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ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



**MAKING MYANMAR NATIONAL LAND USE POLICY AND LEGAL FRAMEWORK
WORK: CHALLENGES AND OPPORTUNITIES FOR HARNESSING TECHNOLOGY,
INNOVATION AND INVESTMENT IN PEOPLE FOR MYANMAR'S INCLUSIVE
DEVELOPMENT**

Thyn Zar Oo, Kyaw Htun, Nwai Aye Aye Wai

Strategy & Directorate, Emerald Sea Group, River Mekong Group

Public Legal Aid Network (The PLAN)

thynzaroo@gmail.com

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Abstract:

"There is no compensation for inaction and lack of policies", warned a panelist in "Leveraging Policies for Sustainable Development Goals", one of the seminars in the 2018 Annual Meetings of the World Bank and IMF in Bali, urging governments' immediate actions to address global issues highlighting the only alternative be the devastating crises. In light of #AM2018Bali agendas, the paper explores the context of Myanmar's challenges and opportunities: how Myanmar could ensure its National Land Use Policy and Legal Framework work for all its populations, including the vulnerable and marginalized by fostering inclusion, equality, rule of law and ensuring leveled playing field for free and fair competition. By honestly looking into the realities of the illicit and unaccounted-for economies, their thriving financing models, could the country capture and incorporate correct data to accommodate comprehensive policy and regulatory frameworks. Harnessing technology, innovation and investing in the future will help Myanmar achieve its full potential.

Key words: Land, Governance, Policy, Poverty, Trafficking, Refugees, Migration, Development, Innovation, Technology, Human Capital, Investment, Economy, Financing, Legal Framework, Legislation, Legislative Drafting

Background: the timeline

NLUP and NLUC: Myanmar National Land Use Policy (NLUP) was adopted in 2016 after tedious years of reviews and public consultations¹. In order to implement the NLUP, the National Land Use Council was established in January 2018 with Vice President (2) as the chair, the Minister for the Ministry of Natural Resources and Environmental Conservation as the secretary, together with other key ministries and government agencies as the members.

Policy Dialogue/Forums: Since the official adoption of the NLUP in 2016, there had been several national level forums with the NLUP as the focal theme. The prominent ones with the policy making capacity includes: (1) the October 23-24, 2017 Forum convened in Nay Pyi Taw, "Towards a Sustainable Land Administration and Management System in Myanmar" organized by the Ministry of Agriculture, Livestock and Irrigation (MOALI), Ministry of Natural Resources and Environmental Conservation (MONREC), Yangon City Development Committee (YCDC) and the World Bank, and (2) the October 2-

¹ Oberndorf, R., Thein, U. S., Oo, T. Z. (2017, March). Developing the national land use policy in Myanmar: The importance of inclusive public consultation and close donor coordination. Paper prepared for presentation at the 2017 World Bank conference on land and poverty. Retrieved from <https://www.land-links.org/research-publication/world-bank-2017-paper-developing-national-land-use-policy-myanmar-importance-inclusive-public-consultations-close-donor-coordination/>



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3, 2018 "National Land Use Policy Forum" which was also convened in Nay Pyi Taw, organized by the National Land Use Council in Myanmar.

At the two conferences, the strategic inputs together with the analytical insights provided to the government by the stakeholders and civil societies who are advocating for Myanmar's proper land governance and inclusivity, gave a better overview, a mapping perhaps, of what we could call a "framework of our problems" regarding land in Myanmar which are issues historic in nature and yet still pressing. The forums called for urgency in land reforms and suggested immediate establishment of a national level overarching land law that could ease out the current operational gaps in addressing dire needs for inclusive development. The umbrella law is expected to trigger newly reformed land laws that align with the NLUP and create a harmonized, comprehensive land administration legal framework.

Policy and advocacy works: Apart from the forums, there had been many tedious efforts on housing land and property rights, climate-smart development, sustainable agriculture and forest management, disaster and crisis displacement solutions, investment and inclusivity in the forms of policy briefs, analytical documents, and policy dialogues attempting to better inform the government on Myanmar's need in comprehensive responsible land governance. Upon looking at the diverse array of visionary yet evidence-based policy inputs, it is observed that the following major highlights are constant and common.

Problem mapping: the problems framework

The problems should be seen as a framework of their own with all the causalities, ways and means of sustaining and persisting, how they recycle and are triggering more devastating impacts and trends in Myanmar. As such the gaps and impact trends should be identified to its fullest yet a workable general structure it has been tried to picture herewith.

Policy and Regulatory Gap: Lack of policies on acknowledging customary and traditional land use, diverse agriculture practices and innovative use of land for food and social security, allocation and restitution for the displaced and landless, reliable systems and mechanisms on integrated geospatial and administrative data, rule of law and institutional arrangements for administration of all land cover areas and tenure types which also require enabling determinant results from the progress (which is not yet) in constitutional reform, peace process, security and crisis resolutions. In addition to this, due to lack of realistic in depth understanding of the real problems in their origins and their side effects which on their own turn into problems themselves, the policies and laws attempted by each new leadership not only failed but also created yet again another set of additional problems with administrative and budget



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burdens plus implementation difficulties; making it worst is when forced implementations of such are deemed to automatically engineer further problems or trigger potential crises in the country.

