An Assessment of Forest Tenure in Myanmar: Securing Forest Tenure for Sustainable Livelihoods

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WORLD BANK GROUP

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Acronyms/Glossary

CBPA	Conservation and Biodiversity and Protected Areas Law
CCNLRM	Central Committee for National Land Resources Management
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CIFOR	Center for International Forestry Research
CF	Community Forestry
CFI	Community Forestry Instructions
CSO	Civil Society Organization
DALMS	Department of Agricultural Land Management and Statistics
DRD	Department of Rural Development
DZGCP	Dry Zone Greening Comprehensive Plan
EAO	Ethnic armed organizations
EIA	Environmental Impact Assessment
FAB	Farmland Administration Body
FAO	Food and Agriculture Organization of the United Nations
FD	Forest Department
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, Prior, and Informed Consent
FSWG	Food Security Working Group
FUG	Forest User Group
GAD	General Administration Department
GIS	Geographical Information System
IDP	Internally Displaced Person
LIS	Land Information System
LSLA	Large-scale land acquisitions
LUC	Land Use Certificates
LULC	Land Use and Land Cover
MIC	Myanmar Investment Commission
MoALI	Ministry of Agriculture, Livestock and Irrigation
MoNREC	Ministry of Natural Resources and Environmental Conservation
MSS	Myanmar Selection System
NCA	National Ceasefire Agreement
NFMP	National Forestry Master Plan
NLUP	National Land Use Policy
NSDI	National Spatial Data Infrastructure
NTFP	Non-Timber Forest Products
NWFP	Non-Wood Forest Products
PFE	Permanent Forest Estate
PRIA	Principles of Responsible Investments in Agriculture
REDD+	Reducing Emissions from Deforestation and Forest Degradation

SDG
SLRD

Sustainable Development Goals
Settlement and Land Records Department

UNDREM
UNDRIP
UNEP
UN-HABITAT
USAID

United Nations Declaration on the Right of Ethnic Minorities
United Nations Declaration on the Rights of Indigenous Peoples
United Nations Environment Program
United Nations Human Settlements Program
United States Agency for International Development

VFV
VGGT

Virgin, Fallow, and Vacant
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and
Forests in the Context of National Food Security

VLMC
VTC

Village Land Management Committees
Village Tract Committee

WB

World Bank

Definition of Terms

The Forest Law (2018) and the Conservation of Biodiversity and Protected Areas Law (CBPA, 2018) are the primary laws regulating forests in Myanmar. The CBPA Law regulates protected areas (PAs) and protected species, both plants and wildlife. The Forest Law regulates Reserved Forests (RF), Protected Public Forests (PPF), plantations, logging, and the use of forest products. The three main categories i.e., RF, PPF, and PAs are under the administration of the Forest Department (FD) of the Ministry of Natural Resources and Environmental Conservation (MoNREC) and are together compose the Permanent Forest Estate (PFE), meaning that they are supposed to remain forests and not be converted to other land uses.¹ Forested land outside the PFE is under the administration of other laws and ministries, most often the Vacant, Fallow, and Virgin (VFF) Land Law (2018)² while the forests and forest products are regulated by MoNREC under the Forest Law (see Figure 1). MoNREC further regulates and limits use rights to national and regional lists of ‘reserved species’ including teak.³

In the forestry governance system of Myanmar, forests are classified as follows:⁴

- **Reserved Forests** are specifically allocated for conservation of natural forest, water and land resources as well as sustainable production of timber and non-timber products, to be managed under detailed Management Plan;⁵
- **Protected Public Forests**, are for protection of land and water resources, forests in dry zone, biodiversity and/or forest products in sustainability
- **Forested Land at the disposal of the government** means other forested land or forest outside the PFE with the exception of land in which a government department, organization, or any person has acquired rights to cultivate, possess, use and occupancy, beneficial enjoyment, heritable right or transferable right under the existing law.

Community Forestry (CF) permits (land use rights) issued to communities by the Forest Department (based on CF Instructions and relevant regulations).

Conserved forest: Multiple types of forest are included within this term. While they have different management objectives, the common trait is that these forests cannot be cleared or converted to agriculture under the customary system. Some forests are protected to maintain the water sources for agriculture plots and terraces, for livestock, for construction, for hunting, and as a safeguard in times of crisis. These areas may also have their own sub-zoning, with some areas managed for construction

¹ PFE is not defined in the law or policy, but this is the general interpretation of this international term within the Myanmar context.

² The VFF Law was also amended in 2018. Revisions included criminalizing all cultivation of VFF land after a March 11, 2019 deadline to apply for leases under the VFF Law. VFF land covers around 30% of the country, most of which is in upland and border areas that are managed by customary tenure and affected by conflict.

³ The Forest Law and Rules describe a competitive bidding system for logging permits, granted by state/regional FD for 1 year, the DG for 2 years, or MoNREC for three years. In practice, the state-owned MTE holds exclusive logging rights to RFs. There are no regulations in the Law or Rules on EIAs, public oversight, FPIC, or protections against extracting timber from customary land. The Law and Rules also regulate transport of logs and wood-based industries that process timber.

⁴ Refer to Forest Law, 2018.

⁵ In District Forest Management Plan, “working circles” are divided into felling series, which are further sub-divided into 30 approximately similar sized blocks so that each can be extracted from successively in a 30 year felling cycle.

materials and forest products, while other areas past within a set boundary are more strictly protected, including areas where entry is not allowed without permission.

