Legal Pluralism: A Terrain of Contestation for Rights-Based Land Governance in Myanmar

Abstract

Dominant state control over land plays a critical role in producing land dispossession throughout the Global South. In Myanmar, the state's approach towards territorial expansion drives the country's system of land governance, resulting in widespread and systemic land grabbing. This article investigates ongoing reform processes and brings to light key structural challenges in the country's land governance system, particularly: 1) the government's drive to formalise land ownership, which has threatened customary land tenure rights and legitimised land grabbing practices; 2) institutional inertia that impeded the current government's reform efforts; and 3) the underlying problems of data inconsistency partly due to serial, historical land confiscation. From a policy perspective, we highlight the need to position legal pluralism as a terrain of contestation for rights-based approaches in land governance, meaning that pluralistic legal systems and norms are contradictory in their capacity to both limit but also generate opportunities for supporting local community's land rights.

Keywords: formalisation approaches, state territorialisation, policy reform processes, farmers' land use rights, Myanmar

Introduction

Over the past decade, Myanmar has undergone a rapid period of political reform as it has transitioned away from a military junta towards a civilian and electorally democratic government. Culminating in the historical win of Daw Aung San Suu Kyi's New League for Democracy (NLD) party in 2015, this period has also witnessed a dizzying set of legal and regulatory reforms aimed at addressing various democratic, ethnic, and developmental crises that plague the country. Land governance reform has been high on the agenda as contentions over control and access to land and territory are often at the heart of the country's most pressing political issues (Ferguson, 2014; Willis, 2013; Callahan, 2003; Grundy-Warr, 2002). The military and its cronies have engaged in a long history of land grabbing that has sparked protests and civil strife (Aung, 2015; Gee, 2005; Jones, 2014). Civil wars and lingering conflicts between ethnic groups and the central government and military are in large parts concerned with territorial boundaries of ethnic states and authority within them (Einzenberger, 2016; Hong, 2017; Kramer, 2015). Insecure peasant access to and unclear ownership over land has hampered prospects of rural economic development throughout the country (Boutry et al. 2017; Huard, 2016).

Significant reforms began after the government of President Thein Sein was put in place in 2011, a quasi-civilian regime that replaced the military junta but that was nonetheless comprised of retired officials from the newly established, military-created Union Solidarity and Development Party (USDP). To address crises of land governance, new

laws such as the Vacant, Fallow and Virgin (VFV) Land Management Law and the Farmland Law were promulgated in 2012 to allocate supposedly unused land to investors and register land ownership, respectively (Oberndorf, 2012). In the same year, the government began developing a National Land Use Policy (NLUP), intended to create a road map for the country's land management that could guide future land-related laws and government councils. Additionally, a Parliamentary Land Investigation Commission (PLIC) was established to investigate cases of land grabbing and return land unjustly expropriated to its legally rightful owners when possible. The NLD government has continued these reforms since they came to power in 2016, but not always in line with the aims and approaches of the Thein Sein government.

The approach of such legal, political, and policy reforms on land was largely to formalise, centralise, and standardise mechanisms of land governance nationally (FIDH, 2017; Gee, 2005). As such, they can be understood as tools of state territorialisation, or attempts to bring control over land more closely within the orbit of central state power, but through legal rather than militaristic means. The VFV law classifies unregistered lands as empty and unused and as a result "Large numbers of farmers in the country, including most upland ethnic communities, have suddenly become 'squatters'" (LIOH 2015: 9). Such lands can then be transferred to investors for more "productive" use and then titled under the Farmland Law. The NLUP aimed to lead toward a more standardized and centralized framework of land governance, to move beyond the contradictory, fragmented, and outdated land-related laws emanating from the British colonial era. Finally, the PLIC sought to respond to protests and demonstrations over land grabbing by investigating and re-allocating land in a centralised, top-down, and opaque manner, cementing the role of the central state as the arbiter of legitimate rights to land.

In practice, however, these centralising and formalising tendencies have butted up against a much more complex and contradictory legal reality of land access, control, and governance. In implementing the VFV and Farmland Laws, the legality of land ownership has been contested by peasants and civil society groups due to the lack of clear land ownership documentation at the local level. Furthermore, some ethnic armed groups, like the Karen National Union have come up with their own land policies and have issued land use certificates, so-called land grants, to farmers and investors in both their controlled and mixed control territories, complicating the implementation of the government's centralised approach to land formalization. Due to demand from international donors and civil society organizations, the NLUP was opened as a deeply consultative process, which included new provisions such as the recognition of ethnic, customary, and communal land rights, provisions that are currently difficult for some elements of the current government to accept. And the land investigation commissions have been only able to address a small number of cases due to the complexity of layered land ownership, which have complicated the effort to determine who is the rightful land owner.

What these developments show is that land governance reforms in Myanmar aimed at developing a comprehensive and unified land governance system are highly pluralistic, fragmented, and contradictory. Instead of moving towards the formalization and centralization of central government management of land, legal reform has splintered into

disparate directions, generating different fragments of land governance that reflect the legally pluralistic practices of land access and use at the local level. This is evident in the ways in which new laws, land use policies, and land investigation commissions are pulled in multiple directions by the immensely diverse group of actors that have stakes in control, access, and rights to land. While such a fractured political landscape is a stereotypical example of "weak" or "poor" governance, we argue that Myanmar's legal pluralism in the land sector presents as many opportunities for rights-based land governance as it does challenges. Inconsistent and contradictory laws and regulations as well as overlapping authorities at different scales of power create openings for predatory land grabbing. However, they also generate possibilities for different ways of protecting, promoting, and shoring up land rights. Furthermore, the plurality of actors involved in land governance reform allows for a range of voices to shape policy processes in progressive ways that recognise the customary land rights of rural communities. Understanding the power interplay and relationships among them are crucial for identifying potential entry points for ensuring that policies genuinely ensure and support farmers and communities' land rights.

This article is based on a review of policy documents and a series interviews with 22 key stakeholders who work in government offices, civil society organizations, international donors, and INGOs. The first and second authors jointly conducted the interviews from late August to early September in Yangon and Naypyitaw. The arguments of the paper are outlined as follows. In the next section, we bring to light the centrality of law and legal frameworks in Myanmar's state transformation processes, how this is manifested in a series of legal reforms in land governance, while also revealing the pluralistic character of such reforms. We then review the concept of legal pluralism in relation to farmers' land use rights. Following that, we look at how legal pluralism both opens and closes opportunities for rights-based land governance referring to two key reform processes: the NLUP and the two land investigation commissions established under the Thein Sein and NLD governments, respectively. We then provide an overview of the key structural challenges that plague Myanmar's land governance reform. Finally, we reflect more deeply on the connections between legal pluralism, social justice, and rights-based land governance.

2. Pluralistic land reform in Myanmar's recent history

Contestation over land has been a central element of Myanmar's legal and political transformations in the past decade (Jones, 2014; Kramer, 2015; South, 2017). The civil strife and protest that led to sweeping governmental changes and brought the NLD to power was in large part focused on unjust and oftentimes violent expropriation of land from rural and peri-urban companies to the military and crony capitalists for land, resource, and real estate investment projects. In response to these concerns, voiced by Myanmar people and civil society as well as the international community, a series of land reforms have been pursued, including various policies and laws, legal consultation processes, and land conflict investigation committees. Such a mix of efforts in a territorially and ethnically fragmented state, combined with regime change, has generated a pluralistic landscape of legal land reform (Hong, 2017) that has simultaneously restricted and generated opportunities for rights-based approaches to land governance.