As such, the problems recycle and give birth to more. Hence, whatever new initiative in the policy and legal framework, the institution framework and the efforts to improve the land governance in Myanmar should address the aforementioned framework of problems and reverse-engineer it to make it work. The process to achieve, execute and implement the good governance land policy and legal framework should be cautious of all the previous trials and errors and receptive of all the challenges brought up by the stakeholders and public plus must take into consideration other unvoiced implied situations on the ground and then make sure to incorporate all of these in the intended solutions framework.

Institution Gap: Most pressing of all problems highlighted by all policy informants is unanimously the lack of coordination among the stakeholder agencies among the land administration bodies, lack of proper lines of authority, communication and jurisdictions to cover either absent or overlapping roles and responsibilities and the need to establish a union-level enabler, a leadership coordination lead entity with political mandate. It should also be highlighted on the fact that without having accomplished an overall strategic vision for comprehensive long term, inclusive and sustainable development for the country, without going through comprehensive overhauls in institutional structures and work attributions, the country had had only experienced changes in departmental/ministerial constructs and switch back and forth of functions among the old structures or newly created ministerial departments without prior administrative experience to comprehend old operational difficulties leaving a vacuum of strategic directions to accommodate immediate policy implementations by each new leadership that took office.

An open mind and good will is needed to accept that the institutions that need to facilitate the intended good governance land policy and legal framework shall be the institutions of the future (with their structures, functions and inter-connections within the system allowing harmonious inter-operation-ability) are not yet existent. It needs to be open for all possible innovation and strategic visions to reflect then to choose where Myanmar wants to be positioned itself for the governance of its people and land.

Human Capital and Capital Gap: The biggest gap perhaps of all would be the vacuum of talent, the mechanism to develop the talent from within the country that shall take the ownership and the leadership in addressing the problems. People of Myanmar are the ones having to deal with all the consequences regardless of whether they had the opportunity to be part of the solutions or not. They, in reality, hold all the stakes and suffered generations of negative impacts from incomprehensive policies. Should the people not able to turn this situation around, they could only be more devastated and the real shift from poverty



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towards shared prosperity could never be in sight. There is a major lack of investments in human capital on the people, the real stakeholders, who own context and evidence of the country and who belong to the land. There are also no sustained structural investments in capabilities to architecture on new and innovative approaches, strategic institutional systems and operations.

A financing model and a fiscal impact assessment are always needed in envisioning a good and working governance policy and legal framework. The kind of investment not just monetarily but by commitment for a very long run is needed in closing the human capital and technical gap as well as in planning, execution, implementation, maintaining and custodianship for the framework to work.

Knowledge Gap: It would be incorrect to conclude that Myanmar lacks a legal or policy framework or even proper laws. It would also be utterly wrong to assume no in-depth studies and research had ever provided sufficient policy briefs for the decision makers. It would be unfair to conclude that all the regimes and leadership that ever took office in Myanmar had never acted on the policy reviews and carried out genuine efforts of transformations in the land governance. Yet the fact that Myanmar still failed to achieve the objectives set forth and often turned around with undesired unintended results or harmful side effects, still question the possibility of developing a framework that does not backlash.

It is almost abstract to realize that the fundamental problem (causing all the rest as consequences) is the lack of understanding that there are more to it. There are perspectives and interpretations and offered solutions by diverse and competing visions. There were severe costs which Myanmar had been indebted for not knowing the problems in their very own depth, scope and context from the experiences of all stakeholders and have had always been either addressing selective problem groups or addressing entirely wrong on the whole basket of problems in each and every era. Moreover, Myanmar needs the ability to map and track the organic and growing nature of these original problems as well as the additional problems, additionally created by the premature or incomprehensive policies/laws attempted by the succession governments and stakeholders in every period of history, in attempt to solve the original problems.

Innovation Gap: A new and innovative approach in looking at things from an ethical apolitical unbiased lens is necessary to map out and diagnose the problems. A new and innovative ways and means in developing and innovatively applying legislative, institutional and policy tools are necessary to architecture innovative mechanisms to address these mapped out problems. A new critical mass of innovation savvy, technology savvy open minded and responsible human capital is necessary to be developed from within Myanmar to own the problems and innovatively solve them.



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Execution Gap: No matter how far and how fast Myanmar could afford to close the above mentioned Gaps, it can still happen in any time at all levels throughout its systems and support systems across the implementing programs that people lose sight on the long term strategic vision set forth by the intended good governance policy and legal framework. The moment of truth is at every step of work by every smallest unit of operations. The vision and concept must be owned and internalized at all structures and components in the system once planned and executed. This is something the government or civil society cannot do alone in Myanmar. The development partners, the international aid agencies and INGOs can give tremendous support by positioning themselves in line with the intended deliverables on democratic change that their very programs are programmed for. The conceptualization of the intended good governance land policy and legal framework at the level of the least important staff or program entity on the ground and at all work circles is the key to the possibility of making such a framework work.