Customary tenure is a set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources. It refers to traditional rights.

Farm Land refers to low land (paddy land), upland (Ya), silty land (Kaing Kyun), hillside cultivation land (Taungyar), perennial crops land, nipa palm land (Dhani), garden land or horticultural land or alluvial land. In this expression, housings, religious buildings and precincts within town boundary and village boundary and communal land that are not used for agriculture are not included. (Reference: 2012 Farmland Law)

Formal institutions are codified, created, communicated and enforced through channels of generally accepted official organizations (e.g., judiciary, legislatures, bureaucracies) and state-enforced rules (constitutions, laws, regulations). They provide a relatively predictable structure, though not necessarily efficient or uncontested, for interaction between the institutions and the public.

Grants are tenurial rights given to community forests (CF) or when a parcel is given a tenurial right (for access/use). Also, the General Administration Department (GAD) grants land for residential purposes in town areas or village lands.

Informal institutions function on the basis of socially shared rules, customs or traditions, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels. Such institutions are generally community-based and driven by community-specific practices and customs. While a stable formal institutional framework is a pre-condition for sustainable forest tenure administration and management, community-driven informal institutions play a crucial role in the Myanmar forest sector

Informal tenure is an umbrella term for tenure systems that are not formally recognized by the state within the legal system. This can range from de facto rights obtained by long-term occupancy, to well-established customary systems of tenure.

Land at the disposal of Government refers to and means (a) land in respect of which no person has acquired a land-holder's right; (b) land in respect of which no person holds any right created by grant or lease made by or on behalf of the Government. (Reference: The Lower Myanmar Town and Village Lands Act, 1899; amendments of 1953, 1989 and 2015).

Lands of religions and educational institutions are land areas that belong to the site of a monastery, pagoda or other sacred building, or of any school, and continuing to be used for the purposes of such monastery, pagoda, building or school. (Reference: The Land Revenue Act (February 1, 1879 and amendment of March 25, 2015).

Mine land refers to and means place, excavation or worksite where mining is carried on or various operations, building land, machinery and equipment connected with mining or mineral processing at any place contiguous to such place of mining excavation or worksite. The said expression also includes quarries where industrial mineral and stone are mined. (Reference: The Myanmar Mines Law (1994), amendment on 24.12. 2015)

Non-timber forest products (NTFPs): Permits needed for commercial use. The Ministry may determine the number/quantity of each forest produce extracted for domestic or personal use not on a commercial scale without a permit.

The current rules could potentially be revised to recognize customary use without a permit, though it's not clear if the right to make management decisions could also be recognized, which is an essential part of customary tenure rights.⁶

In addition, the current Forest Rules authorize the Director General (DG) the power to determine the allowed quantities of each category of forest produce allowed to be extracted without a permit. No NTFP use is allowed without this permission from the DG or a permit for extraction from the FD

Permit is an agreement (or license) issued by the Ministry that authorizes concerned person/organization to use the specific land area and for a specific duration of time.

Private forest: Forest that is intensively managed by a household, often to produce fuel wood and construction materials. These may be hardwood, pine, or mixed hardwood-pine stands. They are usually located near the village. The family or clan manages such forestland area for many years, and the forestland has a very high value. The family or clan must grant permission to allow someone from outside the group to collect produces from the forest. In some villages, according to local traditions, the households can sell forest produces outside of the village. In case of disputes, the community leader mediates in accordance with customary systems.

Reserved tree species growing in any location: The use of reserved tree species is further restricted, including teak and valuable hardwood species.

Risk communication refers to the exchange of real-time information, advice and opinions between experts and people facing threats to their tenurial claims, economic or social well being. The ultimate purpose of risk communication is to enable people at risk to take informed decisions to protect themselves and their loved ones.

Risk mitigation plan is designed to eliminate or minimize the impact of the risk events—occurrences that have a negative impact on the project. Identifying risk is both a creative and a disciplined process.

Sacred forest: Forests that are the location of cultural, spiritual, or ceremonial ritual sites, with special protection because of cultural beliefs. These forests may be any size. There are multiple sacred forests. The forests around salt streams are also sacred, but are classified as salt streams in some of the maps and data held by the local authorities because of their ecological importance.

State land refers to and means all land of which no absolute and revenue-free grant has been made, recognized or continued by or on behalf of the Government. At times, such land areas are also referred to as 'public lands' (government-held lands).

⁶ According to the section 7 sub-section d of the Forest Law (2018), the Ministry may recognize the natural forest and mangrove traditionally conserved by the local community according to the customary practice. Community conserved protected area (CCPA) is seen as a possible solution for ethnic communities, who reside in the forested, remote locations. For instance, the communities could propose and request FD to designate particular sites as CCPA along with a management proposal and plan. The proposal should indicate their tenurial claims and customary governance system in the plan. The said proposal will be reviewed by FD and endorse it subject to environmental and social considerations. Once the area is officially designated as CCPA, communities will have formal rights to use the resources and conserve them in accordance with their local traditions.

Town refers to an area declared by the President of the Union by notification to be a town for the purposes of this Act, or constituted a municipality or town for the purposes of the Municipal Act or of the Towns Act (Reference: The Lower Myanmar Town and Village Lands Act, 1899; amendments of 1953, 1989 and 2015).

