



# **The Politics of National Land Use Policy Formulation in Myanmar**

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## List of Acronyms

CCLUM	Central Committee for Land Utilization Management
CCMVFVL	Central Committee for the Management of Vacant, Fallow and Virgin Lands
CCNLRM	Central Committee for National Land Resource Management
DoEC	Department of Environmental Conservation
DoF	Department of Forestry
FL	Farmland Law
LCG	Land Core Group
LIOH	Land in Our Hand
LUASC	Land Use Allocation and Scrutinizing Committee
MoAI	Ministry of Agriculture and Irrigation
MoECAF	Ministry of Environmental Conservation and Forestry
NHRC	National Human Rights Commission
NLD	National League for Democracy
NLUP	National Land Use Policy
SLRD	Settlement and Land Records Department
USDP	Union Solidarity and Development Party
VFVLMML	Vacant, Fallow and Virgin Land Management Law

## **Abstract**

This paper presents the interaction of state and society around a land policy formulation in a country where the government is in transition towards a democratic system and, the civil society is composed of strong professional advocacy organizations and weak social movements. It finds that “political space” by state reformists and the capacity of policy advocacy to work with and influence on both sides of state and society are necessary for mutually empowering interaction between state reformists and pro-reform social actors towards pro-poor land policy formulation. The interaction between state and society is political dynamic and not static. This paper uses state-society interaction approach and pro-poor land policy concepts as analytical lens to research into the interaction of state and society around National Land Use Policy formulation in Myanmar which is still in process.

## **Keywords**

Mutual empowerment, state-society interaction approach, pro-poor land policy, Myanmar.



# The Politics of National Land Use Policy Formulation in Myanmar

## 1 INTRODUCTION

From the perspective of the radical pro-poor land reform which broadly goes beyond a pro-market approach to land reform of the new institutional economic perspective, there is a classic question of the nexus of pro-poor land policy and democratic governance for an “actual (re)distributive land reform”<sup>1</sup>:

*“[...] how can pro-poor land policy be formulated and implemented in settings where recognition of the rights of the poor is weak and where land-based wealth and political power is highly concentrated in the hands of a few-private individuals, corporate power or the state?” (Borras and Franco 2010: 6)<sup>2</sup>*

In Myanmar where the state is the ultimate owner as well as the biggest land grabber, it was completely dark for those whose concern for pro-poor land policy making to answer this question until five years ago. However, there was a spot of light when the new government started the reform in policy of land use in 2012 parallel with the democratic transition. The initial reform policies in land use were outright “pro-business”. But, the later land policy had significant improvements towards “pro-poor” tendencies in both the formulation process and elements of the policy. A national land policy with somewhat of pro-poor framework has been into sight by 2015 even though the policy is still under process.<sup>3</sup> ***What account for this change in land policy reform in Myanmar?***

In pro-poor reform literatures, many scholars assert that neither state-centred nor society-centred approach can properly explain how pro-poor outcomes emerge, but rather propose that state-society interaction approach is a promising tool to analyse pro-poor outcomes (See Fox 1993, Borras 2007 and Franco 2007, 2009).

Therefore, I build my research work on the concept of pro-poor land reform and state-society interaction approach to investigate my research interests, which come from my curiosity about *how state and society constitute around National Land Use Policy (NLUP) formulation that matter to the interests of marginalized people, which is underway in Myanmar* if “policy-making is essentially a conflict between state and social actors over who makes the rules that regulate social behaviour (Migdal 1988, cited in Fox 1993: 20)”.

In the land reform literatures, scholars have devoted their efforts to “state-society interactive relationship in pro-poor land reform”. While most of

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<sup>1</sup> Here, the meaning of “actual (re)distributive land reform” includes two components: (1) “the actual and effective control over the land resource”, and (2) the transfer of power to control land resources, which has to occur, but such transfer must flow from landed elite to the landless and land-poor peasants (Borras 2007: 10)

<sup>2</sup> For further explanation, Herring (1983 and 1999) should be also read.

<sup>3</sup> In chapter 3, I will explain how I have approached to the analysis of land policy formulation in Myanmar from the perspective of pro-poor land policy.

the cases focused on the context of making “land laws authoritative” during land reform implementation rather than “initial law formulation” (See Borrás 2007, Franco 2007, 2009), there are also some cases that discuss the latter (Franco 2009, Tanner 2002). I choose the NLUP formulation case for my research work in the hope that it will likely to contribute somewhat to struggles between state and society along a long hard journey of land reform to come in years in Myanmar. As a plus, I also hope my work will likely to contribute the experience of state-society interaction in public policy formulation in a fragile state to the pro-poor land reform literatures.

### ***1.1 Research questions***

I have built a main research question and three sub-research questions to guide my work. They are as follows:

- How and to what extent do the state reformists and pro-reform societal actors interact to transform Myanmar’s current National Land Use Policy (NLUP) process into something that moves towards pro-reform and pro-poor tendencies and increasingly away from being outright pro-business?
  - How do pro-reform societal forces respond and approach to the state?
  - How do state reformists respond to pro-reform societal forces?
  - Under what conditions do state reformists and pro-reform societal forces construct a reciprocal relationship towards the pro-poor direction?

The terms of “reformists” and “pro-reform” are used interchangeably the whole of this paper. Reformists or pro-reform actors are “those state or societal elites willing to accept (or encourage) increased associational autonomy among excluded groups in society” (Fox 1996: 1092).

### ***1.2 Scope and limitations***

The research is set in the context of national level public policy formulation. In Myanmar, a national land use policy (NLUP) formulation has been undertaken since 2012. In May 2015, 6<sup>th</sup> draft which is likely to be final draft before the Parliament legislation has been released by CCNLRM. Along the formulation process, there have been changes in policy towards pro-poor tendencies from draft to draft.

The research *explicitly* emphasizes on the relationship of state actors and societal actors in the policy making process. In NLUP formulation process, Land Use Allocation and Scrutinizing Committee (LUASC) chaired by MoECAF is responsible for drafting NLUP. After public consultation on 5<sup>th</sup> draft NLUP, LUASC is replaced with a higher government body named Central Committee for Land Resource Management (CCNLRM) chaired by vice president, but the role of MoECAF remained important as the focal ministry of the latter committee. Unlike previous state policy formulation procedures,

pro-reform societal forces had a chance to participate in NLUP formulation process. Land Core Group (LCG) which is a network as well as a focal point of pro-poor land policy reform activists (individual and organizations within national and international) is a key social actor directly involved in NLUP formulation process.

In relation to outcomes of the policy formulation process, the research focuses on what have changed, especially towards the “legitimate rights” of marginalized people and to what extent, from draft to draft, but it does not analyse the whole NLUP in detail.

### ***1.3 Methodology***

This research is undertaken with a secondary data analysis method combining textual analysis and document analysis. Textual analysis or “working with text” is a research method using “existing texts” as a data source. Here, “texts” include written and printed materials as well as sources which are not necessarily in text form such as videos, songs, artefacts etc. (O’Leary 2009, 2004). For the “text analysis” method, the sources that provide information must be “on the shelf (i.e., it has already been collected) at the time that the current research is proposed” (CPHS 2014:1). This indirect research method helps the researcher currently working for a government organization to minimize the possibility of tainting data by biasing on one side.

As the fields of research, I carefully choose LUASC, CCNLRM and MoECAAF for the analysis of state actors involved in NLUP formulation process. And for societal forces, LCG, resistances of grassroots people and organizations of small-scale farmers are chosen to analyze.

As data sources, I trace MoECAAF webpages, the parliament webpages, the president office webpages and New Light of Myanmar Newspaper (NLMN) for the analysis of state actors while for the analysis of societal forces, I trace LCG webpage under Food Security Working Group (FSWG) and Mylaff website (Myanmar Land, Agribusiness and Forestry Forum). For the investigation of grassroots farmers’ resistances, I trace the Irrawaddy magazines and Mizzma magazines from 2011 to 2015. Out of mass median, I choose those two magazines because they are more autonomous from the state than other median, and it is very helpful to the research having archive system on their webpages. Furthermore, I trace related secondary documents for investigation of small-scale farmers’ organizations as well as for state actors and societal forces.

### ***Limitations and challenges of data collection and analysis***

In Myanmar, the accessibility to information regarding to the state is rather limited while improved under democratic transformation than before. In addition to limitations to the government spokesperson, the government webpages rarely have active archive systems and up-to date information sources that provide complete information. For example, I traced the notifica-

tions issued in 2012 by the presidential office to confirm the list of LUASC members, but there is no any notification before 2014 in website of the presidential office.

Information about the societal forces is relatively more accessible than about the state. But, there are some challenges for secondary data-based analytical work with respect to pro-reform societal forces in Myanmar. The challenges are related to the fluid membership and alliance of advocacy networks for pro-poor land policy reform at national level. For example, LCG is a nationwide virtual network which is composed of various types of CSOs, INGOs and individuals at different levels towards the same goal of pro-poor land policy reform in Myanmar, and allied with diverse stakeholders and INGOs which may have different developmental perspectives. As a result, the works of LCG sometimes appeared under the name of LCG, in some cases under the members' own individual or organizational name rather than LCG and under certain conditions, it appeared with the name of its alliances. In such case, the researcher finds it difficult to properly analyze the works of LCG. However, the appearance of chairman U Shwe Thein on the public as the leader and figure-head of LCG in national advocacy work eased the roadblocks for the research analysis a bit.

### ***Generalization on research findings***

This paper has presented a generalized conclusion on pro-reform societal actors around NLUP formulation even though it is a qualitative research mainly focused on LCG as a pro-reform social actor. So, I should, here, give a proper explanation about the generalization. The conclusion has been generalized based on following reasonable facts: (1) LCG is not only (perhaps) the only one national level advocacy network composed of diverse social actors and allies within and outside the country (especially around 2012 land policy reform was initiated in Myanmar) but also a focal point opened for every individuals and organizations concerned in pro-poor land policy reform; and (2) LCG also conducted as an elite broker brought together state political elites, business elites and pro-reform social elites for participation in NLUP formulation process.

### ***1.4 Organization of the paper***

This paper comes in mainly three parts. The first part presents the general information on political economy of land that shapes the current land structure, and a series of contemporary reform in land policy.

The second part, at first, investigates autonomous societal forces and state actors involved in NLUP formulation separately. And then it examines the juncture of state and society.

The third part critically analyzes power- relation changes in the areas of within the state, within the society and state-society relationship through state-society interaction. While the second part simply looks at how state and society interact, this part examines why they interact in a particular way over another ways.

## 2 THEORETICAL CONCEPTS

How a land reform policy reached on the agendas and how it was initially formulated was assumed rather than demonstrated in conventional state-led land reform literatures while their greater efforts went to the explanation of how it was implemented. However, after market-led and -new wave of land reform- “market-assisted land reform” was introduced in the developing worlds by World Bank since 1980s as an effort to address the backdrops of the former state-led land reform, the initial policy formulation has also drawn the great attention from scholars, activists and international institutions. In such a case, “economic approach” and “human right approach” to land policy come into land reform debates among policy makers and international institutions (Borras and Franco 2010: 3, See also Assies 2009 and Franco 2009). As explained in the part of pro-business vs pro-poor of this section, the former is in favour of business in a land policy while the latter is in favour of pro-poor through recognition and protection of the right of land access of marginalized poor in a land policy.