Diagnosis Gap: Each and every government that ever took office in Myanmar understood the need for economic development. All of them had had always focused on the "Investment" one way or another. All policies and initiatives, to reform and revitalize Myanmar have been motivated by investment. But each and every attempt failed to define "economic development" and "investment" in the lens of problems framework. A panelist in an early day of land and Poverty Conference spoke about this, "Democracy and Rule of Law need Future Market Economy but Future Market Economy also needs Democracy and Rule of Law". Just like we have described in the following trends section of this paper (The problems recycle and multiply: the impact and trends caused by the problems), problems' life-cycles revitalize and expand and the financing models, ways and means re-generate themselves to sustain and rebirth.

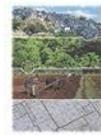
Problems thrive as dark and unaccounted for economy where the governments lack power and jurisdiction. The policy makers who are to make a successful good land governance policy and legal framework, should be able to connect the dots and see the clear lines in the picture of how the solutions frameworks and problems frameworks (with its trends and impacts) could relate and correspond to each other, how it failed when the victims of bad policies could not connect with the good governance initiatives. This is how every attempting new government failed in formulating comprehensive policies and by failing to include the real stakeholders (the victims of failed policies who are impacted most) and come up with non-inclusive remake of the old problems and end up creating additions to the problems basket and self-turning themselves into being part of the problems themselves instead of joining as a part in the solutions in each era of time.

Peace is the very first step to economic development. The investment in peace and human capital of peace makers are necessary steps towards prosperity and sharing of prosperity. This is how every other country



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in history moved from dark economies to rule of law and from poverty to income. Crisis resolution in human rights based practices is the very first step to social harmony and healthy relationships among communities who shall then be happy and ready to work and work together with each other. The investments in human capital on creative problem solvers are very much needed in Myanmar. There is the difference between "*creating a problem and solving it*" vs. "*creative problem solving*". It should never be confused.

The problems recycle and multiply: the impact and trends caused by the problems

The Civil Societies have always been the advocates for evidence driven, data driven, context driven policy making processes. Incomplete data could only deliver discrepant decisions leading to incomprehensive policies which could only result in non-inclusive growth and development pushing further inequalities and economic crises. The data that the Civil Societies are dealing with, on a daily basis, includes the ruthless truths: that of illegal migrations, human trafficking, organ-trading, etc., just to mention as a few examples to begin with. The trends in the dark and unaccounted for economies include illicit drug trading, payment methods in the form of new narcotic products and tablets, forced labor, slavery, all forms of exploitations from all forms of ungoverned, unsafe migrations, etc., also this is just to name a few sample trends. When we are speaking about capital flows and accumulations, we have to acknowledge the flow of illicit capital from illicit economies and business activities which are thriving with robust financing models and mechanisms, developing extremely rapidly by diverse forms of criminal ways and means.

The incapacity to understand these contexts, failure to map out these trends, inability to accumulate these data could be damaging for all of us if decisions are to be made based on incomplete data sets without capturing the populations which are victims to such heinous crimes and exploitations, yet all of these originated one way or another from problems rooted in landlessness, land-loss or crises that began in land. Neither the aggressive taxation alone nor donor contributions could ever raise sufficient funds to finance our sustainable development goals when such hidden economies continue to absorb all the limited natural resources and human capital the world have in its entirety.

It is with great optimism that these days, gradually, we are seeing more and more that the governments are beginning to realize the value of the multi-stakeholder consultations and operation mechanisms in developing policy and legal frameworks. Likewise, resurrecting from centuries of unrevised land governance legal frameworks, Myanmar is finally attempting the steps towards the overhaul of policies in



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its effort to develop proper responsible land governance and general reforms amidst its own share of crises and challenges the country is currently experiencing.

In light of the current micro- and macro- critical challenges and, of course, none the less the opportunities, what can Myanmar do to make sure its newly developing policies and legal frameworks are agile enough to survive in changing global political economy landscape as well as in the real physical change in climate? In order to answer this, we should be deploying the guidelines and policy frameworks set forth by the WB-IMF Bali Agendas based on newly released reports from the global stakeholders and attempt to apply in the context of Myanmar. Meanwhile, we should also examine current trajectories and inputs from national/regional stakeholders to determine what resources and capital are currently available for Myanmar to possibly utilize in realizing its full potential. At the same time, we must try to basket all visible obstacles, incapacities and challenges which are in the way for Myanmar to claim its desired stature.

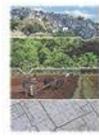
In doing so, we are mapping out our opportunities and challenges in order to enable pinning what Myanmar should capitalize on, what Myanmar should avoid, and what Myanmar should prioritize in investing for maximizing its growth potentials. This shall be our "solutions framework" with which we shall address our "problems framework" and achieve the desired good governance land policy and legal framework that work for all.