Village refers to an area appropriated to dwelling-places not included in the limits of a town.

Woodlots are similar to private forests, but managed primarily for timber and with more specific rules about how they should be managed. A household, community, or other local organization can manage woodlots. Timber from woodlots could be sold to raise money for the community, for example to build a school. Woodlots also include bamboo stands, which may also be used as building material.

A C K N O W L E D G M E N T S

This Report was prepared by the *Myanmar Working Group on Forest Tenure Assessment* under the overall guidance and supervision of the Minister, Ministry of Natural Resources and Environmental Conservation (MoNREC) and Director General and senior officials of the Forest Department of MoNREC of the Union Government of the Republic of Myanmar. The Myanmar Working Group on Forest Tenure Assessment is led by U Than Naing Win and its members are: Zar Chi Win, Tin Hnaung Aye, Zin Phyoo Han Tun, Thet Oo and Hnin New Soe (all from FD/MoNREC). U Shwe Thein of the Land Core Group and Shivakumar Srinivas (Lead Expert assigned by the World Bank) facilitated the assessment process and provided technical inputs.

In preparing this Assessment, the Working Group coordinated closely with, and benefited from, the valuable inputs, reviews, and support of officers and staff from Forest Department and various other ministries and government agencies in Nay Pyi Taw and different States/Regions. The scope and form of this report evolved in the course of a number of brainstorming discussions and workshops held at different times between September and December 2019. We want to thank the Directors of the Mandalay and Bago Regional offices of the Forest Department and participants in the two States/Regions' workshops held in November and December 2019. A number of civil society organizations and individuals have contributed to the discussions and their inputs are thankfully acknowledged.

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The photographs and images used are courtesy of: U Chit Hlaing Win of FD/MoNREC and Shivakumar S. The references, sources and citations in all of the Sections are mutually inclusive.

Secure forest tenure and resource rights⁷ are as essential to food security and environmental protection as sustainable economic development and other elements of good governance. They reduce poverty, increase food security, and ensure sustainable forest management. Many of Myanmar's poorest are dependent on forestland and related resources to sustain their livelihoods. However, rights to land, forests, and related resources are often dictated by political and economic interests. Reforms in laws and regulations over the past decade aimed to generate improvements in local benefits and livelihoods and foster incentives for sustainable land use and management. However, these reforms have been limited in scope and implemented with mixed results. Increasing and competing demands for forestland and resources to meet economic development needs have only increased insecurity.⁸ Failure to take into account multifaceted customary rights systems have, in some cases, fueled fresh conflicts and disempowered local people. External threats persist, resulting in large-scale land-use changes. Social inequalities exacerbate the disempowerment of the poor and of women and ethnic groups.

I. Forest Tenure Assessment

OBJECTIVES OF THE ASSESSMENT

Building on several ongoing reform measures and public consultations, this assessment is being undertaken by the Forest Department (FD) of the Ministry of Natural Resources and Environmental Conservation (MoNREC) to contribute to debates on forest tenure in Myanmar and is financed by the World Bank office in Yangon. It will also serve as input for the government's policy reforms and its national strategy on rural development engagement within the context of forest tenure. The overall goal of this assessment is to outline an improved approach and policy roadmap to strengthen forest tenure. This will enable enhanced government interventions, better services, improved risk-management in rural development, and better livelihoods for forest-dependent rural communities. It is being undertaken within the global framework and international principles on forest tenure and governance.⁹

⁷ **Forest tenure** is concerned with who owns forestland and who uses, manages, and makes decisions about forest resources. It determines who is allowed to use which resources, in what way, for how long, and under what conditions, as well as who is entitled to transfer those rights and how. **Forest rights** may be shared in numerous ways between people and are often seen as a bundle of rights to: access, use forest products, make management decisions, exclude other users, and sell or lease. However, not all rights are exercised and not all of those who gain access to resources have rights (CIFOR, 2014).

⁸ Increasing deforestation, expanding population and the rapidly growing demand for timber and energy plants contribute to this situation.

⁹ Refer to the preliminary global framework along with tools and methodology elaborated in "Securing Forest Tenure Rights for Rural Development: An Analytical Framework" (2019) developed by PROFOR Team, the RRI.

APPROACH AND METHODOLOGY

The assessment was carried out between September 2019 and January 2020. It is supported by a seven-member working group, which includes five officials assigned by FD/MoNREC, an independent facilitator, and a consultant. The assessment has four phases:

Phase 1: Review and revision of the global FTA framework to fit the context and conditions in Myanmar (September-October 2019).

Phase 2: Review of existing research and synthesizing of critical policy, legal, institutional, technical, social, and other issues and lessons learned (September to mid-October 2019).

Phase 3: Preliminary consultations with experts from among government and civil society organization (CSO) stakeholders (late-October 2019). Two multi-stakeholder state/region consultations were conducted in Mandalay and Bago on November 27-28 and December 3-4, 2019, respectively. A summary of the preliminary findings and conclusions was presented at the National Multi-Stakeholders' Consultations and Validation Workshop (February 18-19, 2020) for further deliberations.

Phase 4: Finalization and dissemination of report, incorporating all comments and suggestions (March 2020).

This assessment does not undertake any new primary research. Data was gathered from MoNREC's different divisions, other ministries, various stakeholders, and through multi-stakeholder consultations, and desktop research. This helped identify gaps and areas for potential engagement.