In pro-poor land reform literatures, “democratic land governance” means the mechanism in which pro-poor land policy and democratic governance are mutually reinforcing and reproducing through active interaction. However, the relationship between pro-poor land policy and democratic governance is a matter of chicken and egg dilemma (Borras and Franco 2010: 6). To achieve “democratic land governance”, three key functions are needed; “(1) people’s autonomous pro-reform mobilizations ‘from below’, (2) independent state reformist initiatives ‘from above’, and (3) mutual reinforcing interactions between these two streams that are embedded in democratic values” (Borras and Franco 2008: 4).

In a capitalist nation where the state is semi-authoritarian and the democratic transition is still fragile, what account for the development of pro-poor land policy?

In public policy making literatures, state-centred approach treats the state actors as rational and autonomous from external factors in decision making. In contrast, society-centred approach holds that the state action is just the reflection to influences and constrains posed by external forces. Both approaches may help to explain how a policy is formulated in the initial situation whether it is pro-poor or pro-business. However, they cannot properly explain how a policy has formally and informally changed in policy itself or in its interpretation during formulation and implementation process (See Fox 1993 and, Grindle and Thomas 1989).

Against these backdrops, state-society interaction approach emerges as an “analytic bridge” between state-centred and society-centred approach, and “argues that state action is the result of a reciprocal cause and effect relation-

ship between changes in the balance of power within the state and shifts in the balance of power within society. Through conflict, each is transformed”(Fox 1993: 22). “Reform possibilities” can change through “strategic interaction” between state and society “especially if it manages both to strengthen allies and to weaken adversaries” (Fox 1993: 12).

Given the explanation above, this research investigates the NLUP formulation process and outcome in Myanmar from the perspective of pro-poor land policy perspective by using a lens of state-society interaction approach. So, the rests of this theoretical section explains the related concepts of pro-business vs pro-poor in land policy legislation and the related concepts of state actors and social actors, and their power.

### ***2.1 Pro-business Vs Pro-poor in land policy legislation***

To land policy legislation, there are two competing approaches: “economic approach” which comes from the perspective of new institutional economic approach (NIE) and “human right approach”. For NIE, land is a scarce economic factor. Hence, the proponents of that approach hold that land policies need to promote the transfer of land to economically efficient users through market mechanism. For that approach, the mechanism of land policy and land governance is mandated by “secure individual private property right to land” and “complete free land markets and financial institutions” with minimal state intervention (Deininger and Binswanger 1999). Although that approach convinces most of the state leaders in the developing worlds that commoditizing land is the most desirable way to reduce the poverty in the rural area as well as to increase the nation’s economic growth, a mountain of evidence shows reverse impacts on the marginalized people (for evidence, see Borras et al. : 2008).

On the other hand, human right approach holds that “[They] land, fisheries and forests are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth” (FAO 2012: iv). ***Is the human right approach pro-poor?*** Here, a pro-poor land policy, I mean, is “a public policy that categorically aims to protect and advance the land access and property interest of working poor people” (Borras and Franco 2010: 10). The human right approach to land legislation leads to pro-poor land policy through the recognition of three elements that safeguard the interests of marginalized people (Franco 2009: 13):

First, its starting point is recognition of the heterogeneity of rural societies and of the most vulnerable humans, especially as rights holders, including: “peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers, afro-descendants, unemployed workers, Dalit and other rural [poor] communities”. Second, it encompasses the “actual and effective control over the land resource” including the power to control the “nature, pace, extent and direction of surplus production and extraction from the land and the disposition of such surplus” (Borras, 2006). Third, it includes land understood as territory where people live and reproduce communities and cosmologies, as established by the ICESCR and reinforced by the special rapporteur (Monsalve, 2006).

## ***2.2 State actors in the arena of national policy legislation***

To support my analysis, I will borrow the definition and nature of the state, and “state actors” from the works of Migdal et al. (1994), Migdal (2001) and Fox (1993).

I would like to start with Migdal’s definition of the state (2001: 15-16): “The state is a field of power marked by the use and threat of violence and shaped by (1) *the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by that territory*, and (2) *the actual practices of its multiple parts*”. According to Migdal, the state tends to be homogenous in image while it tends to be heterogeneous in practice.

Migdal further elaborated state components in terms of level to support the analysis of state-society interaction. If they are ordered from bottom to top: (1) “the trenches”: operational level (2) “the dispersed field offices”: tactical level (3) “the agency’s central offices”: strategic level and (4) “the commanding heights”: top executives (1994: 16-17). Migdal asserted that the actions of state agencies at different levels rarely present in harmony because they face different intergovernmental pressures aside from external influences.

In the disaggregation of the state by Migdal (2001:120-121), “the agency’s central offices” are “the places where national policies are formulated and enacted and where resources for implementation are centrally marshaled. These offices are staffed by national parliamentarians and heads of ministries or agencies of the state”.

As mentioned above, while Migdal (1994, 2001) focus on “multiple components” of the state to explain state-society interaction, Fox (1993: 29) asserts that “[...] the agency is not the appropriate unit of analysis. Many state organizations are composed of a range of actors with different interests, who struggle to control the agency, to determine its goals, and to decide how to pursue them”. To support an analytical work, Fox defined “state actors” as “groups of officials whose actions push or pull in the same political direction” (ibid).

In this research, I approach my investigation to the state at national level policy formulation from both analytical tools of “state agency” and “state actors” so as to investigate the position of responsible “the state agency” and its action within the state as well as the action of “specific state actors” who are directly involved in the land policy formulation.

## ***2.3 Pro-reform “Social actors” in the arena of national policy legislation***

In this research, “social actors” means “groups of people who identify common interests and share ideas about how to pursue them” (Fox 1993: 23). Especially, I investigate about the action of “social actors” involved in the national level land policy formulation process.

Regard to their reaction to external pressures, “peasants are not passive societal actors” (Borras 2007: 72). The forms of peasant resistance are diverse from quite silent resistance to loud rebellion. While some resistances are of “policy-focused”, some are not. A policy-focused resistance can be explained by drawing on O’Brien’s “Rightful resistance”. “Rightful resistance is a form of popular contention that (1) operates near the boundary of an authorized

channel, (2) employs the rhetoric and commitments of the powerful to curb political or economic power, and (3) hinges on locating and exploiting divisions among the powerful” (O’Brien 1996:33). Rightful resistance is not structured and organized. But it is “noisy, public and open” unlike “everyday form of peasant resistance”.

However, in a national policy making arena, social resistance can put pro-poor policy onto the agenda, but cannot determine policy choice (Borras and Franco 2010). Therefore, “[...] for rural poor claimants it is important to have access to a support structure for political-legal mobilization, particularly an alternative ‘rights-advocacy’ outreach network, and also to adopt an integrated political-legal strategy” (Franco 2007: 991).

In a (transitional) democracy nation-state, the advocacy of NGOs plays an important role in national policy making. “NGOs, by their presence in both rural communities and national and international institutions, can alter the political environment in which the rural poor attempt to mobilize for their rights” (Herring 1999: 6). The form of policy advocacy NGOs use may vary with the type of social resistances in the environment in which they exist (Covey 1995: 2):

[...] policy influence campaigns can be carried out in ways that strengthen grass roots organizations and their direct voice in affairs affecting them, or they can be implemented by intermediaries for whom the grass roots are clients. The latter can lead to the evolution of a civil society with a strong professional advocacy sector and a weak (unorganized and non-participative) grass roots base (Jenkins, 1987).

## ***2.4 The power of state and society***

Unlike society-centred and state-centred approaches, state-society interactive relationship approach disaggregates the state power into autonomy and capacity. State autonomy is “independent goal formation”. State autonomy is relational and a degree of matter rather than “complete autonomy” as state-centred approach says and “no autonomy” as society-centred says. State capacity is “the ability of state leaders to use the agencies of the state to get people in the society to do what they want them to”. The capacity of the state is not static; “political strategy can change capacity in certain circumstances”. (Fox 1993: 12)

The concept of autonomy and capacity does equally apply to social forces. While autonomy for a social organization is “the degree of external intervention in the internal organizational processes of an organization” (Borras and Franco 2008: 5), capacity is “the ability of an association or community to do what it wants to do” (ibid.).

## ***2.5 Diverse dimensions of land***

This research sees land as an asset bearing four key dimensions: (1) an economic input for agricultural production, (2) the source of precious natural



resources, (3) a source for capturing cheap labour and (4) the territory for the community.<sup>4</sup>

NLUP is the second most important institution after the National Constitution that will govern all land in the country. So, when investigating about the attempt of diverse social actors and state actors to influence the NLUP formulation, the analysis is focused on how different combinations of four land dimensions motivate those concerned actors.

### **3 STRUCTURAL BACKGROUND**

#### ***3.1 Overview Mapping of Political and Economic Reform in Myanmar***

Myanmar has experienced a transition from the military regime to a democratic government system since 2011. With the election held in 2010 by (2008) National Constitution, a parliamentary state has been restored to power after several decades of the military junta. Union Solidity and Development Party (USDP) took the office according to the result of 2010 general election. It was a week after the general election that Daw Aung San Suu Kyi, a pro-democracy Nobel peace laureate who was prohibited to take part in the election was released from house arrest in 13 November 2010. In 2011, President U Thein Sein had an official dialogue with Daw Aung San Suu Kyi. In addition, the newly formed government released thousands of political prisoners in the same year. In April 2012, the historical opponent party, National League of Democracy (NLD) headed by Daw Aung San Suu Kyi entered the Parliament through by-election winning 43 out of 45 parliamentary seats.

Although no one would deny that there has been a huge political reform since 2011, the power of the state seems still under the control of the military. The majority and top positions of USDP (the current ruling party) come from the former military officers. Furthermore, according to Section 436 of 2008 National Constitution<sup>5</sup>, the power of veto in the Parliament over the profound legislation changes has been vested in the military because unelected military representatives take 25% of the parliament's seats while the required votes for key decision makings are strictly limited to more than 75% of all total representatives. In addition to those structural constraints to the democratic transition, the Parliament is also of inexperience and immaturity in its legislation because the country was under the military junta for several decades. Given that situation, the democratic transformation is probably led by the political willingness and the personality of individual reformists in the political landscape.<sup>6</sup> The President U Thein Sein admitted that there were people who were

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<sup>4</sup> I learned about the concept of “diverse dimensions of Land” from the lecture of Professor Saturnino M. Borrás Jr who is the professor of AFES major at Institute of Social Studies (ISS), the Hague, the Netherlands.

<sup>5</sup> Link for 2008 Myanmar National Constitution: Accessed 1 October 2015.  
<<http://burmacampaign.org.uk/media/Constitution-1.pdf>>

<sup>6</sup> I get the mentioned information from the presentation by Siu Sue Mark and Salai Cung Lian Thwang at the conference in Monrovia, Liberia, January 4-7, 2014. They are a research and development manager and a strategic advisor of Pyoe Pin which is a civil society strengthening programme in Myanmar. Use the following link:  
<<http://cprp.emory.edu/home/documents/liberia-conference/participants-case-studies.pdf>>

conservative non-reformists even in his government and warned them to be left behind as the country was on its change (Nyein Nyein 2012). Through it all together, the pace of the democratic transition in Myanmar (still) in the early days is relatively slow and incomplete.