For this purpose, we have look at several scenarios. The scenario one is about the internet, connectivity, access to finance, access to market and opportunities and challenges in such contexts. According to Xinhua news agency report of May 23, 2018, quoting Myanmar Ministry of Transport and Communications, the mobile phone (together with internet access) usage rate increased to over 110.43 percent in Myanmar which is 22 percent increase from 86.2 percent of mobile usage rate in 2016. The report also indicated that the number of mobile subscribers in the country currently reached over 56.8 million in fiscal year 2017-2018 which is an increase by over 500,000 subscribers, where there were only 56.3 million mobile subscribers in fiscal year 2016-2017. While reliable data and proper research are scarce, it can be observed that most conventional banking and money transfer services have been replaced by the speedy FinTech across communities all over the country. New ways and means are generated in social media landscape enabling women, marginalized and vulnerable populations, new opportunities, access to finance and ability to tap into markets while working in the safety and convenience of home while at the same time, the same tools and platforms are exposing them to new risks, insecurities and dangers.



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The scenario two is the extreme poverty, landlessness, crisis situations and lack of access to resources, triggering people to inevitably seek unaccountable irregular ways and means for survival and sustenance. To quote from the report published by the Myanmar Ministry of Home Affairs, "the Central Body for Suppression of Trafficking in Persons: Myanmar Third Five-Year National Plan of Action To Combat Trafficking In Persons (2017-2021)", the scenario is as follows. "International Labor Organization (ILO) estimated that 20.9 million human beings were subjected to forced-labor yearly in the world. According to the statement of United Nations Office of Drugs and Crime (UNODC), the profit of US\$ 150 billion were earned yearly from Trafficking in Persons all over the world, and in examining the forms of trafficking, sex exploitation 54%, forced labor 38%, other types of exploitation 8% were included. It also stated that human organs trafficking occurred in 16 countries around the world. Moreover, it stated that in identifying the victims of Trafficking in Persons, women 49%, children (girls 21% and boys 18%) and men 12% were involved."

"Myanmar considered anti-trafficking in persons as a national cause since 1997, and carried out the acts of prevention and suppression under the existing laws. Myanmar became a signatory to the United Nations Convention against Transnational Organized Crime and its protocols in 2004, promulgated the Anti-Trafficking in Persons Law in 2005 and enhanced the momentum to combat Trafficking in Persons (TIPs). In addition, Myanmar became a member of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) in which 6 GMS countries were included, and developed and implemented five years plans to combat Trafficking in Persons in accordance with the policies of COMMIT." Other than that, Myanmar had bilateral agreements signed with neighboring countries like Thailand and China while at the same time, became a member of ASEAN Convention against Trafficking in Persons, especially Women and Children (ACTIP) since the ASEAN Summit in 2015.'

The scenario three is the landscape of Drugs and Drugs related illicit business activities, crimes and its impact on communities and the regulations regarding Drugs and Drugs related trade and crimes. While sizable steps had been taken by Myanmar in combatting drugs, the illicit market has had reconfigured itself from plantation drugs to tablets and other forms. Quoting from the 21 May 2018 news updates from the United Nations Office of Drugs and Crimes (UNODC): "Illicit drug challenges are not only a national issue, and to ensure our recently announced drug policy succeeds, we need to focus on the situation and implementation including with regional partners" said Myanmar deputy Home Minister." "The Mekong has long been associated with the production and trafficking of illicit drugs, particularly heroin, but has undergone significant transformation in recent years. Opium and heroin production have recently declined, while organized crime have intensified production and trafficking of both low grade "Yaba" methamphetamine and high purity crystal methamphetamine to alarming levels" ... The shift to



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synthetics like methamphetamine is particularly difficult for countries to address due to the complexity of responding to remote and clandestine production that can be moved (which are operations/productions on mobile facilities), but also due to the health impacts on drug users".

Looking just at the scenarios one, two and three which are just a scoop of many, how could Myanmar possibly facilitate and include all issues as such in the policy and legal framework of the National Level Land Governance and tackle such micro- and macro- critical issues while fostering all inclusive development where policy, regulatory and institutional frameworks enable equality, free, fair and leveled competitive grounds encompassing the Land Use, Land-based Investments, Infrastructure, Access to Land and Markets, etc., ensuring all, including the vulnerable, marginalized and displaced populations, equal opportunities in Housing, Land, Property and Livelihood rights? Now, we should look into the deeper understanding of such contexts given by the three scenarios and attempt to provide recommendations in the best ability of national stakeholders in the light of the global guidelines/policy recommendations as well as those given as guidance by the WB-IMF 2018 Bali Agendas for the content of such policy and legal frameworks.

Opportunities and/or Challenges

For those of the civil societies (CSOs) and stakeholders who are breathlessly trying hard to catch up with normally very little publicly accessible information, upon looking at the government and development partners' initiatives on policy reforms, a few of the glimpses of major moves in land sector and land governance can be observed and described as follows. It is important to note that such information of any new happenings within the government and country partnership programs by the developing partners are critically important for the rights advocates to provide inputs and voice concerns "*in time*" to achieve realistic good land governance frameworks that reflect and address the possible remedies required by the vulnerable, marginalized and victimized.