THE FTA PROCESS IN MYANMAR

The pilot process in Myanmar differed significantly from the global one (and from those in Zambia and the Democratic Republic of Congo). The Myanmar process was led by a working group of FD officials and supported by the land core group and a technical specialist assigned by the World Bank. After several consultations with the government and CSOs, the working group determined that the global Forest Tenure Assessment Tool (FTAT), which had a strong theoretical foundation, would not be ideal for an assessment of community-based forest tenure in Myanmar. Importantly, sporadic political and civil strife continues in several parts of

Myanmar as the government and ethnic armed organizations (EAOs) are engaged in protracted peace dialogue. Colonial legacies, a highly complex historical and cultural background, and parallel institutions administered by EAOs make matters worse. On the positive front, ongoing peace dialogue and policy discussions regarding reforms to forest and land rights and regulations provide a background to the FTA work.

It was determined that a more participatory assessment process grounded in local context and using the appropriate language and concepts would be most successful in clarifying the status of forest tenure security in Myanmar. In addition, the Working Group believed that scoring against a global framework would not lead to consensus among government and CSO stakeholders. As such, the Working Group pursued a rather lengthy process of (i) “reviewing and unpacking” the global FTAT toolkit and indicators, and (ii) crafted a new and distinct set of themes and indicators to reflect local circumstances in Myanmar. The World Bank team in

Myanmar was supportive of this process and provided the working group considerable independence in carrying out their work.

The different stages in the Myanmar implementation process that are typically not in the global FTAT:

- 1) Revising Global FTA framework: From October 2019 to end-January 2020, over 27 days, discussions covered the reviewing/revising of the global framework, translating and refining it, and establishing a participatory process for each stage of the assessment. The national counterparts of the FTA Working Group and the National Facilitator met with the Working Group and put in over 18 days of work to ensure consistency and coherence of the framework and its applicability to Myanmar. The International Technical Specialist put in 27 additional work days. In total, the process required around 150 work days of the national team members (via Working Group) and 57 days of the International Technical Specialist. This was essential to develop a refined, contextual FTA framework, step-wise processes, and indicators. Throughout this period, several bilateral interviews and discussions were also held with the FD and other government departments, and CSOs.
- 2) After substantial preparatory work, the Working Group organized two regional consultation workshops (in Bago and Mandalay, in Nov/Dec 2019), where over 100 participants deliberated on forest tenure issues and provided preliminary comments on the FTA's themes and indicators.

In all, the highly collaborative, process-based approach encouraged local ownership and was well received by government and CSO stakeholders at the National Multi-Stakeholder Consultation and Validation Workshop held in February 2020. Discussions on community-based forest tenure have been of interest for several years in Myanmar, and stakeholders felt this process had created value by bringing key people together to discuss issues against the backdrop of a structured framework.

Box Item 1

The Working Group prepared a two-page “concept note” on FTA for the two State/Regions’ workshops. Inputs from CSO consultations convened earlier helped to develop the agenda for these workshops. The workshop agenda included 40 percent time allocated for “open space” deliberations. The workshop participants were selected through consultation with relevant stakeholders and CSO networks. At both States/Regions’ workshops, the FTA’s six themes were introduced for detailed discussions, focusing on the big picture and in the context of ground realities. The process allowed an exchange of experiences. It helped identify issues to be addressed as a priority in the sustainable management of forestland and resources within the context of forest tenure. The indicator list was introduced only at the National Workshop held in February 2020.

The National Multi-Stakeholder Consultation and Validation Workshop was held in Nay Pyi Taw on February 18-19, 2020. On day one, four presentations summarized the preliminary findings of the Myanmar FTA. Deliberations focused on forest tenure by highlighting (a) critical challenges in building a transparent and sustainable system; (b) stated priorities of government, communities, and CSOs; (c) relevance and importance of initiatives for strengthening forest tenure; and (d) areas for further exploration and dialogue. On day two, FTA indicators were introduced. Participants were divided into six groups (theme-wise) and asked to discuss and score each indicator/parameter. At the plenary, each group presented their scores for further discussion. Participants also reviewed early findings and recommendations of ongoing work and examined how the government and its development partners can continue to promote policies, procedures, and guidelines for a sustainable tenure system.

The workshop provided an opportunity for participants to interactively learn from local, regional, and global best practices in sustainably setting up building blocks for the protection and recognition of forest tenure in Myanmar. As a follow-up, the FD/MoNREC, in collaboration with the development partners and civil society stakeholders, will further develop and implement recommendations proposed for the way forward.

Myanmar's revised framework and process demonstrated that a participatory approach allows all stakeholders to better understand the outcomes of their involvement in an assessment, increases local ownership, and reflects real needs with a special focus on forestland and resources that are critical for lives and livelihoods. It also proved that building on existing tenure security awareness has helped make significant progress in achieving nationally prioritized socio-economic development objectives and sustainable development goals too. The FTA has sustainably created and disseminated knowledge on protecting and recognizing forest tenure, legitimized by the involvement of communities, stakeholders, and public administrations, and capable of influencing policy processes. However, replicating the Myanmar process demands higher technical and financial inputs. There are no shortcuts to better policy-making. This preliminary report summarizes the assessment's initial findings and conclusions and aims to serve as a platform for further discussions at the National Multi-Stakeholder Consultation and Validation Workshop convened to discuss issues confronting forest tenure and identify gaps and challenges. The report is divided into four sections: current conditions in Myanmar; a brief overview of the assessment (objectives, methodology, and timeline); the six key themes, that is, the extent and nature of the key challenges encountered; and a brief conclusion of the trends and some ongoing efforts that seek to address several tenure issues.