With the establishment of the Burmese State Law and Order Restoration Council (SLORC) in 1988 that replaced the Burma Socialist Programme Party of General Ne Win, reforms were put in place to begin liberalizing the country's economy to generate economic growth and lift the country out of poverty (McCarthy, 2000). The combination of a military junta with market liberalization led to the emergence of contemporary land grabbing in the country by the military in cahoots with connected crony businesses. Colonial-era laws like the 1894 Land Acquisition Act legally allowed the state to acquire any type of land as long as compensation was paid to the original owners. In 1991, the Wasteland Law was passed which approved the expropriation and reallocation of "wasteland", or lands supposedly vacant or fallow, to private investors for ostensibly more productive use (Gee, 2005; Global Witness 2015). As powerful has been the paddy quota policy that was introduced in the late 1960s, although the quotas have been significantly reduced (Thawnghmung, 2003). If farmers could not provide the amount of paddy rice required by the policy, then the government could confiscate their land.

Myanmar's opening to the global economy was deeply troubled, however, due to American-led sanctions imposed on the country since the early 2000s. Thus, in the late 2000s, the government began embarking on a path of democratization to rid itself of such oppressive economic sanctions. A new constitution was created in 2008 changing the country to the Republic of the Union of Myanmar (Croissant and Kamerling, 2013; Huang, 2013). This led the way for general elections in 2010 and the election of the military-backed Union Solidary and Development Party (USDP). Thus, the military junta was dissolved in 2011 and a civilian government led by President Thein Sein was established, but controlled by the military. Starting in 2012, the US began lifting its economic sanctions in the country in response to the governmental and democratic reforms taking place.

Within this environment of reform and appeal to the international community, the Thein Sein government embarked on a series of legislative reforms, especially in the land sector, to demonstrate its commitments to civilian rule of law and increase the confidence of capital-intensive foreign investors (Mark, 2017). In 2012, two key laws were passed that were meant to formalise land investment and ownership: The Vacant, Fallow, and Virgin (VFV) Land Management Law and the Farmland Law. The former built upon the Wasteland Law by allowing the transfer of supposedly unproductive "vacant, fallow, and virgin" to private companies for various forms of investment activities, thus enabling companies to legally acquire land from the government. These are lands to which farmers do not have land titles or other official documents, particularly swidden cultivation, communal forest, and grazing lands. Thus, certain forms of land use were deemed as illegitimate, regardless of their importance for local communities' livelihoods The latter created mechanisms for the formalisation of land use and ownership, for farmers but also for companies that acquired land through the VFV law, allowing title holders to legally exchange and lease land. Positioning land as an economic good, the law indirectly restricts land use rights to titled lands, retracting land use and ownership rights for any lands that are not titled (Oberndorf, 2012). Both laws have been heavily critiqued for favoring land investors over small-scale land users, legitimising and further facilitating the trend of land grabbing in the country (FIDH, 2017; Linn, 2015).

While land has become an economic asset to liaise with businesses, it has also strengthened the military's power and its economic position (The Irrawaddy, 2013; Earthrights International, 2011; Woods, 2011; Than, 2007; Steinberg, 2005). The Thein Sein government's promotion of large-scale monoculture plantation (e.g. rubber, palm oil) and the establishment of Special Economic Zones (SEZs) (e.g. Kyaukphyu in Rakhine state, Thilawa near Yangon, and Dawei in Tanintharyi region) are simultaneously strategies for expanding state influence into ethnic territories (Woods, 2015; Loewen, 2012; Kramer, 2015; TNI, 2013; Le Billon, 2001). Recent development also shows the emergence of green grabbing, where INGO collaborated with the previous quasi-civilian government aims to establish national park in ethnic states area, thus creating a pretext for the central government to legally incorporate the land into the government-controlled area, while formally taking away ethnic parties' control over land in the area (Kawthoolei Land Seminar, November 2017).

In response to the conflicts that land grabbing has generated in Myanmar, the Thein Sein government initiated several reforms intended to provide it with legitimacy from civil society and good will from the international community and investors, in line with the ultimate goal of ridding the country of economic sanctions (Mark, 2017). The first was a process of developing a National Land Use Policy (NLUP), intended to be a guiding political document for an umbrella land law to be developed later on. As detailed in later sections below, pressure from civil society groups forced the government to democratise the process of developing the NLUP, opening it to comments from a wide range of civil society and ethnic groups across the country, leading to a progressive policy passed in 2016 that emphasised customary land rights, and communal land rights. In 2012, the government also established a Parliamentary Land Investigation Commission (PLIC) in order to examine land grabbing cases and find ways to return land unjustly acquired to its original landowners. Thus, the Thein Sein government embarked on a contradictory path of reform that both legitimised and facilitated further land grabbing while also creating policy processes that investigate past land injustices and that could limit the expansion of land investments into customary and communally held areas in the future.

The democratic opening of Myanmar in 2010 paved the way for the NLD to come to power in 2016. The NLD government continued to investigate land grabs with its own institutional body, the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands (CRFOLA), established in 2016. However, the NLD-established committee has been critiqued for returning significantly fewer lands to original landowners than the Thein Sein government's committee. The status of the NLUP remains unclear as the new government has not explicitly endorsed it and a parliamentary legislative committee has even questioned key components of it. [1]

[1] From our interviews with civil society organizations in Yangon, we gathered that they now feel more left out of political processes under the NLD government than under the Thein Sein government. Such a difference in state-civil society relations may reflect the difference in each government's need to reach out to civil society as a democratic move to appease the international community.

The result of multiple, parallel legal reforms in the land sector within the past decade is that Myanmar is left with a pluralistic legal landscape of laws and norms that shape how land should be governed. They appeal to contradictory goals of facilitating land- and resource-based capital accumulation while protecting the customary, individual, and communal land rights of rural Myanmar people. As we will demonstrate in the following sections, these reform processes are characterised by competing sets of legal norms and discourses, which operate as a double-edged sword. They allow the military, crony capitalists, and a wide range of private sector investors to take advantage of blurriness within the law to unjustly acquire land. At the same time, however, they allow civil society groups, farmers, and minority ethnic groups openings to contest how land is legally used and controlled. Thus, the legal reform process has operated as a pluralistic field of contestation. In the next section, we discuss legal pluralism in relation with farmers' land use rights.

3. Legal pluralism and farmers' de facto land use rights

Legal pluralism highlights the role of law as a discourse and as a process and element of social change (Moore, 1978) rather than an unchanging, or nearly unchanging set of rules monopolised by the state that can be adjudicated in court. The concept emerged in response to the legal centralist conception of law, which claimed that law and order exist only within state bodies, legal frameworks and public administration. In contrast, legal pluralism shows that state law and order coexists with other legal forms (e.g. customary rights, religious law), thus highlighting the fact that there are often overlapping sets of rules. As stated by Griffiths (1986): "Legal pluralism is a fact. Legal centralism is a myth, an ideal, a claim, an illusion". Or as stated by van der Linden (1989: 153): "Pluralism is a 'condition, a way of being, of existing". [2]

As a central theme in the reconceptualization of the law-society relation (Merry, 1988), legal pluralism has evolved as a concept that focuses initially on the effect of the law on society to include complex and interactive relationship between official and unofficial forms of ordering (Benda-Beckmann et al. 1996; Spiertz and Wiber, 1996), as well as the conception of different legal spaces mixed and interpenetrated in our minds and actions (Berman, 2009; Santos, 2006; Brenner, 1999).

While legal pluralism is generally defined as a situation in which two or more legal systems coexist in the same social field (Griffiths 1986; Moore, 1986; Pospisil, 1971), it also presents jurisdictional fragmentation as the 'natural' order of things (Benda Beckmann, 1981) instead of an aberrant situation that should be rectified through legal reform and policy change. Here, it positions the rule of law and government jurisdictions merely as legal means, which can be used by different actors and institutions to achieve their objectives (Griffiths, 1986; Spiertz and de Jong, 1992). As stated by Benda-

[2] Legal scholars have long debated the exact meaning of legal pluralism. Some link it with the overall conception of law in legal anthropology (Merry, 1988) or the role of lawyers in shaping legal disputes (Benda-Beckmann, 1997), whereas others see it as a result of conflicts of law (Galanter, 1981). Nevertheless, initial analysis of legal pluralism was centered on the coexistence of informal local (customary, traditional) and formal national law (Benda-Beckmann et al. 1996; Spiertz and Wiber, 1996).