Current Practices: Entry points or bottle necks

The advocacy works on all inclusive development and rights based approaches are often challenged by the current and persisting practices (due to many reasons) of selective if not exclusive release of information (e.g. invites to policy/legislative consultations) to the CSOs of particular criteria or criteria uninformed to the CSOs in general. Usually, designated implementing partners or contractors/sub-contractors (usually a private company or a selected CSO assigned with the task and professional



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remuneration/budget to carry out facilitation of the project that is being implemented) of either the Government or the Donor/Development-partner facilitate such initiative.

As such, it is increasingly becoming a common practice among the programs with aggressive, time- and politically-sensitive project time-lines having limited, calendar-bounded financing on the side of the development partners and programs that require commitment, buy-in and ownership from the governing partner side (which in turn require cabinet level mandates for partnerships as such). It could also be the fact that the resulting program mile-stones and deliverables such as establishing a law, a regulation or a policy on a certain democratic transition item/subject matter, seems thrilling and impressive. It almost resemble making of a history in action in accomplishing something as such.

But under any circumstances, it should not be mistaken and mis-conceptualized that the democracy or a democratic transition is in its true nature absolutely not as such. The democracy and democratic initiatives are, as to quote a Rule of Law sector colleague who described it as, "competition of many powers" and to put in a simple wikipedia definition, being "Democracy is a form of government in which power ultimately comes from the people who are governed". Hence, it is not just ethics or theory that the democracy, anywhere at all times, unconditionally, in its meaningful definitions is not the other way around. It should be emphasized that there is a clear difference between selecting a "*Champion of Change*" and funding in support of their work to lead and facilitate a "*Cause*", "*Change*" or "*Initiative*" vs. selecting and *sub-contractor or an employee* ; these criteria are two different things with no confusing blurry lines to define the difference.

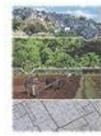
Aforementioned is the kind of thing that challenges the inclusive policy making process without even making itself into the status of "a problem" in legitimate concern criteria of the "problems framework". It is not a gap but rather a bad "habit", an "addiction". We have to remind ourselves that doing things in such manner, conforming to such addictions and aligning with such practices are undemocratic and these are the reasons why sadly the initiatives unwitting created bottlenecks in achieving inclusive policies and legal frameworks and hence they do not work in the end. It reminds us of cronyism and discrimination. This could only foster unfair, unethical selective enforcement of our own code of ethics. In the long run it defeats the democratic ways and means and actual development of rule of law culture. It weakens the ownership and commitment by the actual stakeholders and it promotes favoritism, conflict of interests and end up reinforcing and empowering the old corrupted practices and centralization.

It needs to be careful not to try to achieve superficial democratic milestones/goals via undemocratic practices. Even if it seems easier, the results will be superficial as well. This is the real problem that block



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in the way of all of us, preventing us from being able to tackle the rest of the problems in the problems framework. This is where everything stops simply making us unable to access and identify our opportunity to enter into the real process of democratic change.

The policy in action: new moves, new opportunities to be inclusive

The ADS (by MOALI): Looking back at the time line, with technical assistance from the Food and Agriculture Association (FAO), Livelihoods and Food Security Fund (LIFT) and Asian Development Bank (ADB), Myanmar's Ministry of Agriculture, Livestock and Irrigation (MOALI) has drafted the Myanmar Agriculture Development Strategy (ADS) and published officially on June 7, 2018 for the five year implementation period of 2018/19 to 2022/23. (Presentation by MOALI at the NLUP Forum, Oct 2-3, 2018). There were three objectives: (i) to gain administrative and departmental capacity for agriculture development, (ii) for increase in agriculture productivity and increased income for farmers, to promote efficiency in market connections, and (iii) to improve competitiveness. With the ADS as the foundation, the government, private and public long term partnerships, administration, productivity and competitiveness are aimed to be promoted. The ADS is drafted with (3) major pillars, (27) functional programs with (250) operations. The ADS's immediate deliverables include: (1) progressive land reforms via NLUC or entity created likewise, (2) using the NLUP as guidance, via inclusive, multi-stakeholder involved, public consultation processes, to draft and establish umbrella land law and other individual land laws, (3) by providing land registration (tenure) permits to the small holder farmers, to remove restrictions on their tenure rights, and (4) after farm land registration, provide guarantees to assure land holding rights for the small holder farmers.

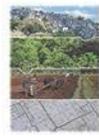
MOALI's other jobs on the ADS also include: (1) effective implementation of the Vacant, Fallow and Virgin Lands Management Law, (2) for the lands with already issued permits, modern data and information be used in updating the current records on the holding numbers, Kwim (lot) maps, etc., (3) to tackle land disputes, to draft and establish a clear law and agency/departmental policy framework which includes effective dispute resolution mechanisms, and (4) to improve capacity and efficiency in land tenure management services, etc. including many other ambitious works.