II. The Context

Forests are an important economic and social resource, critical to the culture and livelihood of communities across Myanmar. Close to two-thirds of Myanmar's rural population of 54 million is dependent

on forestland and resources.¹⁰ Forest resources are key secondary income sources for more than half the rural population, and close to two-thirds of rural energy demands are met by traditional forest fuels.¹¹ Hence, forest-dependent rural communities need secure access and use rights to forestland and resources. Acknowledging this situation, discussions on forest tenure will have to recognize the importance of social, cultural, historical, and political influences, as well as those of technical and legal systems.

Community-based forest tenure prevails across the country. Historically, rights to land and forest resources were embedded in the social structure and governed by customary traditions. Customary tenure remains the dominant form of *de facto* access to and use of forestland and resources across Myanmar. Most locally accepted customary systems allow for a complex mix of individual, family, and community tenures even in urban and peri-urban areas. Across the country, more than half of all landholdings are held, without formal titles or certificates, in accordance with customary practices.¹² However, the actual areas occupied/used/accessed largely remain unmapped, un-demarcated, un-quantified, and most frequently, unprotected, with encroachment and “illegal uses” reported in all areas.

In 2019, Myanmar completed a decade of historic transition. Since 2011, simultaneous transformations are taking place in the country's institutional, land, and forest governance structures, reforming its economic, political, and social spaces, and seeking peaceful solutions to civil conflicts and the long-running demand for tenurial reforms. These shifts are part of a well-negotiated, long-term process and progress includes adoption of the National Land Use Policy (NLUP, 2016) and revisions to Forest Law and Conservation of Biodiversity and Protected Areas (CBPA) Law (2018). However, several reform measures have been widely contested, as rural people continue to

demand protection and recognition of customary tenure and shifting cultivation practices. Meanwhile multiple ethnic armed organizations continue to battle for greater autonomy and seek to shape the future of an eventual federal state. This transition is redefining the social contract between the State and its people, and the relationships between different communities in upland and lowland areas. Decision-making remains rather centralized and popular perceptions on exclusion along ethnic and geographic lines have fueled grievances regarding access to land and resources, underscoring the nation's fragility as it undergoes transition. Frequent disputes, often around access and claims to natural resources, in Kachin, Shan North, and Chin States and in Tantharayi and Sagaing regions further expose the limits of the current reform processes.

Access to formal land tenure administration services is historically low. In Myanmar, this largely affects populations in

¹⁰ Refer to Central Statistical Organization of the Republic of the Union Myanmar refer to Department of Population's website at: www.dop.gom.mm.

¹¹ Refer to: <http://www.eria.org/publications/myanmar-energy-statistics-2019> highlighted that most rural households use traditional biomass, particularly for cooking.

¹² There is no formal or reliable data available. However, field research completed by different institutions have generated 'proxy' data on which this estimate was based. In Myanmar, almost 50% of privately held land parcels (excluding concessions and leases) are categorized as “customary rights” and include households residing inside or outside forest areas, where social traditions guide land tenure arrangements. In many rural areas, inheritance and sub-divisions are not registered but informally held.

parts of Kachin, Kayah, Kayin, Mon, Shan, and Rakhine States and Tantharayi, Sagaing, and Magway regions. During decades of active political-civil strife, most ethnic populations in conflict zones could not access government services since these were not provided, or because security, topography, or displacement made it impossible. As a result, community-based customary tenurial practices continued without much change or challenge.

Ongoing peace negotiations hinge on agreement between the Union government and EAOs on power-sharing agreements and division of responsibilities over forestland and natural resource governance. For ethnic nationalities and EAOs, building a stronger “independent, stand-alone” tenure-administration system (both for forest and non-forest) is desirable and consistent with their political pursuit of local autonomy under the proposed federalist structure. In contrast, the union government sees replacing local systems with a unified national system as a path towards unification. It has been

argued that neither position, however, would bridge the gaps in tenure security. Although most communities use outdated technologies to measure/map land areas, their existing customary tenure systems are often well understood. Communities can challenge formal systems only because CSOs provide them many technical support functions. A complete replacement of customary practices, without building public awareness and capacities on the new systems, would leave a vacuum in local arrangements and knowledge — a gap that CSOs alone might not be able to fill. That vacuum could deliver a body blow to local communities and its negative impact could persist. Exploring a model with both systems co-existing and complementing each other seems promising. Forest tenure should primarily be viewed as a social relationship with complex rules that govern land use and ownership.

Figure 1. Tenure through Different Political Eras

Pre-British era

- Ethnic nationality groups governed land and resources based on local traditions.
- No restrictions but very minimum and occurred within the community (no land market).
- Communities paid small amount as revenue.