Alongside with the political reform, Myanmar has undergone profound economic reforms that lead to the end of extended isolation from international community for several decades. The government has undertaken the reforms in macroeconomic institutions with the assistance of international financial institutions such as IMF and World Bank that encourage liberalizing the trade and opening the market (IMF 2014). In fact, the market-oriented economy had been gradually started since 1988. But, it did not actually develop due to international economic sanctions against the military regime until before the democratic transformation (ICG 2012: 2-3). In 2013, EU and USA started to lift most of the previous sanctions against Myanmar recognizing the improvements in the transition of military dictatorship to a civilian rule. In the regional economic community, ASEAN free trade agreement comes into force in Myanmar in 2015. Foreign direct investment (FDI) has raised \$329.6 million in 2009/10 to \$8.1 billion in 2015 (Aung Hla Tun 2015).

In Myanmar where agriculture is historically the main revenue source of national economy as well as the livelihoods of third-fourth of the total population, the economic reform directly reflects on the agricultural sector which is composed of the majority of small-scale family farmers. The new government's current trend of reforms in economy is likely to accelerate "crony"-led large-scale, export-oriented agricultural business and foreign direct investment (FDI) initiated by the former military government through making "land grabbing" eligible by law. For instance, newly remedied land policies, the foreign investment policy and the Special Economic Zone Law allow the state to confiscate the land for the sake of national development away from the farmers and to offer long-term land lease to domestic and foreign large-scale investors. But, those laws show no proper safeguard to protect the rights of marginalized land users against involuntarily dispossession of their lands.

### ***3.2 Mapping Land Structure in Myanmar***

Myanmar has an area of 676,557 sq. km with the population of 51.5 million (according to 2014 census). Agriculture is the only one source for the livelihoods of majority of the population. According to World Bank 2014, 66% of the total population lives in rural area. And 64% of them are engaged in agricultural activities (UNDP-Myanmar 2011: 38).

#### *Uneven Cultivable Land Distribution*

According to SLRD under MoAI, land is classified into five types: net sown area, fallow land, cultivatable waste land, reserved forests, other forests and other. Net sown area accounts for 18% of total land. Fallow and cultivatable waste lands are 8.5% of total land and they are available to be developed for agriculture (MoAI 2014: 34).

Total sown area is 13.7 million hectares. 27% of them are small-scale farms which are less than 2.21 hectares (MoAI 2014: 35). 63% of total land holdings are small-scale farmers.<sup>7</sup> Hence, 73% of total cultivatable lands are held by 37% of medium and large-scale land holdings.

### *Upland<sup>8</sup> farming*

Like other Southeast Asian countries, Myanmar has upland farming which mostly falls within Chin, Karen, Kachin, Kayah and Shan ethnic areas. The upland accounts for 66% of the total land and it is the home of 42% of the total population (FSWG 2012: 1). Generally, the upland farming (“*taungya*” in Burmese language) can be classified into permanent farming and rotational shifting cultivation (“*shwe pyan taungya*”). The latter accounts for 22.8% of the total land area and 2 million of house holdings are involved in this farming practice (San Win 2004: 3). Mostly the upland farming is not properly registered with SLRD under MoAI. Rather, customary land tenure system is an important institution governing the upland farming (FSWG 2012: 2).

The current governing stationary land laws are not consistent with the rotational shifting cultivation practice. The rotational shifting cultivation practices require the land to fallow from 3 years to 10 years – the fallow periods vary with the different regions - to return that land while the stationary law allows the fallow period not more than one year. In that situation, the fallow lands under the rotational shifting cultivation practice become vulnerable to land grabbing by the state as mentioned below.

The current land administration is marked by top-down, “rule of law”, but no valid judiciary system for land disputes. Land use which does not show in the statistics of SLRD is waste land for the government available to allocate to large-scale investors. Land users whose ownership are not consistent with existing land laws are termed as “squatters” and “illegal forest and protected public forest residents” by the government.

The successive governments regard the shifting cultivation practice as a farming practice that should be remedied. For instance, Myanmar Forestry Policy (1995) says “to discourage shifting cultivation practices through adoption of improved practices for better food production and a better quality of life for shifting cultivators” (San Win 2004: 3). In addition, there is a modern upland farm reclamation project under MoAI which attempts to replace the shifting cultivation practice with the permanent terrace farming practice in the upland areas. Under that project, 13,298 hectares of upland have been in the reclamation in Chin and Shan states by 2014 – see Table 3.1 (MoAI 2014: 37). With respect to that project, there may be many political economy and political ecology questions to be seen: who benefits from that project?, how does it impact on the former land users? And how does it impact on the former human-environmental relationship? etc.

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<sup>7</sup> Author calculation based on MoAI data.

<sup>8</sup> Areas over 1000 feet above sea level according to Food Security Working Group (FSWG)

Table 3.1: Land Reclamation for Terrace Farming in Upland Area (End of March, 2014)				
Sr.no	Region	Govt.	Farmers	Total (Hectare)
1	Shan (North)	3,199	1,538	4,737
2	Shan (East)	1,272	1,249	2,520
3	Shan (South)	1,890	1,159	3,048
4	Chin	1,225	1,767	2,993
	Total	7,586	5,713	13,298
Source: Myanmar Agriculture in Brief 2014, MoAI.				

*Political economy of land after 1990s – agrarian institution reform*

In this part, it may be helpful to use agrarian political economy as an analytical tool to trace the political economy of land in Myanmar after 1990s. Important agrarian questions of political economy are:

- Who owns what?
- Who does what?
- Who gets what?
- What do they do with it? (Bernstein 2010: 22)

*Who owns land?: The state - the ultimate owner of land in Myanmar*

Under the new regime, the state remains as the ultimate owner of all land according to the State Constitution (2008). The state's the right to own all the land went back to several decades because it was the 1974 State Constitution that as the first time, regarded the state as the ultimate owner of all natural resources. In fact, farmers had become tenants of the state since before 1974 according to 1953 - Land Nationalization Act and rules, and 1963 - The Disposal of Tenancies Law and rules. Under the tenancy, the farmers had the right to cultivate the land under terms and rules, but did not have the right to sell, transfer and pawn the land until 2012 when the Farmland law was newly enacted abolishing 1953 Land Nationalization Act and 1963 The Disposal of Tenancies Law (UNHCR and UN-HABITAT, n.d) (see also Oberndorf 2012).

*Who does what?: 1990s- starting large scale land concession to private investors*

In 1990s, Myanmar transformed its economic system into “Market-oriented economy” from “Burmese way to socialist economy”. Since that time, the successive governments from the State Law and Order Restoration Council (1989-1997) and the State Peace and Development Council (1997-2010) to the current (newly) civilian government (2011-2015) have encouraged large-scale

investment in land. Until 2012, the ministry of agriculture and irrigation (MoAI) has allocated the so-called waste land to large-scale “agricultural entrepreneurs” under the Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (1991).<sup>9</sup> In 2012, the government reinforced the said “1991-waste land instructions”<sup>10</sup> by enacting Vacant, Fallow and Virgin Land Management Law (VFVLM) that allowed the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCMVFL) to allocate vacant, fallow and virgin lands to large-scale public and private investors up to the accumulation of 50000 acres, and family farmers up to 50 acres. The new VFVLM allowed foreign enterprises to apply to CCMVFL for the lease of vacant, fallow and virgin lands (Oberndorf 2012).

*Who gets what?: Producing large-scale agricultural entrepreneurial class at the expense of marginalized class*

By 2013, MoAI has allocated 939,684 hectares of lands to 377 national and foreign companies. The thirty years master plan of MoAI (2000-01 to 2030-31) is to develop 10 million acres of wasteland for private investment (Woods 2013: 13). In addition to MoAI, the ministry of environmental conservation and forestry (MoECAF) also allocated the forest reserve land to medium and large-scale private investors. By 2013, MoECAF allocated 369,344 hectares to 842 large-scale and 12,619 medium rubber farmers (in Mon state) (Table 3.2 shows the hectares of the so-called vacant, fallow and virgin lands and forest lands allocated to companies by MoAI and MoECAF by 2013 along with states and regions-exclusion of allocation to medium rubber farmers) (MoAI 2014: 36 and Byerlee et al. 2014: 55-56).

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<sup>9</sup> Link for the Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (1991):

<<http://displacementsolutions.org/wp-content/uploads/DUTIES-AND-RIGHTS-OF-THE-CENTRAL-COMMITTEE-FOR-THE-MANAGEMENT-OF-CULTURAL-LAND-FALLOW-LAND-AND-WASTE-LAND-1991.pdf>> Accessed 2 October 2015.

<sup>10</sup> Here after referred to as the “1991- waste land instruction” instead of the Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (1991).

**Table 3.2**

Vacant, fallow and virgin lands (VFV lands), and forest lands allocated to commercial farming in states and regions by 2013

States/ Regions	VFV lands by MoAI		Forest lands by MoECAF		Total of numbers of enter- prises	Total hec- tares of allocated lands
	The number of en- terprises	Allocat- ed lands (hec- tares)	The number of en- terprises	Allocated lands (hectares)		
Naypyitaw	6	4,126	2	1,519	8	5645
Kachin	113	371,715	6	13,729	119	385444
Kayah	-	-	-	-	-	-
Kayin	1	409	200	8,172	201	8581
Chin	-	-	-	-	-	-
Sagaing	30	162,626	26	36,178	56	198804
Taninthary	41	126,464	296	201,539	337	328003
Bago	14	5,758	82	16,211	96	21969
Magway	19	35,835	9	7,344	28	43179
Mandalay	10	7,190	20	2,425	30	9615
Mon	-	-	12619	34,323	12619	34323
Rakhine	10	45,487	1	238	11	45725
Yangon	9	5,460	126	16,166	135	21626
Shan whole	65	85427	20	10,135	105	105697
Shan south			4	998		
Shan Lashio			9	8,783		
Shan Kaingtone			7	354		
Ayeyarwaddy	59	89,187	34	11,230	93	100417
Total	377	939,684	13,461	369,344	13,838	1,309,028

Source: Author calculation based on Myanmar Agriculture in Brief 2014 by MoAI and Byerlee et al. 2014.

Until now, there is no land redistribution and restitution program to landlessness in Myanmar. Instead, a large amount of data shows that the large scale land concessions involuntarily dispossessed the existing land users of their lands.

In addition, the state gave substantial subsidies to large-scale investors in the agricultural sector over small-scale farmers in terms of credits, agricultural inputs, export permits and infrastructures (Hudson-Rodd et al. n.d: 4):

**Table 3.3**

Comparison of agricultural land use rights between individual cultivators and agricultural “entrepreneurs”, 1999		
	Individual cultivators	Agricultural entrepreneurs
Access to inputs	No permission to purchase fertilizers. No loans available	Exempt from taxes and duties for imported machinery, insecticides, and fertilizers. Loans guaranteed.
Size of land	Approximately 3-5 acres	5000 plus acres
System of access	Rent on yearly basis. Thi-sa-cha	30-year lease
Ability to sell produce	Forced to sell 12-14 baskets to government, civil servants, charity, and defense forces at prices below 50% current market price.	Permitted to export 50% of crop and sell the remaining 50% within Burma at current market price.
State infrastructure	No infrastructure development.	Build roads, bridges, tele-graphic communication, and digs wells at no cost to entrepreneurs.
Responsibility to state	Forced to “volunteer” service to authorities, and to clear, plough, and cultivate land owed by Defense	No responsibility to state or common goal
Sources: Committee Representing People’s Parliament 1999; Kyaw Nyunt 1998; Ministry of National Planning and Economic Development 1997.		