NLU Programs/Projects and Myanmar Sustainable and Balanced Development Plan (MOPF): The Ministry of Planning and Finance (MOPF) also reported their new policy moves on land governance which includes: (1) Zoning (zones for urban and rural developments, agriculture, livestock and fisheries, protective areas, trade and commerce, industrial, mining, grazing and forest), (2) to carry out national land use planning (with objectives in developing effective land use in the country, public private dialogue in



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land use administration as such to achieve balance, natural habitats, eco systems, conservation of natural resorts, landscapes, areas of historic and archeological importance, to deter development projects that involve wastage on water resources, to motivate good land use planning practices, etc.), (3) established a multi-ministerial body for land use planning and coordination with Ministry of Home Affairs (MOHA) Deputy Minister as Chair and members who are representatives (permanent Secretaries) from the Ministries: MOALI, MONREC, Ministry of Construction (MOC), Ministry of Transportation and Communications (MOTC), MOPF, Ministry of Border Affairs (MOBF), Ministry of Foreign Affairs (MOFA), Ministry of Ethnic Affairs (MOEF), Ministry of Defense (MOD), Ministry of Religious Affairs and Culture.

The MOPF published Myanmar's Sustainable and Balanced Development Plan with the program/project period (2018-2030) ending with deliverables coinciding with the Sustainable Development Goals target date 2030.

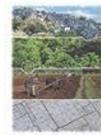
The MOPF's self-assessment on strengths and weaknesses on the program: are in fact very good. Its list of strengths include: (1) public's involvement and oversight in project implementation, (2) public access to information on land disputes and opportunities, (3) to achieve balance life in connection with the natural environment, promote business and social development for the future generations by carrying out systematic land use. Its self-assessed weaknesses on the program/project include: (1) land use planning being a coordination for a common objectives among many people of different works and unequal benefits, (2) the program results are different depending on whether be it bottom/ground level, regional level and national level, (3) there are difficulties in coordinating bottom/ground level program operations, (4) finance, human resources and technical/technological limitations

The Motion to establish National Land Law: On March 1, 2019, the 19th-day meeting of the eleventh regular session of Second Amyotha Hluttaw, the Upper House Parliaments, in Nay Pyi Taw, Myanmar (Burma) approved a motion urging the government to review National Land Use Policy to establish a National Land Law. The parliament session agenda described a Member of Parliament proposed, "Though the 2016 National Land Use Policy already exists, in the matters of land management and land use issues, it is important to establish and implement the policies, strategies, programs, laws, bylaws, regulations and standard procedures in order to realize the nation's progressive development. Hence, urge the Union government to develop the much needed National Land Law, by reviewing the National Land Use Policy, then set up the necessary work plans and standard policies according to the mid-term and long-term land administration and national land use strategy project objectives." To the motion, as a response from the Union level body, Deputy Minister for the Ministry of Natural Resources and



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Environmental Conservation explained the ministry is taking the National Land Use Policy as a guideline towards enacting a new National Land Law together with the land use committees and supporting work committees according to the suggestions made at the national land use policy forum and recommended the Hluttaw keep the motion on record. However the motion proposer wanted the decision to be voted by the Hluttaw. The motion received 160 votes in favor, 6 against and 4 abstaining and approved by the Hluttaw.

What needs check and balance?

There are two useful functions that the NLUP was formulated to work on: (1) to serve as guidance for law harmonization on the existing land laws and legal framework. Which means in law revisions on the current problematic laws with evidence on negative public impacts, the NLUP could give guidance to amend such laws; and, (2) to serve as a guide to establish an overarching umbrella national land law that shall be superior to all the individual land laws and shall close all the gaps that individual land laws had failed; in other words to close the policy and regulatory gaps which individual laws and existing legal framework could not cover [NLUP, Part (1), Chapter (1, 2, 3); Part (10)].

What is the "supposed to be" or are we making the bad laws worse?

While there is a consistent commitment by the reformists, the government, the stakeholders and the development partners, the execution gap still persists. Just to mention one current and live example is the very recent implementation of the Vacant, Fallow and Virgin Lands Management Law (the amended law of the 2012 VFV Law). The problematic 2012 version of the law was amended with many new and enhanced provisions including discretionary clauses and exemptions for the customary/traditional tenures and compliance (Chapter (10), Section 30-a) and better dispute resolution processes [Chapter 8, Section 25 (a),(b),(c),(d)]. At the same time, the law is deeply flawed with many dangerous implications and expansion in criminalization [the whole of Chapter (9), especially Section 27 with all its sub-sections and 27-a, with which many current legal aid litigation cases are occurring since the implementation of the new amendment law].

What can help or spoil (?): Technology, Connectivity, Internet

The uncontrolled and uncontrollable: In the vacuum of regulations and lack of tech-savvy oversight, online crowd source platforms thrive in Myanmar. This is the birth of alternative media and social media where conventional media also take part. Facebook posts could successfully attract



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millions' attention and immediately create critical mass and fast dispatch actions on the ground to rescue people, defend human rights and campaign advocacy on a newly drafted law/policy. Likewise, it could enable instigators/criminals subsequently real but misinformed people to defame other people, wrongly accuse and victimize the innocent, provoke hate and harm people in real life; they can create or falsely justify crises or fake causes as if the real people on the ground cause and justify crises making mass backlashes and blur the real causes disabling problem solvers to solve root causes.