British era (1824-1948)

- Customary practices “allowed” and continued without restrictions. The concept of “disposable land by the State” was introduced. Grant or Lease Certificate issued for “other land uses”.
- Transfers were community-monitored and driven. State started to ‘own’ forest areas (for extraction started) and all the disposable land. Government introduced Form 105 for legally certified land maps..In cities ‘Deeds’ system stabilized
- A small amount of annual tax levied on farm land as well as residential land in some towns. Fees for deeds transfers etc imposed

Post-independence (till 1962)

- State declared as the ultimate owner of all and resources BUT customary practices allowed with some formal restrictions.
- Transfers continued to be community-monitored and driven. Legally not permitted sell, mortgage of farm land. State began to declare its rights over large tracts of forest land. Minor evictions started.
- A small amount as farmland use tax continued.

Socialist era (1962-1989)

- State ownership reinforced and further restrictions on customary tenure imposed and forcibly confiscations reported.
- The concept of ‘encroachment’ (or squatters) introduced. Form 105 certification of land maps continued and those certificates can be used as collateral to secure a loan.
- Tax rates remained same and continued for farmland. When cash economy crippled towards end 1980s, Government introduced ‘in kind’ taxes and collected crop produces. But due to difficulties in storage etc this was discontinued and cash taxes insisted.

Military era (1989-2010)

- Government imposed formal restrictions on access to land by communities. Customary tenure was ‘tolerated’ but measures in place to discourage it. Concept of ‘encroachment’ was strengthened. Government softened that with ‘Wasteland instructions’ (for CFs) but that procedure was used by elites to grab land too.
- Transfers started to be monitored by the Government but still communities not that restricted. Large-scale evictions and confiscations reported. Form 105 certification continued.
- Taxation continued. Higher rates imposed for large-scale permits and concessions.

Since 2010

- VFV Law and Farmland Law 2012 introduced. Land Use Certificates for farmland issued in 2014-15 period. No certificates or titling for other land areas (except concessions, permits etc). Under VFV law ‘unclassified’; forestland emerged as an issue. Government steps to gradually existingish customary rights challenged.
- LUCs replaced Form 105 since 2016 as collateral.

Box Item 2. Drivers of Deforestation and Degradation of Forests¹³

Between 2010 and 2015, Myanmar lost about 1.3 million acres (or close to 550,400 hectares) of forest every year, the third highest rate of deforestation in the world. The main drivers of this rapid deforestation include: agricultural expansion, illegal logging, infrastructure development, energy, and mining, including artisanal and small-scale mining. Deforestation has been highest in districts with oil palm concessions. In addition, Myanmar has experienced frequent crop failures following which additional forestland was cleared for farming. Available data showed that close to one million acres of forest were lost to agricultural expansion alone. Mangroves have also declined significantly, particularly in Ayerwaddy and Rakhine areas. FD information indicates that in 1980 Myanmar had 1.74 million acres of mangrove, but by 2013 only had 738,575 acres indicating a loss of about one million acres over the 33-year period.^{14 15}

Forest Cover Status	Area (,000 ha)	% of total country area
Closed forest	14585	21.56
Open forest	14456	21.36
Total forest	29041	42.92
Other Wooded land	15080	22.28
Others	21634	31.97
Water body	1903	2.81
Total	67658	100

Permanent Forest Estate (PFE)	Area (acres)	% of total country area
Reserved Forest (RF)	29,619,415	17.82
Protected Public Forest (PPF)	11,718,243	6.97
Protected Area System (PAS)	9,607,490	5.75

¹³ References: FD's REDD+ Readiness Report of 2017, FAO (2015). Global Forest Resources Assessment and others (list out).

¹⁴ Nyi Nyi Kyaw, 2015. Forests and Forestry in Myanmar: Meeting the Challenges in the 21st Century. Powerpoint Presentation by the Director General of the Forest Department.

¹⁵ Refer to Myanmar Environmental Rehabilitation-Conservation Network, MERN (2018 and 2012) and also Estoque CR et al (2018). Assessing environmental impacts and change in Myanmar's mangrove ecosystem service value due to deforestation (2000-2014), in *Global Biology*, July 2018.

(Box Item 2 continued) Forest Cover During the Period 2000-2015

It is widely acknowledged that government responses for strengthening forest tenure have not been able to keep pace with the challenges triggered by widespread deforestation. Such responses must consider the needs of local and ethnic communities living on Permanent Forest Estates (PFEs) or non-PFE, forest-edges including Virgin, Fallow, Vacant (VFV) lands. These communities now represent a significant and increasing proportion of total rural and forest-dependent populations in Myanmar. Misguided policy and regulatory frameworks, slow progress of peace negotiations, bureaucratic inertia, and lopsided political economy, invariably conspire to inhibit progress of forest tenure reforms. Mistaken confidence in so-called “simple solutions” to challenges triggered by complex forest tenure has failed to address the diversity of legal, cultural, economic, and political systems within which forestland and resource tenure rights operate in the country.

Box Item 3

The Forest Law (2018) and the CBPA Law (2018) primarily regulate forests in Myanmar.¹⁶ The Forest Law regulates Reserved Forests (RF), Protected Public Forests (PPF), plantations, logging, and the use of forest products. The CBPA Law regulates Protected Areas (PAs) and protected species, both plants and wildlife. However, at present, the government is framing rules for both laws, which are expected to be adopted only in 2020. Till such time, existing rules and guidelines will be in force. Forested land outside the PFE is under the administration of other laws and ministries, most often the VFV Land Law (2018)¹⁷ while forests and forest products are regulated by MoNREC under the Forest Law. MoNREC further regulates and limits use rights to national and regional lists of “reserved species” including teak. MoNREC through the Department of Mines regulates mining of minerals and gemstones while the General Administration Department (GAD) is responsible for regulating quarrying of construction materials such as limestone.