*What do they do with it?: Reproducing “agricultural entrepreneurial class” and landless class?*

Although it may be too early to assess the reproduction of “agricultural entrepreneurial class”, it has already passed almost three decades that the successive governments’ (from 1990s to present) agricultural land policy created that class. Large-scale land confiscations by the state for large-scale commercial farms have negative social and environmental impacts on the community (See Hudson-Rodd et.al n.d, Woods 2013, KDNG 2010, Global Witness 2015). As a result, the numbers of land disputes and resistances between the state or land concessioners and dispossessed former land owners have dramatically increased across the country after 2011.

## *Landlessness*

Landlessness is a prominent issue in the context of agrarian structure in Myanmar even though the percentage of landlessness is inconsistent. For instance, integrated household living condition (IHLC II) survey (2009-10) which is the only nationally household survey showed that 24% of the populations whose earnings come from agriculture are landless (UNDP-Myanmar 2011). However, World Bank revised on IHLC II survey arguing that IHLC II survey is based on outdated population census (1983). According to revised IHLC II by World Bank, rural landlessness is around 40% (two-fifths of the total population) (WBG 2014: 24). The latter is more consistent with regional based small surveys by INGOs. According to the latter data, dry zone is the highest landless rate with 44%, it was followed by delta region and coastal region with 28% and 20% respectively. Hilly region has the lowest landless rate with 8%, but it is worth nothing that the minimum land for subsistence, 2 hectares, is not consistent with the statement of upland farms because infertile upland farms call on more land to be cultivated for subsistence (WBG 2014).

## *Briefly mapping diverse dimensions of land use in Myanmar*

In Myanmar, the large-scale agribusiness is not the only reason for large scale land confiscation (by the state and non-state (ethnic arm forces)) that is threatening the rights of marginalized people to the access to land. Land has many dimensions in use as discussed in theoretical section. According to the reports by two state-led national level commissions of NHRC and the Parliament's land investigation commission, and independent NGOs in the ethnic areas, the state and non-state forces confiscated a large amount of land for different reasons such as military camps, infrastructures (roads, big dam etc.), special economic zones, urban expansion, large-scale industrialized agriculture and extractive industries (different types of mining).

### ***3.3 Reform in Policy of Land Use in Myanmar***

In Myanmar, the policy of land use has undergone a series of reform since 2011. It includes:

1. Farmland law (2012)<sup>11</sup>
2. Vacant, Fallow and Virgin Land Management Law (2012)<sup>12</sup>
3. National Land Use Policy (NLUP) (still under process since 2013)
  - 5<sup>th</sup> draft was unveiled in October 2014.<sup>13</sup>

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<sup>11</sup> Ministry for Agriculture and Irrigation, Government of Myanmar (2012) 'Farmland Law'. Accessed 6 June 2015. <<http://faolex.fao.org/docs/pdf/mya139026.pdf>>

<sup>12</sup> Ministry for Agriculture and Irrigation, Government of Myanmar (2012) 'Vacant, Fallow and Virgin Land Management Law'. Accessed 6 June 2015. <[http://www.burmalibrary.org/docs13/VFVLM\\_Law-en.pdf](http://www.burmalibrary.org/docs13/VFVLM_Law-en.pdf)>

<sup>13</sup> Ministry for Environmental Conservation and Forestry, Government of Myanmar (2014) '5<sup>th</sup> Draft of National Land Use Policy'. Accessed 10 May 2015. <[http://www.burmalibrary.org/docs19/National\\_Land\\_Use\\_Policy-en.pdf](http://www.burmalibrary.org/docs19/National_Land_Use_Policy-en.pdf)>



- 6<sup>th</sup> draft was unveiled in May 2015. <sup>14</sup>

*Overview of changes in land policy in Myanmar from a pro-poor land policy perspective*

An ideal type of pro-poor land policy has nine key features: “protection or transfer of land-based wealth in favour of the poor”, “transfer of land-based political power”, “class-conscious”, “historical”, “gender-sensitive”, “ethnic-sensitive”, “productivity-increasing”, “livelihood-enhancing” and “right-securing” (Borras and Franco 2010: 10-16). Assessing a land policy by using these features whether or to what extent it is pro-poor, the issue of inclusion and exclusion of these features is very often a matter of degree rather than a matter of either/or.

*Farmland law and, Vacant, Fallow and Virgin Land Management Law (2012)*

Farmland law and, vacant, fallow and virgin land management law were enacted in 31 March 2012. Farmland law grants titles for farmland, paddy land and alluvial lands, and allows the rights to sell, pawn, lease, exchange or donate which have not existed before. Under new Farmland law, it is the first time after land was nationalized that farmland is formally commoditized and introduced to formal financial institutions. At the same time, vacant, fallow and virgin land management law is to allocate vacant, fallow and virgin lands to private investors in favor of large-scale investment. *To whom and how do these land laws grant the right of the access to land?*

According to the farmland law, the applicants for land titles must have the land tenancy documents recognized by existing land laws before the current law (Article 6 (2)). However, many evidences showed that most of land users, especially upland users had no legal documents for land ownership. Furthermore, the farmland law does not recognize rotational shifting cultivation practice governed by customary land tenure system although it lists permanent upland farming in its definition of farmland.

Under vacant, fallow and virgin land management law, lands without legal recognition and fallow land under rotational shifting cultivation practice are tend to available for large-scale land concession to private investors. According to Article (5) and (10), business investments (individuals and organizations) are prioritized over small-scale family farming in land allocation even though land grabbing and landlessness are wide spread across the country.

Considering the facts mentioned above, the said land laws are treating land as just an economic factor for the attraction of investment without recog-

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<sup>14</sup> Ministry for Environmental Conservation and Forestry, Government of Myanmar (2014) ‘6<sup>th</sup> Draft of National Land Use Policy’. Accessed 5 June 2015. <[http://www.burmalibrary.org/docs21/NLUP\\_6th\\_draft2015-06-en.pdf](http://www.burmalibrary.org/docs21/NLUP_6th_draft2015-06-en.pdf)>

nition or protection of the legitimate rights of marginalized people to the access to land.

#### *5<sup>th</sup> Draft NLUP (2014)*

NLUP is a step of large land administration reform efforts in Myanmar. Related steps are to be (1) drafting a National Land law, (2) undertaking law harmonization, (3) undertaking national land inventory (4) undertaking national land use plans (5) undertaking sectorial policy and land use planning processes.<sup>15</sup> NLUP will closely guide drafting a national land law and undertaking law harmonization.

5<sup>th</sup> draft of NLUP was unveiled in October 2014. It was composed of twelve parts: (1) land use management, (2) planning and changing land use, (3) granting concession on or the lease of state-owned lands, (4) procedures relating to the land acquisition, compensation, resettlement and rehabilitation, (5) settlement of land disputes and appeal, (6) matters relating to assessment of land revenue, fee for land transfer and due stamps duty, (7) land use rights of the ethnic nationalities, (8) equal rights between men and women in land tenure and land use management, (9) harmonization of laws and enactment of new law, (10) monitoring and valuation, (11) doing research and development and (12) miscellaneous.

In 5<sup>th</sup> draft NLUP, there had been improvements compared with the former land laws. For instance, the rights of ethnic nationalities and equal rights between men and women had been partly recognized in part (7) and (8) respectively. However, it still remained as a “class-blind” and “lack of right-securing” land policy because there was no prioritization or recognition of the rights of marginalized people (Although it can be seen in every part of the policy, especially see Part 1 and 3). Rather, it focused on administrative safeguards against the worst effects on existing land users so as to facilitate “land concentration” without disputes from small-scale land users to “business investors”. For instance, Part II of the policy- planning and changing land use is full of administrative and technical terms rather than the recognition of human rights or legitimate land rights of people. It tends to lead the term “land use right of the citizens” (preliminary section, paragraph (6)) in the policy to be narrowly defined as NIE’s “secure private property right” for business purpose in 5<sup>th</sup> draft NLUP.

#### *6<sup>th</sup> Draft NLUP, likely to be final draft before submitted to the parliament*

6<sup>th</sup> draft of NLUP was unveiled in May 2015 after several consultations with public and experts. It consisted of thirteen parts: (1) Objectives and basic

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<sup>15</sup> From the presentation by U Aye Maung Sein, a member of LUASC at a multi-stakeholders consultation meeting held in Inya Lake Hotel in 18 October 2014.

principles, (2) Land use administration, (3) Planning and changing land use, (4) Grants and leases of land at the disposal of government, (5) Procedures related to land acquisition, relocation, compensation, rehabilitation and restitution, (6) Land dispute resolution and appeal, (7) Assessment and collection of land tax, land transfer fee and stamp duties, (8) Land use rights of the ethnic nationalities, (9) Equal rights of men and women, (10) Harmonization of laws and enacting new law, (11) Monitoring and evaluation, (12) Research and development and (13) Miscellaneous.

There have been significant improvements in 6<sup>th</sup> draft NLUP towards pro-poor in terms of recognition and prioritization of the rights of marginalized people in future land use plan while “land-based wealth” and “land-based political power” still remained in the hand of the minority of political and business elites. Anyway, 6<sup>th</sup> draft NLUP prioritized the rights of marginalized people in its basic principles: “To recognize and protect legitimate land tenure rights of people, as recognized by the local community, with particular attention to vulnerable groups such as smallholder farmers, the poor, ethnic nationalities and women” (Part 1, Chapter II, 7 (a)). Furthermore, “restitution” and “allocation of land to landlessness” were new languages in newly improved version of land policy even though “redistribution” of land from landed elites to landlessness was silent even in the latest version.

TNI which is an important contributor to the development of “right based pro-poor land policy” in Myanmar also recognized that there have been improvements in recognition and protection of the rights of most vulnerable people in new version even though there were still some negative points in land policy.<sup>16</sup>

#### **4 AUTONOMOUS PRO-REFORM SOCIETAL FORCES TOWARDS PRO-POOR LAND POLICY FORMULATION**

Under the current democratic transition in Myanmar, there have been wider “political opportunity structure” or “political spaces” for the society to some degree than ever before. The new government has undertaken some measures for freedom of press, assembly and registration of social organizations which were prohibited by the former military junta. For instance, “the Peaceful Assembly and Peaceful Procession Act<sup>17</sup> was newly enacted in December, 2011. By responding to the demands of activists, an amended act to

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<sup>16</sup> For TNI’s recommendations on 6<sup>th</sup> draft NLUP, [https://www.tni.org/files/publication-downloads/nlup-6-key\\_points.pdf](https://www.tni.org/files/publication-downloads/nlup-6-key_points.pdf). Accessed 20 October 2015.

<sup>17</sup> The Peaceful Assembly and Peaceful Procession Act (2011) can be accessed from the following link. Accessed 20 October 2015. <[http://www.burmalibrary.org/docs15/2011-Peaceful\\_Assembly\\_and\\_Procession\\_Act-en.pdf](http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf)>

the former peaceful assembly and peaceful procession act (2011)<sup>18</sup> was proved by the Parliament in June 2014. Similarly, “the Media Law”<sup>19</sup> and “the Registration of Association(s) Law”<sup>20</sup> were enacted by the government in 2014 after several amendments by concerned stakeholders and by the legislators in the Parliament. Furthermore, the government established a national human right commission (NHRC) in 2011.

#### ***4.1 Resistance and claim by small-scale farmers***

In Myanmar, the majority of the population lives in rural area and their livelihoods are mainly dependent on the agriculture. Most of them are small-scale land holders who have less than 5 acres, semi-landless and landless. Historically, small-scale farmers are the backbone of the country’s economy and food security. However, they have faced forced land acquisitions by the state for different reasons since the country’s economic system was changed from a socialist economy to a market-oriented economy in 1990s. Since that time, vast amounts of the so-called vacant and fallow land have been allocated to private investors and public enterprises. When lands allocated under the name of vacant are not really vacant on the ground and the existence of original farmers are not recognized and prioritized by current land policies, the existing small-scale farmers become vulnerable to land grabbing. The newly enacted land related policies such as the farmland law, the vacant, fallow and virgin land management law, the foreign investment law and the special economic zones law exacerbate the existing vulnerable situation of small-scale farmers.