Opportunities and opportunities in disguise: As described in the trends and impacts, regarding internet and cell coverage, Myanmar are not behind. Exposure to high-speed online communications and exposure to the exact same experience of all the privileges and spoils that the advanced economies enjoy, is good and bad. It is good because Myanmar can see it can leap 1st, 2nd and 3rd generations technologies and skip it all together to the now. It is bad as the Myanmar users lack awareness on online safety, integrity and security, protective regulations, digital rights education and the savvy.

Occupation and hazards: Since, Facebook became a dwelling place and time occupier for most people, women and marginalized groups are given opportunities they had never dreamt before. Jobs, businesses, trade and markets are created and openly accessed. Home-based and delivery businesses boom and everybody prosper. This disruptive technology leverage people in both positive and negative ways and neither are mutually exclusive.

Such like technologies in the forms of entertainment, market, media, social platforms are disruptive for all timelines whether be it in development of new policy and legal frameworks with its disruptive nature of pushing case evidences, data, information, disinformation and misinformation due to the fact that such tools and platforms are being used unmonitored by the good, the bad and the manipulative. Its results are hard to control so is its nature being hard to regulate. In any case, it in fact is inevitable.

Facilitator for educators: Many facilities like Facebook, YouTube, Twitter as well as wider options on internet are great sources of legitimate quality information and data. Education does happen via such medium and they in fact are quality education and skill trainings by quality facilitators. This cannot be underestimated for Myanmar that received only 0.47 out of 1 in the World Bank global human capital index, meaning conventional ways and means of provisions in education and health care in Myanmar so far, can yet reach only 47% realization on the actual achievable potential. Myanmar needs immediate ways to innovatively educate itself and its people via technology and equal distributions of these capable platforms. We need to remember that "Fire" was not all bad when



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human first found it though we were uninformed. In the same manner, there is no going back to a place and time absent from technology. It is inevitable that we must harness technology and nurture innovations to help us good.

Samples and scenarios for policy makers' attention

Among many important things pressing, stretching and straining policy makers governance capabilities, unlikely examples are picked to present to this paper so that such pockets of possibilities be known that they exist and could be further analyzed and applied by the stakeholders in Myanmar land governance in envisioning good governance policy and legal framework.

Innovative land use and access to markets

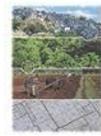
Livelihood, Capital, Agri-Tech and Market: The unlikely partnerships between private sector investments, small and medium enterprises, small holder farmers and communities occurred when one of our legal aid cases fall out. Via current land legal aid mechanisms, we administer cases where current legal framework is seen through the strategic litigation lens and we exercise all possible little corners of legal tool box to apply and execute the best possible litigation/problem resolution strategies in establishing defense lines for our clients who are victims of unfair land disputes. The case in YwaNgan, Southern Shan State, could have been a complete success (it was legally a winning case, where the farmer get acquitted from the charges as not guilty) a rare win, yet we failed it when the farmers loose a season of crops, when ends do not meet for their livelihood and survival. The responsible small businesses working in the areas of such devastating communities showed their value when they demonstrated their capabilities to assist farmers with capacity building, short and medium term investments as much as they could risk and join in partnerships with the victims and communities in creating jobs and livelihoods. In this case the small business community provided villagers with access to roads by subsidizing their own land, while also giving technical assistance and capital to create diverse seasonal income structure of planting the land in three timed yields to grow elephant yam (also known as Japanese yam), coffee and macadamia saving farmers and villagers from falling off preventing them from being forced to sell land tenures.

Creating Agri-based sustainable income: Lack of investment in cold-storage supply chain and, over-dependence on undiversified markets often lead farmers to end up growing the same type of produce over an exclusive period of time, in the exact same way as a large number of competitors.



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During the yield time the over produce and surpluses always destroy markets, resulting in wastage and zero income. Investments in value added products of the perishables, cold storage and export market penetration are direly lacking in Myanmar. A good land governance policy and legal framework could set the stage for other umbrella policies to effectively interact and synchronize with the land umbrella policy/law. Investment in food security, health and nutrition, industries, logistics and supply-chain, trade and international market diversification and penetration are where the real investment vacuum is. It could also create enabling policy instruments to promote innovation in such disastrous sectors which still hold the productive (if not yet prosperous) potential for real economic development. This is where financing institutions should take risks. There is the investment and capital vacuum from the lacking of investment in human capital and education of the farmers and from the dire needed to establish climate smart, market smart, business savvy Agri-businesses. Innovation, proper planning, market data and information as well as risk taking from the side of the financial institution are needed badly in this area.

Fin-tech and Financing: Many financial tools and instruments are constantly being introduced to Myanmar's premature markets. Online payment mechanisms, procurement platforms and financial tools are targeting the vast untapped user base in Myanmar where they are far in spectrum of sophistication and savvy-ness, far away yet to comprehend complexity and multiple valuations on the instruments of modern finance and markets.

Banking in the new age: Conventional banks with its 2005 level of outdated mentality and risk averseness are unable to compete with such attractive market instruments. The visual appeal and prestigious image of the new comers in town have pulled large client bases in fund transfers, digital wallets, virtual cash and holds, making people to release and spend the money at a cost rather than interest yet people are thrilled to. These tools are used for all forms of commodities including but not limited housing, land and properties. The unaccredited unregulated credit markets are paving way for unknown unaccounted for capital flows. These are the unchartered waters with no practical jurisdiction from any oversight authority and such unregulated virtual market environments impose higher risk to stakeholders and host regulators. The good governance policy and legal framework must be able position itself to tackle these environments as well.