Since 2010, the Myanmar Government has revised its forestland and resource policies, laws, guidelines, and regulations to provide greater recognition of tenure security including protection of rights of ethnic communities and women [Farmland Law, 2012; NLUP 2016; Mines Law of 2015; Myanmar Investment Law 2015; Forest Law 2018; CBPA Law 2018; Land Acquisition, Resettlement and Rehabilitation Law of 2018, revised Community Forestry (CF) Instructions of 2016 (further amended in 2019)]. In addition, it established the NLUP Council (2018) to move forward on broader sectoral agenda. These initiatives aim to generate economic and social gains and incentivize sustainable forest use and management.

¹⁶ A complete list of all references is presented in the Bibliography/References Section.

¹⁷ The VFV Law was amended in 2018. Revisions included criminalizing all cultivation of VFV land after a 11 March 2019 deadline to apply for leases under the VFV Law. VFV land covers around 30% of the country, most of which is in upland and border areas that are managed by customary tenure and affected by conflict.

III. Securing Forest Tenure: A Summary of Preliminary Findings

The Myanmar FTA Working Group reviewed the global framework and revised it to suit Myanmar's local context and conditions. It included integrated methodologies for assessing the *current status* of and *future* needs in terms of tenure security. A set of **six themes** was prepared to examine different aspects of community-based forest tenure. The themes focused on a) assessing the status of community-based forest tenure security¹⁸ and b) the presence and extent of **key elements** for securing and protecting forestland and resource rights of local and ethnic communities in Myanmar. The six themes were then elaborated with a disaggregated set of "focus questions" to enable

participatory diagnostic assessment of the strengths and weaknesses of current forest tenure frameworks, capacities, and implementation processes in the country. Based on the results, the current status of each element/theme will be benchmarked for future policy dialogue and monitoring.

The FTA Myanmar framework emphasizes a participatory process that engages key rights-holders, stakeholders, and decision-makers through a structured process and dialogue. This is grounded in the recognition that accurate understanding and successful reforms require inputs from multiple perspectives and a process that promotes dialogue and the building of consensus and positive momentum. Central to this participatory methodology is a workshop that enables stakeholders to build a common understanding of strengths, weaknesses, and opportunities for change. It also responds to particular needs identified by the government and CSOs, to enhance responses to tenure-related challenges in policy.

Theme 1	{	• Policy and legal/regulatory environment
Theme 2	{	• Institutional framework (formal and informal)
Theme 3	{	• Tenurial rights to forests and related resources (in Permanent Forest Estate (PFE) and non-PFE areas; formal and informal)
Theme 4	{	• Forest tenure data/Records management
Theme 5	{	• Grievances and dispute resolution mechanisms (formal and informal)
Theme 6	{	• Safeguarding forest tenure rights (of local and ethnic communities; formal and informal)

¹⁸ A particular issue is that rights to forestland and trees are often dealt with separately through distinct (land and forest) laws. Legal recognition of rights to land in some countries does not automatically convey rights to trees or other land-based resources. Conversely, forestry laws recognizing rights to forests may not encompass rights to land.

THEME 1: POLICY-LEGAL CONTEXT AND ENVIRONMENT FOR IMPROVING FOREST TENURE

This theme discusses the evolution of current national policies relating to forest and natural resource governance and their protection and identifies some critical gaps and opportunities. It highlights different stakeholders engaged in policy and legal development and scrutinizes different rights and their connection to other challenges such as peace and reconciliation, women's rights, and federalism.

Community traditions and practices in tenure management remain strong. Despite efforts at national-level governance, community-based traditions and practices evolved over several decades continue to guide forest tenure. Such traditions are stronger in upland areas where shifting cultivation practices are common and also in ethnic areas and dry zones, where rotational fallow arrangements are the norm. A firm rule for all village-based customary communal tenure arrangements in Myanmar has been that no land can be given, lent, or sold to an outsider.¹⁹ Seasonal and secondary rights to forest resources are provided in Article 17 of the Forest Law of 2018 but few

mechanisms/procedures exist to protect them. (Refer to Indicators 1.1 and 1.2).²⁰

Myanmar's forestland and resource policy/regulatory framework has multiple, overlapping regulations and guidelines, creating ambiguous, often contradictory provisions. These create administration and management systems with overlapping authority and jurisdictions for governing forest tenure in PFE and non-PFE areas. At present, at least 44 statutory laws and regulations govern the land and resources sector; 20 of these apply to forest administration and management.²¹ Further disorder comes from multiple layers of parallel and contradictory implementation arrangements that are difficult to manage and largely unpredictable. This environment triggers exclusion and aggravates existing conflicts/disputes and leaves an atmosphere of distrust. Additionally, contested governance arrangements, centralized decision making, institutional conflict (both among formal and informal entities), poor service provision, and limited accessibility present the most significant challenges to advancing secure forest tenure for rural communities. This means multiple layers of laws exist simultaneously, creating conflicts and legal contradictions.²² As a result, forest tenure and resource governance remain ambiguous. Addressing these issues is at the center of forest tenure reforms.²³ (Refer to Indicators 1.1, 1.4 and 6.1).