Beckmann (1981: 145): "While actors in a dispute shop for various institutions of dispute settlement, institutions also shop for dispute. Depending on which aspect of the dispute is emphasised, a different institution can assume jurisdiction". This is in line with Moore's (1973) conception of the semi-autonomous social field as multiple systems of ordering in complex societies, which generates rules, customs, and symbols internally, while also vulnerable to externally driven rules and decisions.

Legal pluralism implies the penetration and dominance of state law, and to a certain extent the existing power asymmetry. Nonetheless, it also brings to light how local community and the society at large can resist such domination (Benda-Beckmann, 1981). Or, as stated by Fitzpatrick (1983: 50): "Power is not simply based on prohibition but also on the positive formation of norms and shaping of individuals to fit these norms". Here, law is viewed not simply as a set of rules to exercise coercive power, but also as a system of thought, which allows the different social groups to examine ways of determining truth and justice, based on how they perceive the existing ordering, disputes situation and social relationships shaping and reshaping it. Or, as stated by Spiertz (2000: 176): "What a legal rule or normative principle does is attach a normative proposition or evaluation to a fact it describes. It is often not realised that such 'legal facts' are not empirical facts. Ownership for instance, maybe a legal fact, but not an empirical one, and vice versa".

Building on this literature and placing it within the context of state transformation processes in Myanmar, this article contributes to the current discourse on legal pluralism in two ways. First, it brings to light the blurred boundaries between the different legal systems and spaces, as most apparent from the way the previous and current government shape ongoing reform processes in the country's land governance. Current discourse on legal pluralism recognises the different forms of ordering and their interactions. However, legal scholars tend to view such jurisdictional fragmentation merely as the conception of different, yet interlinked legal systems and spaces, partly overlooking the fact that boundaries of these legal systems and spaces are at best blurred. Thus, rather than positioning state law as a one-directional force of power that can be used by the military government to impose restrictions to farmers, it argues that within the context of ongoing reform processes, state law could also serve as civil society organization's and local community's means to reclaim their farmland. This is most apparent in the way civil society groups have successfully incorporated customary land rights in NLUP (2016). Similarly, the way farmers representative and civil society groups form alliances to reclaim farmers' land through Tanintharyi Joint Monitoring Committee (Earthrights International, 2016) also shows how farmers' struggle to reclaim their land could be advanced through the formal legal frameworks. While this highlights the nature of state law as a field of contestation, it also shows how various groups could use existing laws to make a legal case that supports their interests, including farmers' land rights.

Second, it argues that the characteristics of different legal systems and spaces are partly defined by how they interact with each other, often intertwined in multiple actors' interests, strategies, and access to resources. The way state law recognises certain elements of customary land rights would have an influence in the overall shaping of the

characteristics of state laws, and vice versa. In Myanmar, this is most apparent from the need to integrate customary land rights as part of government's reform efforts to return farmers' farmland, and thus indirectly adopting some aspects of the former as part of the state's legal system to ensure the land is returned in a socially just way.

Building on this notion of blurred boundary and referring to the overall conception of legal pluralism, the article contests the predominant policy narrative portraying Myanmar's land governance as 'weak' and 'poor' due to its overlapping and conflicting policies and legal frameworks (Mark, 2016). Instead, it highlights the central positioning of legal pluralism as a field of struggle and terrain of contestation upon which land rights are fought over. We argue that in the context of ongoing reform processes in the country's land governance, legal pluralism can serve as a legal foundation for farmers' room for maneuver and grass roots counterforce against state territorialisation approaches (Smucker et al. 2000). It enacts a political foundation for recognition of farmers' land use rights and better understanding of customary land rights, including how these have changed, evolved over time as implications of past injustices. Most importantly, legal pluralism is not a silver bullet for addressing the country's systemic failure in land governance. Nonetheless, it can operate as an important field of struggle that provides important opening and entry points for tackling the country's systemic failure embedded in massive land grabbing and failed formalization attempt.

In the following section, we describe the previous and current government's reform efforts, centered respectively on the formulation processes of National Land Use Policy (NLUP), and the formation of the Committee for Reinspection of Farmland and Other Land Acquisition (CRFOLA) to address past land grabbing practices and return farmers' farmland. NLUP formulation processes illustrate the shaping of law as a discourse and element of social change, centering on NLUP consultation processes and how these are shaped by various actors' views and perceptions including international donors and civil society organizations. It highlights how NLUP was brought up as an idea, discussed and formulated through interactive relationship between official and unofficial forms of ordering, while also bringing to light its characteristics as a system of thought, emerged and intertwined by the different stakeholders' perceptions of what NLUP should entail. Similarly, the Committee formation resembles processes of institutional change, embedded in the NLD government's effort to address past land grabbing, partially counter arguing the legal centrality and strong domination of state laws (e.g. Farmland Law and VFV Law) formulated by the previous government. While both reform processes, legally and institutionally took place within the realm of state power, we argue that both processes also resemble the very nature of legal pluralism as an arena of power struggles, upon which land rights are fought for, albeit through different policy and institutional means. Most importantly, both reform processes reveal how myriad of actors operating at various scales in the fragmented political landscape shape and reshaped the relationship between law and society.

4. Legal pluralism and Myanmar's land governance reform

In this section we focus on two key programs of land governance reform in Myanmar: The National Land Use Policy and The Committee for the Re-inspection of Farmland and

Other Land Acquisition. We show how both reforms were intended to address land tenure problems by centralizing, formalizing, and standardizing them, but ended up becoming highly ineffective amidst the country's legal pluralism. In turn, such pluralism has created both opportunities and challenges for the country's transition towards rights-based land governance.

4.1: The National Land Use Policy (NLUP)

The NLUP exemplifies Myanmar's legal pluralism in the land sector. Originally intended to provide guidance for an overarching land law and other land-related legislation that could better centralise, unify, and formalise land governance throughout the country, the policy process and ultimate product was subject to the pluralistic forces of Myanmar political society, reflecting the diverse ways in which land is accessed and governed at the local level. While this led to a more progressive policy, it has arguably compromised the NLD government's acceptance of it because it limits the government's capacity to further formalise and centralise control over the country's land. In this sub-section we analyse: 1) how NLUP rationales are shaped by interactive relationship between official and unofficial forms of ordering, the latter involving international donors' role and development agenda; 2) how NLUP formulation processes reveal a certain degree of jurisdictional fragmentation; and 3) how power struggles in the aftermath of NLUP formulation processes resembles the role of law as a discourse and an element of social change.

As a response to widespread land conflicts that occurred in the past and continued to plague the country, and later driven by the country's economic liberalization, the role of investment, and the positioning of land as a central element in the country's socio-economic reform, NLUP formulation resembles a formal commitment from both the previous government and international donors community in promoting good land governance in Myanmar. As stated by one of our interview respondents: the "NLUP was developed because President Thein Sein wanted to show to donors and international community that his quasi-civilian government is capable to address land issues in the country, especially in relation to upcoming investment" (interview with CSO member, September 2017).

The NLUP formulation process was shaped as an integral part of international donors' development agenda[3], led by United States Agency of International Development (USAID) and supported by Swiss Agency for Development Cooperation and the European Union, in line with the previous government's interest to show compliance with international standards of good governance, to gain good will from the international community and get sanctions lifted. The idea to formulate NLUP emerged, in the aftermath of a national forum on how to reform the country's socio-economic sectors, held in Micasa hotel in Yangon in May 2012. At that time, a network of civil society groups actively working on land issue started to push for NLUP as part of their effort to promote policy reform in the land sector, as means to protect rural community's land use rights from incoming investments. As shared by some members of the civil society

[3] Strong donors' involvement in NLUP formulation processes is most evident in the way NLUP was first drafted in English and later translated into Burmese.

groups: "Access to land and the overall notion of land governance becomes an important issue, amidst the country's opening to investments flows" (interview with CSO member, October 2017). Later, Land Core Group (LCG) led the process of NLUP formulation, relying on its connection with government ministries (especially Department of Forestry/DoF but also other ministries) and a wide range of civil society organizations and international donors. However, it was very difficult to gain government support at that time, as the previous quasi-civilian government did not trust anything that did not come from within the government. Hence, the strategy was to approach it through international donors and used the latter as entry point to convince the government and gain their trust. In line with this strategy, LCG would manage the national processes in NLUP formulation (e.g. discussing with government, donors, civil society).