Tax not just by taxing the taxed: The burden of fees, payments and unaccounted for loss or potential loss people/customers have to bare in conventional banking (examples of fee paying, percentage deducting foreign currency accounts) and unrealistic risk averseness with hyped requirements and



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collaterals for any possible financing/loans create most welcoming playgrounds for non-conventional banking instruments. The lack of knowledge on international money laundry mechanisms and coolness of the digital currencies in such unregulated environments create potential victims who see the risks as opportunities too cool to miss. The corrupted or old-fashioned practices of "taxing the taxed and keep taxing the complied" should now shift to actual rule of law and proper enforcement of smartly architected tax regimes which facilitate leveled playing field and promote the right kind of investments for intended policy objectives. Likewise, the land regulatory fees and Agri-based, commodities payment mechanisms online or off sights should be carefully monitored and should require oversight from the good land governance and legal framework.

There are many more to it than simple changes in constitutional arrangements on States/Regions government financing and decentralization. The "Risks Framework", the "Taxable Base" and "Financing Framework" had been growing at a tremendous rate over the years since Myanmar came online with full connectivity and cell coverage. Likewise, the gap is becoming wider and wider along the timeline with the chronic deficiencies in oversight and legislative capabilities to create proper regulatory environment.

All markets can happen online: including human trafficking and all forms of dark and unaccounted for, irregular trends in the manner of all forms of migration. Still, through online and mobile apps people are able to be tracked, identified and rescued. Legal aid cases in such scenarios could connect the evidence on how illegal activities are triggered by loss in livelihood and land. As such should inform a good land governance policy and legal framework to incorporate protective mechanisms within the facilities for livelihood and job creation/sustaining.

Access to Sun, water and electricity

The national electrification plan is still taking shape yet to meet its goals. Yet people in need of light at night and lack energy to carry on with life find ways. The solar ad renewable energy facilities and equipments are becoming more popular due to new green movements, green financing mechanisms and development enterprise funding programs. The cheapness in cost (a given number of outlets, usually five to ten for lights, tv, even water pumps, and a given number of electronic charging outlets, more than a few for phones, batteries, etc. for a household at the cost of 30-50 US Dollars are in certain options 30000-60000 MMK/Myanmar Kyats, according to villagers across the country) seems much more appealing than towers and grids with arrangements for co-pay between government



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subsidy and village collection of fees where each house hold approximately still end up having to pay 150,000 MMK per month. In comparison, the alternative solar package costs them only 20% of the amount and the electricity generation is guaranteed and meet the need for each household.

Small businesses have attempted to inform the government that the infrastructure arrangements as in lamp posts and cables be installed as planned in villages but since the electricity source, generation and feasible cost are not guaranteed, perhaps such could be turned into an integrated grid or sub-grids where partially solar grid which is generating electricity for whole communities could be consolidated for better efficiency and used in conjunction with the government planned grids. This is to acknowledge that such innovative ideas exist and are present for the policy makers.

The other stakeholders including technical experts as well as energy and development agencies should be involved in this very important policy dialogue to better enhance and better capitalize sustainable capabilities via good governance, climate smart and green policy and legal framework. Also, the solar powered water pumps that are piloted in Kyaukpadaung, utilizing enterprise development funding model, the kind of project that involves bank financing, business enterprise and village communities are successful and being scaled up in wider areas of dry zone (quoting the Public Legal Aid Network, The PLAN's clusters and counter-parts in green and renewable energy work clusters). Access to water is very important for farmers, land users in general and to fulfill other food security requirements in the communities. These small yet precisely important steps and likewise efforts deserve attention from the policy makers so that they can make the responsible good land governance and legal framework work.

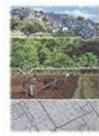
Summary

In order to make Myanmar National Land Use Policy and Legal Framework work, policy makers must acknowledge past mistakes of the predecessors and visualize problems as if they are the framework by themselves and see each and every angle and dynamics in their context. Through proper understanding of how such problems recycle and regenerate, turning all the original policies, their reform attempts, their by-products, their side effects, their consequences and their impacts on the ground and their consequences into the whole "ecosystem of problems". Knowing how such are triggered and become organic in nature, grow, regenerate and recycled, provides a proper "nexus" to facilitate an "ecosystem of solutions" and leads to proper formulation of good governance land policy



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and legal framework that works for all. In doing so, undemocratic non-inclusive practices should be avoided at all times in developing a working policy and legal framework as genuine ownership and commitment by real stakeholders are necessary for the "solutions nexus or solutions framework" to work. The policy makers must pay attention to devastating impacts and scenarios and at the same time receptive to success stories in order to harness technology, innovations and investment in human capital to enable genuine democratic governance and inclusive development in Myanmar.

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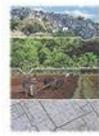
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