The conflict-affected ethnic areas are more vulnerable to land grabbing because of land rights insecurity and the dispossession of land by civil-war. Those areas hold the vast amounts of natural resources which are claimed by the government as “the last investment frontier of Southeast Asia” under the new political and economic reforms (See Kramer and Woods 2012 and, Buchanan et al. 2013). Both parties of central state and ethnic armed forces in those regions are involved in land grabbing. The numbers of land grabbing in those areas have tremendously increased after preliminary ceasefire agreement-2011 between Tatmadaw (Myanmar Army) and ethnic arm forces (KHRG 2013).

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<sup>18</sup> Law Amending the law on the right to peaceful assembly and peaceful procession-Pyidaungsu Hluttaw Law No. 26/2014 can be accessed through the following link. Accessed 20 October 2015.

<[http://www.burmalibrary.org/docs18/2014-06-24-Law\\_Amending\\_the\\_Law\\_on\\_the\\_Right\\_to\\_Peaceful\\_Assembly\\_and\\_Peaceful\\_Procession-26-bu.pdf](http://www.burmalibrary.org/docs18/2014-06-24-Law_Amending_the_Law_on_the_Right_to_Peaceful_Assembly_and_Peaceful_Procession-26-bu.pdf)>

<sup>19</sup> News Meida Law- Pyidaungsu Hluttaw Law No.12/2014 can be accessed through the link:

<[http://www.burmalibrary.org/docs17/2014-Media\\_Law-en.pdf](http://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf)> Accessed on 20 October 2015.

<sup>20</sup> The Registration of Association(s) Law can be accessed through the link:

<[http://www.burmalibrary.org/docs19/2014-07-18-Law\\_Relating\\_to\\_Registration\\_of\\_Organizations\\_31-bu.pdf](http://www.burmalibrary.org/docs19/2014-07-18-Law_Relating_to_Registration_of_Organizations_31-bu.pdf)>. Accessed 20 October 2015.

Until 2011, disposed small-scale farmers could hardly resist to land confiscation under the military regime with an iron fist. However, resistances, protests and demands by grassroots farmers have been common across the country since 2011 when the new government embarked upon the political reform. The forms of resistance are various from plow protest, road blocking, lawsuits and public demonstrations to sending letters to the national human right commission (NHRC) and the Parliament's the land disputes investigation committee. NHRC and the Parliament land disputes investigation commission are national level bodies that concern with land complaints by grassroots farmers. NHRC stated that land cases are the most among the complaints it received since it was established in 2011 (Chao S 2015: 8). By March – August 2013 after about a year it was established, the Parliament land disputes investigation commission reported that they had investigated 745 complaints across the country. It was only 11% of more than 6000 complaints the commission received. By 2015, the commission has reported 11,000 land confiscation to the government (Htoo Thant 2015).

The resistances are supported by individual land activists, lawyer networks, CBOs, political parties, and NGOs. The grassroots farmers faced the cases of “sue and be sued by the law” in the resistances. Although it was recognized that they are unlikely to succeed, the grassroots farmers and their allies brought several hundred of suits against the power in the courts so that the failure of current laws and judiciary system to deal with current land disputes could be approved (AHRC and MLN 2015). In the cases of plow protest and public demonstration which are popular resistance forms in Myanmar (in some cases those kinds of resistances seem violent), the farmers and land activists very often suffered from arbitrary arrests and jail sentences for from months to years (AHRC 2014). Under the situation of that protest farmers become the newest political prisoners in Myanmar, the grassroots farmers' movements are hardly in the position to mobilize and represent by themselves at a national level policy formulation.

#### ***4.2 Organizations of Small-scale farmers***

Alongside with the boom in grassroots-farmers resistances, organizations of small-scale farmers have come up since 2011. The access to information about small-scale farmer organizations is very limited because they are largely informal and community-based organizations. At the present time when land policy reforms are happening in the county, however, they are attempting to establish a network among them to represent at national level. For instance, Land in Our Hand (LIOH) is a network of local small-scale farmers' organizations, supportive CSOs and allied organizations established in 2014. It is comprised of more than 60 groups from all states and regions across the countries. Independent ethnic CSOs based in Kachin, Kayah, Karen, Chin, Mon, Rakhine and Shan ethnic communities also organized a Customary Land Protection Committee (CLPC) to represent at and to influence on the NLUP formulation process.

Those network and organizations have actively participated in the NLUP formulation process. Responding to NLUP consultation, LIOH held the consultation meetings with grassroots farmers and, upon which a statement of recommendations was issued (LIOH 2015). CLPC also held a forum and

issued a statement of their opinion on NLUP (ECDF and CLPC 2014). However, they are still too young to see their capacity to work with and influence on the state.

### ***4.3 Policy advocacy role of civil society groups***

Here, I use the term “civil society” with the definition that “civil society is a space between the state and family, which is autonomous and separated from the state” , but it does not include business and political organizations (Kramer 2011: 5). Generally, there are three kinds of civil society in Myanmar: community-based, local and international non-government organizations (NGOs) (ADB 2015). There has been a significant increase in the number of civil society including the entry of INGOs in Myanmar since 2000s following the government’s attempt for ceasefire agreement in ethnic area started two decades ago, Cyclone Nargis in 2008 which killed over 130,000 people in Delta area and, the political reform since 2011 (Kramer 2011 and ADB 2015).

Historically, civil society plays an important role in social, economic and political lives of Myanmar society. In the era of king ruling, Buddhist monasteries were the place where people informally organized themselves for their social purpose. Furthermore, Buddhist monasteries were primary providers of educational services. In the colonial period, there were more formal and Western style civil society organizations. Their activities also expanded to policy advocacy and mobilization of social movements beyond the traditional service provider e.g., YMBA at national level and Wunthanu Athin at village level. In the military junta from 1962 to 2010, the functions of civil society were strictly controlled and limited to the provision of services under restrictive institutions. In the quasi-civilian government, however, their policy advocacy roles have been recognized and welcomed to participate in the democratic transformation while still limitations (Kramer 2011 and Jesnes 2014).

But, the risks and opportunities civil society faces vary with centre and periphery where they operate in. For instance, while their advocacy works seem improved at the national level policy formulation through lobbying MPs, the situations at the local, especially ethnic areas, remain at risk and uncertainty (Jesnes 2014). However, there have been thematic CSOs network groups that facilitate the cooperation of civil social groups working at different levels (ADB 2015).

### ***4.4 Land Core Group (LCG)***

In the context of land reform in Myanmar, Land Core Group (LCG) was formed as a thematic network on pro-poor land policy reform in 2011. There was no national level CSOs coordination mechanism towards pro-poor land reform before LCG.<sup>21</sup> LCG was composed of CBOs, LNGOs, INGOs and individual activists who concern for pro-poor land reform. It becomes a focal point for pro-poor land reform advocates. It was under FSWG from

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<sup>21</sup> See footnote –no.6

2011 to the end of 2014 when it became independent. By 2014, it has 90 members representing 41 organizations and two staff.<sup>22</sup>

LCG started with a three-year program from 2011-2014 with the aim of “laws, policies and institutions for land and natural resource access are formulated and effectively implemented to support sustainable economic, social and environmental development that balances the contributions of smallholder farmers and large-scale investment to national growth” (LCG-FSWG, n.d.). To achieve its goal, the concept LCG hold is that “Strong government commitment, wide stakeholder consultation processes, and the voice of farmers and civil society are critical for creation of pro-poor economic policies and institutions that benefits smallholder farmers” (LCG-FSWG, n.d.).

LCG network is mandated by a vertical and horizontal coordination mechanism through working with diverse stakeholders at different levels from civil society groups (local, national and multinational), private sector and grassroots farmer groups to the government and authorities. With some stakeholders LCG build allies, some are its targets for advocacy and some are aimed for both. LCG set comprehensive guidelines to achieve pro-poor land policy reform in 2012 and 2013. The guidelines were aimed to serve as platforms not only for LCG members but also for whomever individuals and organizations interested in pro-poor land policy development in Myanmar.<sup>23</sup>

In the relationship with government, LCG learnt from its past experiences that “having frank and honest discussions with government in advance and not being afraid to challenge them has allowed LCG to negotiate space for discussions which would otherwise not have existed” (LCG: 2013). For direct policy advocacy to the government bodies, LCG establish close relationship with the ministry of environmental conservation and forestry (MoECAF), and ministry of agriculture and irrigation (MoAI). In the regard of the relationship of those government bodies, a social actor described that MoECAF seemed relatively more opened for CSOs while MoAI also demonstrated its willingness to discuss with CSOs.<sup>24</sup>

LCG has three core programs: (1) research, (2) advocacy support and (3) capacity building that facilitate its coordination mechanism. LCG rely on good quality researches and policy briefs to convince various stakeholders of the sustainable development of pro-poor land policy in Myanmar. For capacity building in the civil society groups, LCG arranges training programme for farmer groups and lawyers through its member network. Moreover, IEC (In-

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<sup>22</sup> See the link: <http://mohinga.info/en/profiles/activity/MM-FERD-ID4174/>. Accessed 20 October 2015.

<sup>23</sup> Link for 2012 plan:

<[http://www.myanmarfswg.org/source/download/land\\_update\\_15\\_10\\_2013/Program\\_Plan/FSWG\\_LCG%20Program.pdf](http://www.myanmarfswg.org/source/download/land_update_15_10_2013/Program_Plan/FSWG_LCG%20Program.pdf)>

Link for 2013 plan:

<[http://www.myanmarfswg.org/source/download/land\\_update\\_15\\_10\\_2013/Program\\_Plan/Rationale%20LCG%20Prioritised%20Actions%202013%20\\_ENG.pdf](http://www.myanmarfswg.org/source/download/land_update_15_10_2013/Program_Plan/Rationale%20LCG%20Prioritised%20Actions%202013%20_ENG.pdf)>

<sup>24</sup> See footnote no-6

formation, Education and Communication) materials are published to increase public awareness.<sup>25</sup>

### ***Advocacy work of LCG at National Policy Legislation***

As the explanation earlier, LCG is a virtual network group with strong membership. The state in Myanmar is highly reliant on personal connection for the relationship with social actors. As evidence, an author who was also a research and development manager of a civil society strengthening programme in Myanmar mentioned in an article that:

Given the backgrounds of many civil society leaders, it is only natural that they would have personal relationships with authorities and parliamentarians. As one civil-society leader put it, “Our networks have contacts based on social relationships, not only working relationships...When you bring people into a discussion, we must know it they will be allies and whether they will be champions.” (Mark 2012)

In such case, the figurehead role and the personality of the person who represent LCG in the public are very important to LCG’s advocacy work, especially to the penetration of the state. It is conducive to a good policy advocacy work that the board of LCG is chaired by U Shwe Thein who has long worked for the government as well as civil society.<sup>26</sup>

### ***Farmland law (FL) and, Vacant, Fallow and Virgin Land Management Law (VFVLM) (2012)***

FL and VFVLM is the first land policy reform under the new government. With respect to FL and VFVLM formulation, LCG had a difficult situation to influence on the policy making, because MoAI conducted FL and VFVLM formulation with no space for the participation of civil society organizations. In that case, LCG lobbied and encouraged MPs to change the legislation of those laws and subsequent “by laws” and “rules”. Unfortunately, “by laws” and “rules” following FL and VFVLM were passed by MoAI without the legislation of the parliament.