NLUP eventually became a joint product of donor intervention, government initiatives, and civil society aspirations, navigated throughout the different institutional interests and bureaucratic passages within the government. By appointing the DoF (under the now Ministry of Natural Resources and Environment Conservation or MoNREC) as the lead government agency in charge for NLUP formulation processes, NLUP was formulated without posing a direct threat to relevant government agencies in charge for land management (e.g. General Administration Department/GAD under the Ministry of Home Affairs or MoHA, Department of Agriculture Land Management Survey/DALMS under the now Ministry of Agriculture, Livestock and Irrigation or MoALI).[4] As stated by an official from DoF: "Donors worked together with DoF because it is an easy entry point. Not to mention that they cannot work with GAD or Ministry of Agriculture at that time" [5] (interview with DoF official, September 2017). While NLUP rationales are shaped by interactive relationship between official and unofficial forms of ordering, the latter involving international donors' role and development agenda, the shaping of these rationales is also defined by the selection of DoF as the leading government agency in charge for NLUP formulation, amidst different institutional interests within the various government bodies. Not to mention that proposing land governance reforms directly to GAD/MoHA and/or DALMS/MoALI might result in both government agencies' decisions to halt the NLUP formulation processes, as the latter might conflict with GAD/DALMS' interest in land management.

While NLUP rationales highlight the previous government's, international donors' and civil society organizations' attempts to improve the country's land governance, the question remains as to whether their different aspirations can be incorporated into the NLUP without undermining the policy's emphasis and focus. For example, while NLUP incorporates the need to resolve past land conflict, it is unclear as to whether this would need to be done prior to any investment can take place in the first place. Similarly, while NLUP incorporates ethnic land rights, it is unclear how the policy will tackle the issue in practice, amidst ongoing discussion on peace processes. In addition, while NLUP outlines the need for private investors to follow rules and regulations to ensure it invests

[4] While this strategy proven to be effective in ensuring NLUP formulation, it appears to be less effective at the later stage of reform, especially to counter force ongoing, parallel revision of Farmland law and VFV law led by MoALI.

[5] With both being key players in past land grabbing issue

responsibly, the question remains as to whether the policy would also tackle the problem of irresponsible investment in the past.

Following the previous government's green light, the Land Use Allocation and Scrutinizing Committee (LUASC) was formed in 2012. The Committee served as an inter-ministerial platform led by the Vice President and had its members from 25 government ministries. It is assigned with the task to formulate NLUP. Following the formation of LUASC, USAID agreed to support the government to develop the road map for NLUP in January 2013. The process of drafting NLUP was then started, led by DoF within LUASC institutional framework.

Following the formulation of a draft NLUP, the previous government initially wanted to conduct regular consultations, involving solely government staff from different ministries at national and regional level. This consultation period was planned for 2 months. However, civil society groups were able to push for more involvement from local communities, including those living in ethnic states, and the consultation process was extended to a full year, including two experts roundtable meeting, national consultation meetings, followed up by wider consultation to local communities and civil society groups (USAID, 2014), facilitated by Land In Our Hands network. In total, 91 consultation meetings were held. This included 17 consultations with the government and 1 national workshop. USAID provided technical expertise to deal with all the comments and suggestions received (total 900 comments). Through these consultations civil society organizations pushed for the inclusion of ethnic land rights and customary land rights in the NLUP. Both issues are incorporated into NLUP but without further elaboration on how they should be applied.

The wider consultation process embedded in NLUP formulation processes shows the previous government's willingness to move outside its comfort zone and make it more inclusive. LUASC formation also shows how the previous government views land governance as a cross-sectoral issue, and the need to incorporate sectoral ministries' perspective into the overall policy. Nonetheless, the latter does not necessarily result in sectoral ministries' compliance with regard to the proposed road map in NLUP, centered on the promulgation of the new land law as an overarching legal framework in land management. On the contrary, in early 2017, MoALI has started with the amendment process of respectively Farmland Law and VFV Law, while MoNREC initiated the drafting of the new Forest Law. Jurisdictional fragmentation in the country's land governance is linked with institutional fragmentation within the government bodies in charge for land management. At present, it is unclear as to whether the current government would proceed with the new land law promulgation processes as outlined in the NLUP.

Substantially, NLUP formulation processes were shaped by power struggles between the government and CSOs, with the first preparing it for the purpose to resolve land conflicts, ensure responsible investment and to a certain extent also attract foreign investor, and please the international community, and the latter pushing for the resolution of land

conflict and land grabbing as key priority issue prior to moving forward with positioning land for investment.

Nonetheless, the real power struggle in NLUP was not apparent until early 2017, when the parliamentary commission in charge for reviewing all legal frameworks led by U Shwe Mann release a letter commenting on the NLUP and inquiring some key elements to be taken out. Following the NLD government taking power in April 2016, it put existing legal frameworks formulated by the previous government under review. Promulgated in January 2016, just a few months before the new government came to power, NLUP is included in the list of policies needs to be further reviewed. These include the cancellation of government's recognition of ethnic land rights and customary land rights as stated in NLUP as well as the request to take out the role of women in land management. While many thought that U Shwe Mann's response is closely linked to his interest to protect his business networks, some also think that the military is not comfortable with the inclusion of customary land rights and ethnic land rights in NLUP. As said by our interview respondents: "The military is worried that local community would refer to this customary land rights and use it as their legal basis to apply territorial approach. Not to mention how ethnic armed organizations could use this to justify their territory" (interview with CSO member, September 2017).

The military defies the idea of customary land rights, because it resembles local community's role in land management, and their positioning as actors shaping and reshaping this management, rather than passive recipients who would follow the government's decision. While customary land rights and communal land rights could in principle be used as local community's legal means to protect their land from external expropriation, NLUP was the first government's policy recognizing the legal aspects of customary land rights. This highlights the characteristics of NLUP as a discourse, a process and element of social change.

The previous government may have approved NLUP in line with its interest to promote FDI and showing international donors that they are committed in reform processes without quite realizing the implication of incorporating customary land rights as a means to follow up on past land grabbing cases beyond returning the land to farmers. Also, bearing in mind that DoF is the one leading the NLUP formulation processes, it might not view such incorporation as immediate threats to the military's business networks, as such when GAD) and/or DALMS would be the one leading the NLUP formulation process.

At present, NLUP legal status is pending. Following U Shwe Mann's letter, NLUP remains a policy paper. While the prospect for NLUP implementation is far from certain, given U Shwe Mann's comments, the question remains as NLUP could indeed be implemented meaningfully, bearing in mind GAD's significant role in land management, their involvement in past land grabbing, and thus their conflict of interest in defending their own interest above the need for policy reform, which will be discussed in the next sub-section. This highlights the dilemma in promoting policy reform from outside the government bureaucracy that needs to be reformed (GAD in this case), but without being able to meaningfully involve them in designing the reform processes, bearing in mind

that they might resist such processes, putting it on hold for indefinite time, or sabotage the proposed reform before it was even started.

