened to improve land tenure security for farmers in Myanmar.

5.1 FINDINGS

Colonization, post-independent conflicts and military ruling have in one way or another, contributed to a lack of legitimate and coherent system of land tenure in Myanmar. Land tenure became increasingly uncertain after independence as systems of customary and informal land tenure co-existed with the nationalization of land by the state. This uncertainty was further exacerbated by the ad-hoc administration of land following economic liberalization. The lack of land records has enabled the systematic transfer of income and property from the rural poor to urban elites. State legitimacy in the administration of land was further reduced with the introduction of economic reform in Myanmar, as this was seen as a further attempt to advance the interests of state officials and minority elites at the expense of the rest of the population. As a result, there has been growing protests over land issues as landlessness became increasingly widespread.

The examples of land titling projects in Thailand and Cambodia have shown the importance of legitimacy for such projects to be successful. Hence, the rule of law and transparency need to be enhanced to strengthen state legitimacy in the governance of land. Only then can a foundation capable of supporting land titling be laid. Also, land laws currently governing land tenure in Myanmar are inadequate in protecting the most vulnerable and marginalized from dispossession. Without equitable land laws, land titling will only formalize existing inequalities and land tenure security for the poor will not improve.

While formal land titles come with the benefits of better land tenure security, poverty reduction and economic growth, these benefits cannot be realized unless sufficient measures other than providing formal land titles are put in place. As we have seen throughout the history of Myanmar since the arrival of the Chettiars, the lack of financial services have exposed small farmers to a high level of debts, as informal money lenders and their exploitative interest rates were the only option for farmers. Hence, the risk of landlessness as a result of defaults is inevitably high. This risk is further increased with a lack of basic infrastructure such as irrigation systems to support adequate agricultural yields and a stable income. On top of that, system of land records needs to be improved so that formal land titles are effective in providing farmers the security needed for a more favourable loan. The administration of identity cards needs to be improved so that all citizens in Myanmar, including those in the hill region are entitled to register their land with central government.

Last but not least, economic development policies adopted in Myanmar are seen by many as benefitting domestic and foreign large scale investors at the expense of small farmers. The rights of existing occupants to give or withhold consent to proposed development projects must be acknowledged. Adequate compensation must be given in the event of voluntary relocation. Besides, economic development policies are conducive to real economic growth and poverty reduction only when new jobs are created in the process for those who are landless as a result. However, foreign labourers are brought in instead by foreign investors, notably by the Chinese, where local farmers have had to make way for the establishment of their large scale agricultural production.

5.2 RECOMMENDATIONS

The findings discussed above are summarized in the following recommendations, which may help improve land tenure security for farmers in Myanmar:

- State legitimacy in the governance of land needs to be strengthened. This can be achieved with the rule of law, improved transparency and equitable land laws.
- The opportunity cost of dismissal must be higher than the benefits of corruption for staff in the public sector.¹³⁶ This can be achieved with adequate pay, increased competitiveness with performance bonus and a career structure.
- Recognition of existing customary land tenure.
- Adequate financial services.
- Adequate provision of basic infrastructures and irrigation systems.
- Improved system of land records.
- The registration of identity cards needs to include all citizens in Myanmar.

¹³⁶ See note 6 above.

- Adequate compensation to those who agreed to relocate as a result of development projects.
- Revision of economic development policies to provide employment opportunities for the landless.

5.3 CONCLUSION

It is evident that landlessness in Myanmar is not a result of a lack of formal land titles alone. For land titling programs to be successful in the circumstances facing Myanmar, a more comprehensive approach needs to be adopted to address the underlying inequalities, which have become far too entrenched over decades of conflicts, violence and corruption. While there are international donors who are willing to provide financial and technical assistance, Myanmar must be equally willing to strengthen its state legitimacy in the governance of land by ensuring equal access to land tenure security for all.

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