However, LCG converted these disadvantages into opportunities for further lobby works. It prepared policy recommendations based on a research on 13 case studies of land grabbing<sup>27</sup> and a legal overview on FL and VFVLM (Oberndorf 2012). The said two documents highlighted the inefficiency of current land policies for inclusive sustainable development, especially for upland farming governed by customary communal land tenure system and rotational

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<sup>25</sup> The presentation by chair of LCG, U Shwe Thein in Green-Lotus meeting held in 4<sup>th</sup> October, 2014. Accessed 10 October 2015.

Link: <<http://www.green-lotus.org/wp-content/uploads/2014/07/Land-Core-Group-presentation-for-Green-Lotus-Meeting.pdf>>

<sup>26</sup> He has worked for over seventeen years in government services and for 10 years in civil society (for CARE , an International Non-government Organization). I had the access to this information from his “LinkedIn Account”.

<sup>27</sup> For 13 case studies research of LCG, use this link:

<[http://www.myanmarfswg.org/source/download/land\\_update\\_15\\_10\\_2013/13%20Case%20Studies/FSWG\\_LCG\\_13%20Land%20Grabbing%20Case%20Studies%20%28Oct%202012%29%20%28ENG%29.pdf](http://www.myanmarfswg.org/source/download/land_update_15_10_2013/13%20Case%20Studies/FSWG_LCG_13%20Land%20Grabbing%20Case%20Studies%20%28Oct%202012%29%20%28ENG%29.pdf)>



cultivation practice, and recommended for the development of comprehensive national land policy and land administration. Those documents and other research-based policy recommendations of LCG members made much contribution to NLUP.<sup>28</sup>

### ***National Land Use Policy Drafting Process (2013- 2015)***

In NLUP formulation, Land Core Group (LCG) involved in the NLUP formulation process as the main pro-reform social actors. Especially, U Shwe Thein, chairman of LCG is a key social actor who can work with and influence on both sides of the state and society including international institutions and donor organizations towards pro-poor land policy reform.

LCG directly worked with LUASC throughout the whole process. It played many different, but related roles in drafting NLUP and consultation process. It attempted to raise and put the rights of marginalized people in the policy formulation: the main issues LCG raised were (1) revision of the Farmland law and the Vacant, Fallow and Virgin Land Management law which make small-farmers and landless not only ineligible to the access to land but also vulnerable to land grabbing, (2) building comprehensive and participatory National Land-Use Planning, (3) land allocation to landlessness, (4) recognition of customary communal land tenure system and practices, (5) recognition of women rights to the access to land, (6) establishing of free prior and informed consent (FPIC) and establishing of fair adjudication (LCG: 2012a).

### ***Conclusion***

In Myanmar, resistances of grassroots people to land confiscation have been happening across the country, but they remained unorganized and immobilized under still risky political situation. Autonomous societal forces around pro-poor land reform came in following public outcries of marginalized people and the democratic transition. Despite of keeping in self-isolation from the state until last five years ago, societal forces in these days become more active to confront with the state than ever before. Under the so-called civilian government, the role of professional policy advocacy at national level gains momentum in the context of public policy formulation. However, the capacity of marginalized farmer organizations in the periphery area (they are the majority) is still nascent, fragile and rife to deal with both risks and opportunities.

Given that situation, policy advocacy professional social actors were intermediaries between the state and grassroots people in a national public policy formulation. They had to work both sides of the state and grassroots people. In NLUP formulation, LCG was placed in the position such that it has to convince the state actors of pro-poor land reform in the same time of mobilizing grassroots people.

## **5 REFORMIST STATE ACTORS IN NLUP FORMULATION**

Since the government led by President U Thein Sein took the office in 2011, economic and political reforms have been underway towards “a modern industrialized nation”. In the context of the acceleration in market-oriented

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<sup>28</sup> The presentation of a government representative of LUASC showed that many documents and policy recommendations from CSOs were included in the list of documents used to feed up NLUP.

economic reform, the state has undertaken necessary measures for privatization and market liberalization. That reform calls on concerned ministries and government agencies for amendment, improvement and abolition of existing laws and regulations as well as for enactment of new laws towards the development of meaningful market-oriented economy.

In land resource administration, ministry of agriculture and irrigation (MoAI) and ministry of environmental conservation and forestry (MoECAFF) are main government bodies of the state. Generally, while MoAI manages cultivable land, MoECAFF is designated for the administration of forest land. Settlement and land records department (SLRD) under MoAI is responsible for land mapping and registration, updating land records and crop statistics and resolving land disputes. The newly enacted FL and VFVLMML (2012) designated the minister for MoAI and the director general of SLRD as the chair and secretary of vacant, fallow and virgin land management committee respectively.

### ***5.1 Legislation of Land Policies towards Land Reform***

In the land policy reform, MoAI was the only one ministry responsible for the formulation of the first two new land bill named Farmland Law (FL) and, Vacant, Fallow and Virgin Land Management Law (VFVLMML); MoAI drafted those bills behind the closed door. After the legislation by the Parliament, the President signed them in 31 March 2012. There was no space for public integration into any phrase of policy making process from drafting by MoAI to registration in the Parliament. Those laws were very controversial in the society because they were “class blind”, “ethnic unconscious” and “ahistorical”, but in the favour of business.

A few months later after FL and VFVLMML were promulgated; the government initiated a plan for a huge land reform. In June 2012, the president U Thein Sein highlighted in his speech the need for land reform to encourage investment projects saying that: “We have difficulties in land management as squatters on forest land, virgin and fallow land and others are acting as if they originally own the plot they illegally occupied. The result is the widespread problems and because of these problems we are not in a position to allot a large number of hectares of land for investments as other countries do” (NLM 2012: 8).

For the formulation of new land policy, the president office formed a multi-ministries land policy formulation committee named Land Use Allocation and Securitizing Committee (LUASC) unlike the former mono-ministry formulation committee. In that case, LUASC was composed of 25 members who are representatives from concerned ministries and government agencies. The responsibility of the committee is to formulate a comprehensive national land policy and land management mechanism, and then to submit to the government. In such case, LUASC does not have the authority to make final decisions on drafting NLUP. Rather, there is another higher level government body to finalize NLUP before the draft policy is passed to the Parliament.

MoECAFF was nominated as the focal ministry of LUASC. As the focal ministry, MoECAFF was to chair LUASC and to facilitate the inputs of other line ministries and diverse stakeholders from the society. Among departments under MoECAFF, the department of forestry (DoF) conducted as a responsible

department for LUASC. The director general and deputy director generals of DoF are the main state actors from MoECAAF involved in NLUP formulation.<sup>29</sup>

### ***5.2 The involvement of state actors in NLUP formulation process***

As the focal ministry, the representatives of MoECAAF had a chance to take a leading role in the formulation process over other member ministries of LUASC. At pre-formulation stages for NLUP, MoECAAF worked together with CSOs, international institutions and donor organizations. Jointly with LCG and the National Economic and Social Advisory Council (NESAC), MoECAAF held a multi-stakeholders national dialogue on land tenure and land use rights in November 2012 as well as a multi-stakeholder meeting on the Voluntary Guidelines on the Responsible Governance of Tenure in 2013 jointly with FAO. In October 2013, MoECAAF established a roadmap for NLUP formulation with the assistance of USAID. The roadmap included a multi-stakeholders consultative process.

In late 2013, the initial steps of roadmap consisting of drafting NLUP and public consultation were undertaken by a special working group composed of members of LUASC and LCG as the representative of CSOs. Up to fourth draft, NLUP formulation was an inter-governmental process. It also included the submission of fourth draft of NLUP to the President office and a multi-stakeholder Presidential workshop. The latter was explicitly a workshop dominated by political and business elites and, the feedback from it was fed up to the 5<sup>th</sup> draft NLUP.

After that, 5<sup>th</sup> draft of NLUP was unveiled in 31 October 2014 for a public consultation process. It was widely circulated by MoECAAF through its homepage in both English and Burmese language versions to reach various stakeholders in addition to delivering to the government agencies through official ways.

According to the NLUP formulation road map, the policy formulation process was to be more accessible to multi-stakeholders for participation only after public consultation. The public consultation was started with a pre-consultation meeting with multi-stakeholders where LUASC and the LCG representative explained what and how they had done and the forthcoming procedures. In the wider context of public consultation, it is to include ground

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<sup>29</sup> I have to trace the information about the member lists of LUASC and representative members from MoECAAF only through the notes of NLUP consultation meetings and MoECAAF webpages. I could not access the document or notification issued by the presidential office and MoECAAF. So, I can only access about the state actors who are actually active in NLUP process. According to my experience, there may be other members left who do not show up in public, but they are active on the paper, and very often take important positions in decision making.

meetings (LUASC led meetings and CSOs led meetings) which are to be followed experts' review on the feedbacks.

By the head of governments of states and regions, LUASC held its ground consultation meetings in all states and regions. Perhaps it was the first time in the history of public policy formulation that a country wide consultation was held on the state policy. In addition to ground consultations, an online consultation program was also set up by LUASC.

The long consultation process was followed by two expert round tables and three revision meetings. The improved version, 6<sup>th</sup> draft of NLUP was unveiled in May 2015. In 29 June 2015, a multi-stakeholders group consultation on the 6<sup>th</sup> draft was held by LUASC to collect feedback for further improvement.

The left procedure is that the final version of NLUP is to be submitted to Central Committee for National Land Resource Management (CCNLRM) for the finalization before passed to the Parliament for the legislation. CCNLRM is formed in 10 October 2014 and it is the highest government body for NLUP formulation. It was chaired by the vice president U Nyan Tun and composed of ministers and deputy ministers from concerned ministries. The ministers for MoHA and MoECAF are designated for two positions of vice chairman of the committee.

### ***5.3 Reformist state actors in NLUP formulation***

Comparing the first two land policies (Farmland law and vacant, fallow and virgin land management law - 2012) and NLUP, the latter formulation process was more compatible with democratic way to public policy making. LUASC was a multi-ministries committee for formulating NLUP. But as the focal ministry, MoECAF led shaping the procedure of NLUP process.

***How have there been reformist state actors in LUASC/CCNLRM, especially in MoECAF towards the reformist way to NLUP formulation procedure?*** There have been political, social and technological dynamics in the context of NLUP making that shape the relationship of state actors with social actors. But, they do not always have equal influence on all concerned state actors. Based on the data, the state actors who directly interact with social actors are likely to be more reformists.<sup>30</sup> Anyway, it is certain

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<sup>30</sup> This is an assumption based on various documents such as government press releases, newspapers, journals and the research documents. In such case, it is difficult to analyze whether the state actors who speak out in the public in favor of pro-reform are really reformists or just the spokesperson because of the strict top-down bureaucratic system within the government organizations in Myanmar. The same challenge can be encountered even by the researcher who had a chance to directly talk to the

that representatives from MoECAF in LUASC has influenced and encouraged other members and the government to choose and implement a reformist way to public policy making.

*Political dynamics: Legitimacy for the state*

Under the military junta from 1962 to 2010, public policy making was not conducive to such a way that allowed public participation. After the office was taken by the so-called civilian government, there has been a progress in policy making process. The head of the government, President U Thein Sein has encouraged his Cabinet to invite public to participate in the developmental tasks for establishing mutual trust.