4.2 The Committee for the Re-inspection of Farmland and Other Land Acquisition

Following steps taken by the previous government to establish the Parliamentary Land Investigation Commission (PLIC) to inspect land expropriation cases and return land unjustly expropriated to its original owners, the current NLD government focuses its reform efforts through the formation of Committee for Reinspection of Farmland and Other Land Acquisition (CRFOLA) throughout the central down to village tract, to address land grabbing issues and return farmers' farmland that had been confiscated by the military and businesses. The CRFOLA and its predecessor, the PLIC, are additional examples of reform effort aimed to clarify and formalise land ownership. They have sought to address acts of land grabbing that have sparked land conflicts by determining who is the legally rightful owner of the land and returning it to them. The Committee was meant to settle all land disputes within the first six months of the NLD-led government, but has continued to work until now (USAID, 2015).

The Central Committee was created by a presidential instruction to resolve historic land confiscation claims. It is mandated to monitor state and regional governments in handling over farmers' reclaiming of their land confiscated by military. At the central level, the Committee is chaired by Vice President 2, and comprises of 2 vice chairs from MoHA and MoALI as well as members from Ministry of National Defense (MND), MoNREC, Ministry of Investment (MoI), MoHA, and Ministry of Commerce (MoC), and Chairman of Nay Phi Taw Council (USAID, 2015).

At regional level, a Chief Minister together with the Minister of MoALI chaired the Committee. The Regional Committee comprises of Director General from various government departments (e.g. GAD, DoF, DoA, DALMS), divisional staff officer from the military intelligence, as well as three farmer representatives as its members. At district level, GAD district administrative official together with district regional parliament representative chaired the Committee. The District Committee comprises of different government staff (e.g. DoA, DoF, DALMS) and eight farmer representatives as its members. Similarly, at township and village level, the Committee comprises of government staff and a number of farmer representatives, while chaired by GAD staff.

The structure of the sub-committees presented above is a general one. In practice, sub-committees organizational structure varies within states/regions, district, township and village tract level. Organizationally, village level committee would first handle farmers' claims and cases before channeling it to the township and district level. If the case was not resolved at the district level, this would be channeled to the regional level and later to the central level when the first could not resolve it.

The Central Committee handles only special or old cases, cases that have an unusual significance because of high value, large number of affected citizens, or cases that have been filed years ago, but still not resolved. Such claims can be submitted directly to the Union Assembly Legal Affairs Advisory Committee, chaired by U Shwe Mann, who has

authority to call chief ministers, ministers and others to address these cases as part of the work of the Central Committee (USAID, 2015).

The formation of the CRFOLA across the administrative level shows the current government's strong efforts to address the problem of land grabbing and return farmers' farmland. In practice, however, as long as the military occupied the land, there is little that the committee can do. As it stands now, the committee has solved in total of 12 cases, out of more than 10,000 complaints submitted by farmers at different administrative levels, throughout the country (see Paung Ku report). While various civil society groups have been quite successful in using the committee as its entry point to start legal processes to reclaim farmers' farmland, these efforts happened sporadically on case by case basis depending for instance on farmers' connection to particular civil society organization.

In the next section, we discuss key structural challenges in Myanmar's land governance, including how CRFOLA's effectiveness has been highly curtailed by the problem of institutional inertia and the diverse ways in which land is owned and accessed at the local level, making it excessively difficult if not impossible to determine who is the legally rightful owner of the land. This has generated excessive confusion and made it difficult for cases of unjust expropriation to be solved in a socially just manner. While these challenges bring to light the need to look beyond the state's legal frameworks and institutional means, if the current government's reform efforts to reclaim farmers' farmland are to be meaningful, it also reveals the important positioning of legal pluralism as a field of struggle and the potential role of customary land rights as an important opening and alternative legal means to correct past injustices.

6. Key structural challenges in Myanmar's land governance

While both NLUP formulation processes and the formation of CRFOLA show how the previous and current government put land issue high in their policy agendas, both reform processes do not necessarily address the roots of the problem in Myanmar's land governance, which we will discuss in the following sub-sections.

6.1. State formalization approach and the contestation of farmers' land use rights

With the promulgation of Farmland Law in 2012, the previous government embarked on a formalization approach in land governance. Prior to the promulgation of Farmland Law, farmers' land use rights referred to their customary land rights. Following the promulgation of the law, farmers need to register their land, get their land use certificate and pay tax accordingly. While state's formalization approaches sound fine in theory, assuming that farmers would register their land and getting their land use certificate, which would then increase and ensure their land tenure security, in practice, these assumptions were neither materialised, nor its legal consequences and sequence respected and followed. On the contrary, the way formalization processes enrolled in Myanmar reveal how the previous government could position existing laws and legal frameworks as a set of rules and its legal means to exercise coercive power.

While the previous government's formalization approach urges the need for farmers to register their land and get land use certificates, the latter did not stop the military and businesses from taking away farmers' farmland when they need it (e.g. to build military training ground, develop irrigation systems, create new industrial zone, among others). As stated in the LIOH report (2015: 3): "the possession of legal documents did not provide any significant defense protection against land grabbing for farmers. In the LIOH network 1129 respondents (42.5%) said they possessed legal documents issued by the government when their land was confiscated, while 1058 respondents (39.8%) said that they did not possess any such kind of documents, almost even odds". This highlights not only the role of the military as predatory state in land governance, it also brings to light the zero actual significance of having such certificate for farmers, as having land use certificate does not seem to at all secure farmers' land tenure (Boutry et al. 2017).

The notion as to whether farmers' land use rights are legal or illegal depends mainly on how the military and the previous government viewed the land in relation to their interest. Here, the idea of land tenure security is closely linked with the military's interest and access to particular land, and less on whether or not farmers have the rights to use the land, with or without land use certificate (de-jure and de-facto). This is most apparent from the criminalization case[6] in Sagaing Region (Aung, 2015), where the military confiscated farmers' farmland for sugarcane cultivation and sugar factory development. Following the confiscation, villagers protested by occupying the land. Later, 15 villagers were put in court for trespassing charges. Some villagers are now released and some are still in court. Those who are released could not get their land back, as the case filed in court was about criminal charges (e.g. farmers trespassing others' land) and not about farmers claiming their land back from the sugar factory. It shows not only the military's decision making power, but also how it could use Farmland Law as its legal back up to frame farmers protest as disruptive forces counter forcing the existing legal systems.

Formalization approach in land management also serves as the previous government's legal means to claim disputed land in ethnic states, often resulted in DALMS conducting land titling in area under contested control to impose its dominance, as happened in Tanintharyi Region. Here, DALMS would do the land titling process rapidly, without accurate land measurement, because their main objective is to claim as many land as possible and register it as government's land. This highlights the legal centralist conception of law, as it claims that law and order exist only within state bodies, legal frameworks, and public administration. Most importantly, it brings to light the need to recognise customary and ethnic land rights and their important role as a field of contestation and counterforce against state's territorialization approaches.

6.2. Institutional inertia and the paradox of bureaucratic reform

Institutional inertia in Myanmar land governance is most evident in the way the Committee for Reinspection of Farmland and Other Land Acquisition actually function, driven by conflict of interests of the majority of its members, in relation to their past involvement with land grabbing practices (Global Witness, 2016). Consequently, the committee could not function accordingly to address farmers' claims to get back their

[6] See also farmers' plowing protest in Boutry et al (2017).

land, as the latter might hurt GAD's and the previous military government's interests. Put differently, the Committee could only do its work if GAD agrees to return the land to farmers, while DALMS corrects and adjusts the information in its land record in accordance with actual land use.

The committee's role to return farmers' farmland is significantly undermined by the existing power asymmetry between farmer representative and government staff, not to mention that the committee's organizational structure and membership composition is still very much dominated by past land grabbing actors. For example, in most areas GAD officials will choose farmers who are close to them to act as 'farmer representatives' in the committee. This is possible because farmers received only one-day notification to appoint their representatives (personal communication with CSO member, September 2017). Furthermore, rather than finding a way to accommodate farmers' claims, DALMS and GAD would keep the official land record as is, thus halting the land restitution process with regard to reinstalling farmers' land use rights, while maintaining the status quo and protecting its interest. While such power asymmetry is apparent in the Committee's actual functioning, it is also implied in the way the committee referred to existing legal frameworks as means to halt farmers reclaiming their land, thus imposing state's dominance in law formulation and implementation, despite the fact that the same legal frameworks had been used to legitimise land grabbing. For example, when farmers raise a complaint, GAD officials will say that farmers do not know about government rules and regulations and hence lack the understanding as to why the government could confiscate their land when farmers did not follow the defined rules.

While farmer representatives could technically represent farmers' needs and claims, they lack power and decision making authority to push government staff in the committee to process the claim accordingly, and implementing the changes. As stated by one of our interview respondents: "Since 2012, we have submitted 30 complaints to reclaim our farmland back. In the past, some committee members manipulated the data shared by farmers. When farmers knew this they requested the committee to change it to the original data they provided earlier" (interview with CSO and farmer, September 2017). While excluding government staff from the committee seems to be the most logical thing to do, the question remains as to whether the committee would then be able to push relevant government department (e.g. GAD and DALMS) to return farmers' farmland.

Despite the current government's motivation to return farmers' farmland, the committee serves merely as part of GAD's institutional arms to protect and defend its interests and maintain the status quo, thus contradicting the reform efforts. As said by one of CSO members: "Systemic failure in land governance requires structural reform. Yet, it is hard to do this when government actors involved in past land grabbing practices are leading reform processes at present" (interview with CSO member, September 2017). According to The New Light of Myanmar (September 2014), only 583 out of 2,689 complaints forwarded to the MND, and only 299 out of 6,559 complaints forwarded to the state/region government had been addressed.

This highlights not only the design and procedural failure in the current government's reform efforts to return farmers' farmland, it also shows the importance to recognise customary land rights as alternative legal pathways to resolve the problem of institutional inertia. We argue that reliance on farmers' and local community's memories on the history of their land, how it is confiscated, and how to reclaim it back could serve not only as starting point to reduce the committee's dependence on existing legal frameworks and mechanisms, but also as important openings and institutional foundation to develop people-centered, rights-based approaches in land governance. While this would ensure that the current government does not only distribute the land to people who needed it, but also return farmers' farmland to its rightful owners[7], it would require the integration of some elements of customary land rights into the government's land policies and legal frameworks.

6.3. Data inconsistency due to serial, historical land grabbing

Serial, historical land grabbing by the military and businesses is a common phenomenon in Myanmar. As stated by Hines from Global Witness (2016): "For more than five decades Myanmar's military junta has seized land and sold it to investors at a huge personal profit, leaving rural communities landless and often destitute". Widespread serial, historical land grabbing has resulted in layered land use rights, partially distorting the basic conception of farmers' customary land use rights. Initially, farmers claimed their customary land use rights by cultivating the land. Yet, as the military confiscation has made it possible for more than one farmer to cultivate the same plot of land, without knowing about each other's existence, this resulted in more than one farmer having land use rights on the same plot of land. For example, when an irrigation development project came, the military government would take some part of farmers' land to build the irrigation system. Farmers would have to leave and went somewhere else after losing their farmland. After some time, however, the irrigation project turned out to be a failure, so the government left the area. During this time, another farmer came and started to farm on the piece of land left by the original landowners. Thus, when the latter decided to return to their lands, upon hearing that the development project had left, they found out that another farmer has already occupied the land (Boutry et al. 2017). In the context of ethnic state, serial and historical land grabbing is featured through the returns of IDPs to their land, only to found out that the land have been taken by other farmers as secondary occupants.

This layered land use rights system reflects how widespread practice of land confiscation by the military has resulted in overlapping land use rights between farmers, while also created a deadlock on how the current government could solve the problem of land grabbing and return the confiscated land to farmer. Returning farmers' farmland becomes a complicated endeavor, as this would require significant adjustment in how land use rights should be re-conceptualised[8], not mentioning the military's power to retain these lands in the first place. While this highlights the limitation of state's legal frameworks to address the problem of land grabbing and return farmers' farmland, it also brings to light

[7] See also the issue of layered land use rights described and discussed in the next sub-section.

[8] As to whether farmers' land use rights should also be based on the historical timeline when farmers start to cultivate or the duration of cultivation, while recognizing the complexity of the situation.

the need to integrate several aspects of customary land rights as part of government's policies and legal frameworks. We argue that such integration is pertinent to serve as legal basis to start negotiation processes between relevant farmers as to how they would regain or retain their land use rights, while respecting each other's past and present contributions to the land in line with the practice of their customary land rights.

While serial, historical land grabbing plays a key role in distorting farmers' land use rights, the latter's actual significance is further undermined by state formalization approach and poor land record data, not matching the actual land use. As expressed by DoRD official: "While local community lacks any registration system to formally claim their land use rights, data presented by the government agency does not seem to match with actual land management and land use. Everyone seems to have different data" (interview with DoRD official, September 2017).

There are various sources of data inconsistency. First, government ministries might have different data on sectoral land use in relation to their defined sectoral development targets, scope of work and mandates. Yet, as these data are focused on presenting government ministries' achievement in terms of fulfilling their sectoral development targets, they neither represent farmers' land use rights, nor the realities on the ground and actual land use (Boutry et al. 2017). Second, lacking any land registration system, GAD has always arranged it through informal channels, for instance by renting state land to private companies informally, leaving the door wide open for institutionalised corruption practices. As stated by one of our interview respondents: "This creates the prevailing land market, where private companies have to pay lease every month to GAD, with GAD does not have to report it or transfer the lease payment as government revenue. Technically, the government has no choice to do it the way it is doing now, as setting up a registration system would be very expensive. Yet, there is also issue of vested interest to preserve the current practice of rent seeking" (interview with CSO member, September 2017). While the first source of data inconsistency could be partially addressed through centralised planning approach, to fine tune different sectoral ministries' land data, the second source highlights the need for structural reform within the government bureaucracy.

The issue of systemic data inconsistency, centered on the need to show previous government's achievement in relation to its sectoral development targets, regardless of whether or not these targets match with actual land use, as well as the practice of institutionalised corruption reveals structural flaws in the existing legal systems for land management. While this urges the current government to move beyond the existing legal frameworks and institutional set up if the ongoing reform processes are to have actual significance, it also reveals the importance of legal pluralism as an alternative legal pathways and terrain of contestation for farmers to reclaim their land. We argue that if the current government aims to change the characteristics of the state from a predatory state to a state governed by rule of law, then the conception of law needs to integrate some elements of customary land rights. While such integration would serve as the current government's point of reference to return farmers' farmland to its rightful owners, it also highlights the blurred boundary between different legal systems and spaces.

7. Linking legal pluralism with social justice: Towards rights-based land governance

As access to land is central to one's ability to produce food, sustain livelihoods, and improve living standards, land governance is key not only for the country's socio-economic development, but also for promoting and ensuring social justice in state transformation processes in Myanmar. As stated by Kyaw Thu in LIOH report (2015): "Land is the place where food is produced, the place which we learn our role in the social and natural environment… Land is the history of human being and their environment".

Bringing to light systemic and extensive limitations of existing legal frameworks and institutional set up in the country's land governance, we propose the positioning of law as part of a multiplicity of institutional arrangements and normative repertoires in society (Spiertz, 2000)[9]. Here, we argue that 'rules and laws themselves are subject to negotiation, reinterpretation, and change' (Meinzen-Dick and Pradhan, 2002: 7). Moreover, different legal orders, social loci should not be seen as isolated from each other, but as 'mutually constitutive' (Guillet, 1998) as revealed through their interactions and the blurred boundaries between different legal systems and spaces.