With respect to NLUP formulation and implementation procedures, president U Thein Sein urged responsible government officers and participants for inviting public participation (NLM 2014) and vice president U Nyan Tun who is chairman of CCNLRM set ensuring for the participation of people as the first priority of the committee (President Office of the Republic of the Union of Myanmar 2015).

*Social dynamics*

Political dynamics creates a change in social relationship between state and society. In fifty years, it is the first time that the government has held national dialogues such as Myanmar Development Cooperation Forums (MDCFs) and a workshop with civil society that brought together the government officers, civil society groups and international organizations. As a consequence, state actors have been more in touch with external actors such as social actors and international organizations under the political and social reform.

MoECAF as the focal ministry of LUASC/CCNLRM has been holding a series of multi-stakeholders workshop and national dialogue jointly with CSOs organizations, international institutions and donor organizations to feed up NLUP as already discussed. In fact, MoECAF has been a ministry used to working with CSOs since before NLUP formulation. For example, when the

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state actors in Myanmar. For example, an author who is closely working with Myanmar government officers mentioned in a document that officers from one department are more open than others. With respect to that document, I informally discussed with a local social actor. The said social actor discussed that it would be difficult to determine whether a government officer was really the reformist just having frankly talks because some government officers talked in favour of the reform with social actors, but they might be silent in the organization. As a current government officer, I totally agreed with what the social actor discussed because it is really happening within the government organizations. Similarly, whenever I find an *official* pro-reform message by a government officer, I couldn't help thinking who is behind that person due to my experience.

department of environmental conservation (DoEC) under MoECAAF drafted the by-law of the environmental conservation law, DoEC invited four non-governmental organizations for participation (Kean 2012).

#### *Technical dynamics*

NLUP formulation is just one step for a large land-reform program that requires a lot of technical supports including legal advice and regional knowledge supports from various stakeholders who may include from public at community level to international donor organizations. In the current situation, the government organizations are very weak at the areas of technology and human resources. Working groups under CCNLRM have been currently undertaking pilot projects for a public participatory land mapping and an open access spatial database (One Map Myanmar) towards National Land Inventory and Law Harmonization. As partner organizations, USAID, the Swiss Agency for Development and Cooperation (SDC), the EU and Land Core Group (a network of CSOs) have been closely working with MoECAAF, the focal ministry of CCNLRM.

#### **Conclusion**

The new government has embarked the transition to democracy since 2011. In that democratic transformation, some state actors are fairly quick in adopting the changes while some remained unchanged in many arena of reform. It can also be seen in the context of government initiative land policy reform.

MoAI and MoECAAF were main state agencies in both land policy formulation and implementation. However, state actors at MoAI were too slow to adopt the democratic governance practice while MoECAAF become more used to working with CSOs and international donor organizations in its public policy formulation under the reform government.

MoAI was a responsible ministry for drafting FL and VFVLMML which was passed in 2012. In the formulation of those land laws, MoAI followed the same procedures used by the former military government without any transparency and consultation with people to be affected.

In turn of NLUP formulation, the Presidential office formed a multi-ministries land policy formulation committee led by MoECAAF. MoECAAF as the chair of LUASC has made significant changes in the arena of government's policy formulation procedure as a response to political, social and technological dynamics in NLUP making. MoECAAF's roadmap to NLUP formulation process can be generally divided into two parts according to before and after public consultation process: the intergovernmental formulation and the people-centered formulation.

However, the decision making power within the state agencies are still located at the top levels. For instance, LUASC hardly had the authority to make the decision on its own. It can be seen in the process and outcomes of the whole formulation process, especially in the intergovernmental formulation process.

## 6 STATE-SOCIETY INTERACTIVE RELATIONSHIP TOWARDS PRO-POOR LAND POLICY REFORM

### *6.1 How do the grassroots resistances create division within the state?*

The resistances, protests and claim by grassroots people across the country created the division within the parliament, the government and the military. In July 2012, over a year after land disputes had taken place, the parliament took an action on it by establishing an investigation commission for prevention of public disenfranchisements connected to confiscation of farmland and other Lands (I used this committee with the name of “the Parliament’ Land Dispute Investigation Committee” in the early parts of this paper). It was composed of 74 MPs from various parties and the military representatives in the parliament. The commission responsibility is to investigate the disputes on the ground and submit the findings to the parliament, but had no authority to deal with the problems on their own. In addition to that limitation, there were other kinds of constraint to the commission’ investigation: (1) the commission’s investigations were limited to land disputes after 1988 and (2) the commission must be in accordance with the current land laws and rules in their investigation work even though they recognized that existing land laws were obsolete. The commission reported four times for six themes: land confiscations for (1) military base, (2) expansion of urban, (3) expansion of industrial zones, (4) the infrastructures, (5) the state-owned factories and (6) concession to companies for agriculture and livestock businesses.<sup>31</sup>

The commission’s reports showed that the military and the former government organizations highly involved in mass land confiscation. The commission’s first report (It was submitted in eight months after the commission was established) described that 565 complaints among the complaints they received were related to the military and the total confiscated land accounted for 247077.06 acres (IC- PPDCCFOL 2013a). It was a critical test for the current military-backed government and the bureaucracy full of ex-military officers at every level to deal with the current land disputes properly (Hendrix and Noland 2015).

In the regard of the government’s encouragement of large-scale agribusiness, the commission’ reports urged that the government should reconsider allocating large amount of land to export-oriented private investors because large-scale land confiscation hurt small-scale farmers who are the majority of the population and back-bone for food security and sustainable development of the country. Furthermore, the commission explicitly recommended for “land redistribution” from inefficient large-scale investors to landless and small-scale farmers in general recommendation part of the third report (IC-PPDCCFOL 2013b).

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<sup>31</sup> The commission submitted its first report on land confiscation for military camp in 26.2.2013. The second report submitted in 12.3.2013 included two themes of land confiscation for expansion of urban and industrial expansion. The third report was submitted on three themes of land confiscation for infrastructures and state-owned factories and agriculture and livestock businesses in 7.8.2013. The fourth report was submitted on the theme of land confiscation for other purposes in July, 2014.

As a response to the commission findings, the government formed a land utilization central committee with ministers and vice ministers from concerned seven ministries, and chief ministers of states and regions to resolve the disputes in the reports in 16<sup>th</sup> September 2013. The committee was chaired by vice president U Nyan Tun (the members of that committee mostly overlaps with CCNLRM which is the highest government body formed in October 2014, to take charge of NLUP formulation and implementation.). On January 2014, the government reported to the parliament that they had properly resolved 51% of the total land problems the commission submitted.

However, against that issue, the commission' chairman, U Tin Htut and other member MPs promptly responded that the government's action was just on the paper and the ground situation remained unsolved, even worse in some cases, especially in the cases of land dispute between "business cronies" and small-scale farmers (Pyidaungsu Hluttaw 2014) (See also, Land Grab Problems President's Message to Assembly of the Union 2014).

On the other hand, the Parliament is full of MPs of USDP (the current ruling party) who are mostly "business cronies" and ex-military officers highly involved in land grabbing (e.g, U Khin Shwe (chairman of Zaykabar company)<sup>32</sup> and U Htay Myint (chairman of Yuzana )<sup>33</sup>). U Khin Shwe urged that the current government should have protected land concession granted by the former government against the resistances of grassroots farmers. He even threatened the government that it was against Section 447 and 448 of 2008-National Constitution unless the current government did not properly protect the concession by the former government (Pyidaungsu Hluttaw 2014).

## ***6.2 State-society cooperation around NLUP formulation process***

As the focal ministry of LUASC, MoECAF positively responded to approaches of pro-reform social actors. As a result, there was a national level multi-stakeholders dialogue on land tenure & land use right jointly held by MoECAF, NESAC and LCG before the formulation process. It was the first national dialogue on land issues that brought together government officials, MPs, various civil society groups, farmer groups, donor organizations and, national, regional and international land policy experts. Nevertheless, not many stakeholders from private sectors joined with that dialogue. From the dialogue, governmental officials and civil society representatives got the agreement on three themes: (1) Large-scale industrial agriculture is not the only way to national economic growth. Small-scale farmers can create the economic growth if they have "land tenure security" and the provision of the state. (2) Upland customary land rights and shifting taungya need to be officially recognized and incorporated into state law. (3) Myanmar needs to establish a comprehensive national land use policy and administrative body to solve the country's overlapping and conflicting land tenure regimes and land use (LCG 2012b). The outcomes from this meeting directly provided a foundation for developing a pro-poor land policy in Myanmar.

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<sup>32</sup> U Khin Shwe is a MP of USDP in the Amyotha Hluttaw who has been accused of land grabbing in Yangon region and Mon state.

<sup>33</sup> U Htay Myint is a MP of USDP in the Pyithu Hluttaw who has been accused of land grabbing in many regions, especially in Kachin state.



Unlike the previous public policy formulation procedures, the roadmap of NLUP formulation procedure created wider space for state-society interaction in a formal way in addition to informal lobby approach.

***In the preliminary stage of drafting NLUP, LUASC welcomed LCG as a representative of CSOs.*** U Shwe Thein, chairman of LCG joined the special working group of LUASC. His participation ensured for the incorporation of policy recommendations from national dialogues and, researches and reports of LCG members and other CSOs into NLUP. The special contribution of LCG went to the parts of “Land Use Rights of the Ethnic Nationalities” which had never been recognized in the policy before.

By participating to LUASC as an adviser, he was managed to encourage the government from the inside to undertake and realize an inclusive public consultation process for NLUP (Lift 2014: 113).

***During the consultation process, LCG had a chance to organize and mobilize civil society forces.*** In a pre-consultation meeting, U Shwe Thein *officially* encouraged all sorts of CSOs to hold their own CSOs-led grassroots meetings before the government-led consultation process. It was a significant change in the context of state-society interaction that social forces *officially* had a chance to hold country wide public consultation meetings parallel with the state-led public consultation (LUASC 2014).

LCG’ taskforce team held over sixty policy review meetings with grassroots farmers in all states and regions. Through these meetings, LCG was managed to not only provide farmers with necessary information on NLUP prior to the government consultation but also prepare a report on the first-hand evidence of farmers’ feedback to feed up the new version of the policy (LCG- Taskforce Team 2015).

In addition, MoECAAF, LCG and Transnational Institute (TNI) jointly held a national dialogue on customary communal land tenure and rotational fallow farming systems during the consultation period. It was undertaken to reinforce the land rights of ethnic nationalities in a new version of the policy (Shwe Thein 2015).

***In the documentation of public feedback, LCG participated as a technical provider.*** LCG members supported the documentation of feedback from public consultation not only with the technology but also human resources. Documenting public voice was an important phrase in the policy making process to ensure that the voice of real grassroots farmers was incorporated into the policy. That is why TNI highlighted their concern on that issue before the consultation process:

Feedback will reportedly be collected and analysed by a policy review team, who will discard “irrelevant” comments, deliberate on how to apply any “relevant” comments, and document their decisions. This latter phase may prove to be the most critical, depending on who submits comments, the nature of the comments received, and how these get either interpreted and rejected or interpreted and reformulated by the policy review team. A lot of content could change for the better. Or, it could even change for the worse. (2014:6)

***Government's positive response to public voices on the issue of consultation period.*** With respect to the public consultation, the public called for the government to extend the period. As a response, the government extended the period of public consultation up to March 2015 while the original planned term for public consultation was from third week of October to the end of November 2014.