Land governance in Myanmar features not only complex and diverse land tenure arrangement and practices, it also highlights the eminent role of serial, historical land grabbing practices as well as decades old conflicts (Kramer, 2009) in shaping and reshaping farmers' land use rights. This complexity and diversity in legal systems and spaces, as manifested in the layered systems of land use rights needs to be recognised as the first step to address past injustice practices. For this, we position legal pluralism central for incorporating social justice perspective in the country's land governance, to address land grabbing issues and return farmers' farmland to its rightful owners. We argue that legal pluralism can serve as a field of struggle to recognise local community's customary land use rights, while also resembling an autonomous system and integral part of local institutional arrangement with regard to local communities' different types of land use (e.g. communal forest, shifting cultivation, hunting ground), not necessarily incorporated into formal land use and national land allocation.

Consequently, customary land rights systems and practices should be viewed as complementary to ongoing policies and legal frameworks formulation processes, rather than as a source of problem in relation to the government's defined rules and regulations in land management, as previously perceived. The current government and international donors should perceive the diverse, overlapping and sometimes conflicting legal frameworks not simply as messy or a sign of 'weak' and 'poor' land governance, but also as a terrain of contestation, and important policy and institutional openings where farmers' land rights can be fought over.

Scholars have discussed the dilemmas of recognizing customary law, bearing in mind the issue of unequal power relationship within the different groups of local communities and its implications for the overall rule shaping and institutional arrangements, in relation to their social status linked to gender and ethnicity. In the context of land, there is no

[9] See also Sen (2009) and Fraser (1998) on the importance to include the notion of diversity, equity and accountability.

shortage of evidence that unequal power relationships within the local community is often reflected in land concentration by large land owners, while leaving significant number of farmers to be landless. Scholars have also highlighted the plural and diverse nature of customary law and its implication of recognizing which customary law. Nonetheless, we argue that legal pluralism is more than just about recognizing customary law per se, but rather to take into account the very notion of diversity and plurality in legal practices as significant factor in development policy planning and a means to promote social justice (Hall et al. 2015; Fraser, 1998). Recognizing this diversity and plurality is key to improve the current government's ability to carry out its policy reform efforts, increase the reform's actual significance and change the role and nature of the state from a predatory to a state that is accountable to people's development needs and aspirations.

In retrospect with how the military government perceived customary land rights as source of conflicts, something they could not really control, and as potential threat for the state's territoriality approach in land governance, especially in relation to ethnic state's land policy, we argue that recognizing customary and communal land rights can be viewed as political foundation towards more decentralised, inclusive, and accountable land governance. Putting customary land rights central in the current discourse on land restitution, we argue that they become not only farmers' and local community's 'legal to reclaim their land use rights, but also the very embodiment of social movement to push for deliberative decision-making processes in land governance.

Linking this with the ongoing peace processes, legal pluralism could serve as an alternative means to create a level playing field in the ongoing discussion concerning natural resource governance, between the current government and ethnic states (Kramer, 2012). We argue that rather than positioning current government's policies and legal frameworks as legal means to impose land governance in ethnic states area, legal pluralism provides an entry point for both ethnic states and the current government to link their respective policies and legal frameworks, towards the shaping of common objective to promote sustainable, just, and accountable development centered on federalism. Integrating customary land rights and ethnic land rights into the current government's policies formulation and programs development is crucial to resolve past and current land conflicts. As stated by Meinzen-Dick and Pradhan (2002: 28): *"It is not just a matter of getting the 'right' law or 'right' institution to allocate or manage resources"*. Instead, the state and society's ability to resolve conflict and respond to ecological, social and political uncertainties will be determined by their ability to navigate through the messy and dynamic processes of negotiation to identify potential ways forward. [10]

From a policy perspective, the current government needs to agree to abolish the existing land data managed by DALMS and create a new land inventory based on how people

[10] See also Unruh's (2001) analysis from postwar Mozambique, which illustrates the need to bring in all types of systems and evidence to bear, including social (testimony establishing a link between a person and a community), cultural ecological (signs of human activity on the landscape), and physical (natural terrain features establishing familiarity with an area), as means to resolve conflict and move forward with state transformation processes.

actually use the land, through participatory bottom-up approaches. Only people who use the land know the history of it. Hence, they should use this as a starting point to develop a new land inventory. In turn, this new land inventory could serve as an entry point to develop people-centered land cadaster as technical and institutional foundation to legally recognise and protect farmers' de-facto land use rights (The Irrawaddy, 2016). While this certainly requires significant political and bureaucratic reform within the government as well as considerable amount of resources, we argue that it could also serve as an important opening, if not first step in the right direction to start addressing the key structural challenges in the country's land governance.

References

Aung, T. T. 2015. "Economic impacts of forced land acquisition on farming households in Upper Myanmar." School of Environment Resources and Development. Thailand: AIT. Master Thesis.

Benda Beckmann, F. von. 1997. "Citizens, strangers, and indigenous peoples: Conceptual politics and legal pluralism." *Law Anthropology* 9: 1-42.

Benda-Beckmann, K. von. 1981. "Forum shopping and shopping forums: Dispute processing in a Minangkabau village in West Sumatra". *Journal of Legal Pluralism* 19: 117-159.

Benda-Beckmann, F. von, K. von Benda-Beckmann, J. Spiertz. 1996. "Water rights and water policy." In *The Role of Law in Natural Resource Management*, edited by J. Spiertz and M. G. Wiber, 77-100. The Hague, The Netherlands: VUGA.

Berman, P. S. 2009. "The new legal pluralism." *Annual Review of Law and Social Science* 5: 225-242.

Boutry, M., C. Allaverdian, M. Mellac, S. Huard, U. S. Thein, T. M. Win, K. P. Sone. 2017. "Land tenure in rural lowland Myanmar: From historical perspectives to contemporary realities in the Dry zone and the Delta." Of Lives and Land Myanmar Research Series. GRET.

Brenner, N. 1999. "Beyond state centrism? Space, territoriality and geographical scale in globalization studies." *Theory and Society* 28: 39-78.

Buchanan, J., T. Kramer, K. Woods. 2013. "Developing disparity: Regional investment in Burma's borderland." Transnational Institute, The Hague.

Callahan, M. 2003. *Making Enemies: War and State Building in Burma*. Ithaca: Cornell University Press.

Croissant, A., Kamerling, J. 2013. "Why do military regimes institutionalize? Constitution making and elections as political survival strategy in Myanmar." Asian Journal of Political Science 21 (2): 105-125.

Earthrights International. 2016. "Green desert: Communities in Tanintharyi renounce the MSPP oil palm concession." Yangon: ERI.

Earthrights International. 2011. "The Burma-China pipelines: Human rights violations, applicable law and revenue secrecy." Yangon: ERI.

Einzenberger, R. 2016. "Contested frontiers: Indigenous mobilization and control over land and natural resources in Myanmar's upland areas." *Austrian Journal of Southeast Asian Studies* 9 (1): 163-172.

Ferguson, J. M. 2014. "The scramble for the waste lands: Tracking colonial legacies, counterinsurgency and international investment through the lens of land laws in Burma/Myanmar." *Singapore Journal of Tropical Geography* 35, 295-311.

FIDH. 2017. "Land of sorrow: Human rights violations at Myanmar's Myotha industrial park." Yangon: FIDH.

Fraser, N. 1998. "Social justice in the age of identity politics: Redistribution, recognition, participation." Wissenschaftszentrum Berlin fur Sozialforschung Discussion Paper No. FS/98-108.

Galanter, M. 1981. "Justice in many rooms: Courts, private ordering and indigenous law." *Journal of Legal Pluralism* 19, 1-47.

Gee, S. 2005. "The invention of the wasteland: Civic narrative and Dryden's Annus Mirabilis." *Eighteenth Century Life* 29 (1): 82-108.

Global Witness. 2016. Myanmar's efforts to tackle land grabbing crisis must address the role of the military in perpetuating theft and violence. Global Witness May 11, 2016.

Global Witness. 2009. "A disharmonious trade, China and the continued destruction of Burma's northern frontier forests." London: Global Witness.

Griffiths, J. 1986. "What is legal pluralism?" *Journal of Legal Pluralism* 24: 1-55.

Grundy-Warr, C., E. W. S. Yin. 2002. "Geographies of displacement: The Karenni and the Shan across the Myanmar-Thailand border." *Singapore Journal of Tropical Geography* 23 (1): 93-122.

Guillet, D. 1998. "Rethinking legal pluralism: Local law and state law in the evolution of water property rights in Northwestern Spain." *Comparative Studies in Society and History* 40 (1): 42-70.

Hall, R., M. Edelman, S. M. Borras Jr., I. Scoones, B. White, W. Wolford. 2015. "Resistance, acquiescence of incorporation? An introduction to land grabbing and political reactions "From Below"." *Journal of Peasant Studies* 42 (3): 467-488.

Hong, E. 2017. "Scaling struggles over land and law: Autonomy, investment and interlegality in Myanmar's borderlands." *Geoforum* 82, 225-236

Huang, R. L. 2013. "Rethinking Myanmar's political regime: Military rule in Myanmar and implications for current reforms." *Contemporary Politics* 19 (3): 247-261

Huard, S. 2016. "A common land in the village? Land biography, village-state interplay and moral economy in central Myanmar, Burma." *Natures Sciences Societes* 24 (4): 347-357.

Jones, L. 2014. "The political economy of Myanmar's transition." *Journal of Contemporary Asia* 44 (1): 144-170.

Kramer, T. 2015. "Ethnic conflict and land rights in Myanmar." *Social Research* 82 (2): 355-375.

Kramer, T. 2012. "Ending 50 years of military rule? Prospects for peace, democracy and development in Burma." Oslo: NOREF.

Kramer, T. 2009. "Neither war nor peace: The future of the cease-fire agreements in Burma." Amsterdam: TNI.

Le Billon, P. 2001. "The political ecology of war: Natural resources and armed conflicts." *Political Geography* 20, 561-584.

Linn, S. N. 2015. "Myanmar: Conflicts over land in a time of transition." *Economic and Political Weekly* 9, 69-73.

LIOH. 2015. “Destroying people’s lives: The impact of land grabbing on communities in Myanmar.” Yangon: LIOH.

Loewen, E. 2012. “Land grabbing in Dawei (Myanmar/Burma): A (Inter) National human rights concern.” Yangon and Amsterdam: Paungku and TNI.

Mark, S. 2016. “Are the odds of justice stacked against them? Challenges and opportunities for securing land claims by smallholder farmers in Myanmar.” *Critical Asian Studies* 48 (3): 443-460.

McCarthy, S. 2000. “Ten years of chaos in Burma: Foreign investment and economic liberalization under the SLORC-SPDC, 1988-1998.” *Pacific Affairs* 72 (2): 233-262.

Meinzen-Dick, R., R. Pradhan, 2002. “Legal pluralism and dynamic property rights.” CAPRi Working Paper 22. Washington DC: IFPRI.

Merry, S. E. 1988. “Legal pluralism.” *Law and Society Review* 22 (5): 869-896.

Moore, S. 1986. *Social Facts and Fabrications: Customary Law on Kilimanjaro, 1880-1980.* Cambridge: Cambridge University Press.

Moore, S. F. 1978. Law and social change: The semi-autonomous social field as an appropriate subject of study. In *Law as a Process: An Anthropological Approach*, edited by S. Moore, 54-81. London: Routledge.

Moore, S.F. 1973. “Law and Social Change: The Semi-autonomous field as an appropriate field of study.” *Law and Society Review* 70: 719-746.

Oberndorf, R. 2012. “Legal review of recently enacted Farmland law and Vacant, Fallow and Virgin Lands Management law.” Yangon: Food Security Working Group’s Land Core Group.

Pospisil, L. 1971. *Antropology of Law.* New York: Harper and Row.

San Thein, Pyae Sone and Diepart, J.-C. 2017. *Transparency Under Scrutiny: Information Disclosure by the Parliamentary Land Investigation Commission in Myanmar.* MRLG Case Study Series #1. Vientiane: Mekong Region Land Governance.

Santos, B. de Sousa. 2002. “The heterogeneous state and legal pluralism in Mozambique.” *Law and Society Review* 40 (1): 39-76.

Santos, B. de Sousa, C. A. Rodriguez-Garavito. 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge, UK: Cambridge University Press.

Sen, A. 2009. *The Idea of Justice.* Harvard: Harvard University Press.

Smucker, G. R., T. A. White, M. Bannister. 2000. "Land tenure and the adoption of agricultural technology in Haiti." CAPRi Working Paper 6. Washington DC: IFPRI.

South, A. 2017. "Hybrid governance and the politics of legitimacy in the Myanmar peace process." *Journal of Contemporary Asia* 1-17

Spiertz, J. 2000. "Water rights and legal pluralism: Some basics of a legal anthropological approach." In *Negotiating Water Rights,* edited by B. Bruns, R. Meinzen-Dick, 162-199. London: Intermediate Technology Publications.

Spiertz, J., M. G. Wiber. 1996. *The Role of Law in Natural Resource Management*. The Hague, The Netherlands: VUGA.

Spiertz, J., I. J. H. de Jong. 1992. "Traditional law and irrigation management: The case of Bethma." In *Irrigators and Engineers: Essays in Honor of Lucas Horst*, edited by G. Diemer and J. Slabbers, 185-201. Amsterdam: Thesis Publishers.

Steinberg, D. 2005. "Burma/Myanmar: The role of the military in the economy." *Burma Economic Watch* 1, 51-78.

Than, T. M. M. 2007. "Myanmar's foreign trade under military rule: Patterns and recent trends." *Southeast Asian Affairs* 224-256.

Thawnghmung, A. 2003. "The socio-economic impacts of rice policies implementation in rural Burma/Myanmar." *Journal of Social Issues in Southeast Asia* 18 (2): 299-321.

The Irrawaddy. 2017. Reassessing the role of Myanmar's powerful military. Kyaw Zwa Moe, 20 October 2017. https://www.irrawaddy.com/opinion/commentary/reassessing-role-myanmars-powerful-military.html

The Irrawaddy. 2016. Myanmar government to redistribute vacant land. Htet Naing Zaw, 26 September 2017. https://www.irrawaddy.com/news/burma/myanmar-govt-redistribute-vacant-land.html

The Irrawaddy. 2013. Military involved in massive land grabs: Parliamentary report. Htet Naing Zaw, Aye Kyawt Khaing, 5 March 2013. http://www.irrawaddy.org/human-rights/military-involved-in-massive-land-grabs-parliamentary-report.html

TNI. 2013. "Access denied: Land rights and ethnic conflict in Burma." Burma Policy Briefing no. 11. Amsterdam: Transnational Institute.

Unruh, J. 2001. “Land dispute resolution in Mozambique: Evidence and institutions of agroforestry technology adoption.” CAPRi Working Paper 12. Washington DC: IFPRI.

USAID. 2017. Land stakeholder analysis: Governance structures and actors in Burma. Tenure and Global Climate Change Program.

USAID. 2014. Land use policy reform in Burma: Engaging stakeholders and regional lessons, 25 March 2014. Washington DC: USAID.

Van der Linden, J. 1989. “Return to legal pluralism.” *Journal of Legal Pluralism* 28, 149-157.

Willis, N. 2013. “Land disputes and the ongoing development of the substantive rule of law in Myanmar (Burma)”. In: *Law and Practice: Critical Analysis and Legal Reasoning*, edited by S. Kierkegaard, 882-896. International Association of IT Lawyers, Denmark.

Woods, K. 2015. “Commercial agriculture expansion in Myanmar: Links to deforestation, conversion timber and land conflicts.” Forest Trend Report Series. Washington DC: Forest Trend.

Woods, K. 2011. “Ceasefire capitalism: Military-private partnerships, resource concessions and military state building in the Burma-China borderlands.” *Journal of Peasant Studies* 35 (4): 747-770.