The responsible officer of MoECAF to LUCSA commented on the said government response that “We have heard the voice of the people and the Government has listened to this voice”.<sup>34</sup> Given that comment and other readings, the ultimate decision making power is still vested at the top level state actors while the immediate pro-reform state actors had the advisory role to them. In that situation, it is important for the achievement of pro-poor land policy that the voice of people are heard to the state actors at the decision making level.

***Realization of the inclusive participation roadmap to NLUP formulation.*** LCG under the head of chairman U Shwe Thein helped LUASC to ensure that the participation of diverse stakeholders in the formulation process goes as planned in the roadmap. LCG supported in diverse areas from encouraging stakeholders for participation in the policy formulation to the arrangement of accommodation and transportation of the meetings.

## ***Conclusion***

The outcry of grassroots farmers and their allies created the division of pro-poor group and pro-business group within the state. However, pro-reform MPs and government officers hardly mentioned the political conflict among different social classes in a formal way<sup>35</sup>; instead they hung upon the institutions, the technology and the administrative issues in attempting to resolve land disputes. At the best, it led to the reform of the institutions. At the worst, the institutions tend to become “too much land disputes focus” relying on new institutional economic way to land policy such as “class blind”, technical-oriented and market-oriented.

Fortunately, MoECAF adopted the multi-stakeholders participation roadmap for NLUP formulation. Grasping at the chance, LCG attempted to ensure that there was a space in NLUP formulation process where diverse stakeholders can politically confront each other, beyond a created space just for so-called participation. To do so, LCG strategically approached and responded to the government's initiative spaces through both formal and informal integration in the policy formulation. At the same time, it created further

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<sup>34</sup> See the link:

<[http://www.usaidlandtenure.net/sites/default/files/USAID\\_Land\\_Tenure\\_TGCC\\_Success\\_Story\\_Burma\\_Jan\\_2015.pdf](http://www.usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_TGCC_Success_Story_Burma_Jan_2015.pdf)> Accessed 20 October 2015.

<sup>35</sup> For example, there is no any mention about the political conflict between political/business elites and the very powerless people in the commission's reports even though the commission member MPs spoke out about it in the media.

spaces through mobilizing and organizing diverse stakeholders from grassroots people to national and international land experts.

## 7 HOW POWER-RELATION CHANGES WITHIN THE STATE, WITHIN THE SOCIETY AND, STATE-SOCIETY JUNCTURE THROUGH STATE-SOCIETY INTERACTION<sup>36</sup>

In the environment of national level pro-reform society, farmer “social movements” were too thin to influence a public policy formulation even though “rightful resistances” of farmers were common across the country; professional advocacy-led CSOs started to gain momentum and strength in the area of national level public policy formulation after 2011. In that setting, the government initiative participatory public policy formulation process does not automatically go to real participatory and pro-poor tendencies outcomes because of “low power equilibrium” (Fox 2005: 68) in which pro-reform state actors and pro-reform social actors contested their adversaries within both state and society.

The following are the explanation of how the balance of power has changed within state and society towards pro-reform or pro-poor tendencies through state-society interaction around NLUP formulation. The roadmap to NLUP formulation can be generally classified into two parts: before and after the public consultation. The former followed relatively an intergovernmental formulation procedure while the latter was more open to the society.

5<sup>th</sup> draft of NLUP was one resulted from many circulations within the government arena for over a year. Despite there were many junctures of state and society cooperation before and during the first phrase of drafting process where pro-reform social actors presented how and why “rural poor” should be prioritized in NLUP to achieve inclusive growth in Myanmar, the 5<sup>th</sup> draft finally came out as a policy biased in favor of the growth of private investment in land.

If one closely looks at the improvements in a series of NLUP draft, it can be found that significant improvements towards the pro-poor policy have been in the policy only after public consultations held in every region and state. This public consultation is the first time in the arena of public policy making. But, public consultations and referenda are not new to Myanmar people. There were many state-led manipulated referenda and so-called public consultations for predetermined government plans under the former governments. However, this time has made a difference in terms of both consultation processes and outcomes. *What account for this difference?*

In Myanmar, it was the first time that *autonomous* CSOs had a chance not only to monitor but also to participate in every phrase of formulation process arranged by the government. At the phrase of grassroots consultations, LCG members ensured that the real voices of grassroots farmers had reached in both consultation meetings and expert round tables through their own pre-

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<sup>36</sup> See, “Empowerment vs Rights” Fox, J. (2005: 71). He sees the power “in terms of relationships”. And “empowerment is changes in power relations in three interlocking arenas: within society, within the state, and between state and society”.

consultation meetings and reports besides government-led meetings. There were over 60 CSOs-led meetings while the government-led meetings were only 17. At the phase of consultation with experts, LCG ensured that national and international experts participated in and contributed to the policy review.<sup>37</sup> Furthermore, at the phase of documentation, LCG and USAID ensured that the feedback were systematically documented and reviewed by supplying with technical and human resources. After public consultations, NLUP formulation process became largely people-centered. The later phases of the process were led by land policy experts and multi-stakeholders consultations. U Shwe Thin remarked that “During the process, we saw experts and rights activists were able to lead consultations and make frank comments. Government officials showed patience and responded to the feedback. I feel that is quite significant” (Sandar Lwin 2015).

Those improvements and changes in the process and outcome were not in a vacuum. To explain what make NLUP public consultation different from old ones, I need to borrow the concept of “virtuous circles of mutual empowerment” between pro-reform state actors and pro-reform societal actors from Fox (2005:70).

In the phase of intergovernmental formulation, the capacities of both pro-reform state actors and social actors were too thin to put much the interests of marginalized people on the policy because of “power imbalance”. For example, pro-reform state actors who directly interacted with pro-reform social actors rarely had the authority to make the final decision. However, in the phrases during and after public consultations, the degree of power balance of pro-reform state and social actors increased because LCG and their allies managed to organize and mobilize the real voices of grassroots people, and ensured that these voices were to be heard to state executives at decision making level and other stakeholders; which in turn increased the capacities of pro-reform state actors to create the opportunity for pro-reform social actors. Here, if NLUP public consultation process got succeeded to some degree, one must acknowledge the importance of “anti-negative incentives” provided by pro-reform state actors for people who raised their real voices in public consultation meetings. Even in that circumstance, there were the situations in some areas that the participants were prohibited by the authorities from joining CSO-led meetings (LIOH 2015).

### ***Conclusion***

In Myanmar where the civil society is composed of strong professional advocacy groups and weak grassroots social movements, the capacity of societal actors to achieve pro-poor reform is relational to the availability of “political space”, that is, it will be possible, but difficult for pro-reform social actors to penetrate the state unless there was no political space. For instance, LCG found itself difficult to influence the law making when MoAI drafted FL and

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<sup>37</sup> An international legal expert who attended a national dialogue on NLUP in Naypyi Taw remarked that the conference would have been more like an intergovernmental one unless there was a diligent organization of ICG.

<https://businesshumanrightsburma.wordpress.com/2015/07/01/national-land-use-policy-consultation-in-nay-pyi-taw-a-positive-step-or-a-distraction/> Accessed 10 October 2015.

VFVLMML behind the door. An equally importance goes to the capacity of pro-poor land policy advocacy to organize and mobilize the voices of grassroots people because the work of advocacy alone is not adequate to convince state actors at final decision making level.

In NLUP formulation case, the initial capacity of LCG was strong in the areas of knowledge, technical and human resources, but weak in penetrating the authoritarian state (LCG: 2013). But “mutually empowerment interaction” between pro-reform state actors and pro-reform social actors changed the situation. At first, the pro-reform state actors opened “political space” following the democratic transition for policy advocacy societal reformists who were strategically approaching them, which in turn scaled up their power: autonomy and capacity. But, unless the social actors had not capacity to apply and enhance that space, the outcomes may be different. So, the capacity of societal actors to apply and enhance the opportunities is crucial for the achievement of mutual empowerment.

## 8 CONCLUSION

I started this paper with my interest on how pro-poor land policy has been formulated in Myanmar where the state is the ultimate owner of all land as well as the biggest land grabber; at the same time, Myanmar has undergone the democratic transition. To find my interest, I used the state-society interaction approach as an analytical lens.

The main research question that guided the whole research work was: *How and to what extent state reformists and pro-reform societal forces interact to transform Myanmar's current National Land Use Policy (NLUP) process into something that moves towards pro-reform and pro-poor tendencies and increasingly away from being outright pro-business?* It is composed of two parts: how state reformists and societal reformists interact each other and to what extent the interaction between them has been towards a land policy with pro-poor tendencies.

To support the investigation, I built three sub questions: (1) how do pro-reform social forces response and approach to the state?, (2) how do pro-reform state actors response to pro-reform social forces? and (3) under what condition pro-reform state actors and pro-reform social actors construct reciprocity relationship towards pro-poor direction?

In relation to the former part, the findings to these questions showed that the democratic transformation encouraged the emergence of pro-reform actors within both the state and society. Their interaction also became more confrontation than ever before. However, both sides of pro-reform actors still have some kinds of constraints to influence their adversaries in the arena of policy formulation. On the social reformist side, grassroots farmers' social movements and newly emerged organizations of small-scale farmers were not strong enough to represent themselves in the negotiation of policy formulation with the state actors. On the side of the pro-reform state actors, most of the pro-reform state actors who directly interacted with social reformists rarely had the decision making power because the democratic transition in Myanmar was still slow and immature. In that setting, professional advocacy social forces gaining momentum and strength under the reform took the position workable with both sides.

Therefore, the state-society integration in NLUP formulation started with the convergence of “political spaces” by pro-reform state actors and a strategic approach by advocacy societal actors. In the initial integration, the power of both pro-reform state actors and pro-reform social actors was not strong enough to influence their adversaries in drafting the policy. However, public consultation process created great changes in the balance of power within three areas: within the state, within society and in the interface of state-society. It does not mean that public consultation automatically went to power changes in those three areas. In the context of power changes, the capacity of pro-reform societal actors to organize and mobilize the voice of real farmers was crucial. The voices of people increased the power of pro-reform state actors to respond to pro-reform social actors in such a way that enhance the capacity of pro-reform social actors to penetrate the state. For instance, after public consultation, the drafting process was influenced by land policy experts and consultations.

In relation to the latter part of the main research question, the extent of state-society interaction are, here, assessed in terms of results in the policy and social relationship between state and society. There are four ideal types of state-society integration in terms of results: “total transformation”, “state incorporation of existing social forces”, “existing social forces’ incorporation of the state” and the state failing altogether (Migdal et al. 1994: 24-26). NLUP formulation case fell in the second type because the state’s land policy ideology has changed from outright pro-business one to the one more compatible with the rights of people.

In terms of social relationship, the extent of state-society interactive relationship depends on the state’s policy making structure, the political, social and technological dynamics in the context of public policy making, and the willingness and capacity of societal forces to confront with the state. The state’s NLUP formulation has two layers: drafting and finalizing. The state-society interaction at the drafting level is quite extensive while the state actors at higher level of finalizing NLUP are kept away from or behind the society. However, the capacity of societal forces to realize “open public consultation” has created “objective alliance” between higher level state actors and the society.

In all, no one would deny that NLUP formulation process was a step forward for democratic way to public policy formulation. It was not the ideal model though. Hence, the constraint of the state and the dominant class to pro-poor policy formulation is not structural as some developmental concepts hold and, is overcome by the state-society interactive cooperation even under a semi-authoritarian state.

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