¹⁹ Such practices are widespread in almost all states/regions but stronger in Shan state. In addition, Current legal frameworks adequately allow for ethnic communities to sustainably manage their forest areas.

²⁰ Refer to Annex III for the tentative List of Indicators. This list will be further discussed at the National Workshop.

²¹ Refer to Annex 2 for a list of Policies, Laws and Regulations that affect land sector in general and forestland and resources in particular. This list was prepared based on a presentation by Dr Swe Swe Aung (Office of the Union Attorney General) delivered at the October 2018 NLUP Forum.

²² Mark. S (2016) describes the situation as “fragmented” legal administration. Refer to: Mark, S. (2016). Are the Odds of Justice “Stacked” Against Them? Challenges and Opportunities for Securing Land Claims by Smallholder Farmers in Myanmar. In: *Critical Asian Studies* 48 (3), P. 443–460.

²³ As a short-term solution, in 2013, the government passed a one-time executive order requiring the FD to de-gazette 1,213 villages with 50 or more households residing in permanent forests and convert the forestland to settlement and agricultural land, leading to a removal of 345,889 acres from permanent forests. However, the de-gazettement and associated issuance of tenure rights to communities is slow and tardy. The reasons attributed include (i) lack of standard procedures and training for local staff; (ii) DALMS can issue rights only to farmland parcels while residential land should be recognized by GAD, and (iii) numerous unresolved conflicts that the de-gazetting process could not address readily.

That said, Myanmar's forest policy is gradually shifting from promoting the trade of forest products to balancing sustainable production of forest products with addressing tenure rights, biodiversity, and climate change. This is reflected in Myanmar's biodiversity strategy and action plans, its environment policy, Reduced Emissions from Deforestation and Forest Degradation (REDD+) action plans, Myanmar Investment Law (2016), revisions to CF Instructions (2016, and amendments in 2019), and most recently, the commitments made at the Panglong Union Peace Conference (2017). The Forest Law 2018 recognizes tenure rights to forests and allows reclassification of forestlands to accommodate actual use, but implementation is pending. (Refer to Indicators 1.1 and 1.4).

Box Item 4

A recent report from Karen region noted that several small-scale customary land owners had lost their lands and were subjected to judicial harassment as the registration deadline under VFV Law neared. Between 2015 and 2019, several people in Thandaunggyi Township were sued and ultimately fined for trespassing on lands they used to own under customary practice. These had previously been minor forest areas and were later declared VFV land by Agricultural Manager Aung Kyaw Oo, of the Ministry of Industry No. 1. A woman from the village explained: "This is our land, but they are saying that it is VFV land now. Now, if you go and look, there are bamboo trees which we planted to mark our land areas. The lands were destroyed, but the [bamboo] fences still remain. [...] This is our fence, our village and our home. They told us that we went into their land and destroyed things, so they prosecuted us in court."

A section leader from Thandaunggyi Township explained that, in November 2018, the Myanmar government notified local authorities about the creation of a reserved forest in his area: "There was no meeting or negotiation with the local people. We also did not get a prior notification letter." If fully implemented, the new reserve area will have disastrous consequences for the population of several villages, as it would prevent them from living and working on their customary farmlands located inside the reserved areas: "They are ready to start the process but we do not know anything. [...] The letter that they released said that if anyone trespasses, enters the limited areas, cuts the bamboo or cleans/burns the hill farms; they would be prosecuted or fined. If the local people burn the fields, they will be punished as well. There are many villages, and plantations with many kinds of plants and crops in those areas."

Lack of a uniform land and land-use classification system is impeding progress.

Efforts to modify land-use classification have had limited success. At present, at least three different sets of inconsistent and overlapping criteria classify land use (refer to categories in NLUP: farm land, forestland, and other lands). Additionally, multiple customary or informal tenure arrangements apply different land-use methods in upper and lower regions with many communities using local categories for identifying land uses. For example, Department of Agricultural Management and Statistics (DALMS) of MoALI has two types of classification,

including 22 major land-use types, and land quality based on productivity of land, particularly agricultural land, e.g., for paddy (R1, R2, R3, etc.) and for Ya land (Y1, Y2, Y3). FD/MoNREC does not use this categorization. In upland areas, land classification is further complicated by a history of internal conflict, which has repeatedly displaced, settled, and displaced people. Such differences have created numerous challenges in confirming the tenurial rights of communities and in allocating land for development. (Refer to Indicators 1.4 and 2.5).

Since 2010, progress has been made in reforming policy and regulatory frameworks to formalize customary laws and strengthen forest tenure but “legal pluralism prevails” and serious gaps remain. Articles 3 and 37c of the Constitution of 2008 provide a framework for harmonizing formal and socially accepted informal tenure systems. The government has made efforts to revise its land and forestry policies, laws, guidelines, and regulations to provide greater recognition to customary and local authorities, ethnic rights, and women’s rights through different instruments and programs (e.g., Farmland Law 2012; NLUP 2016; Forest Law 2018; CF Instructions 2016, revised in 2019; and ongoing public consultations on drafting rules for the CBPA

Law and the Forest Law). Recently, the government also mandated the National Land Law Formulation and Law Harmonization Working Committee, with the Union Attorney General as facilitator, to prepare an umbrella land law. This is seen as an opportunity to break new ground. However, enforcement and details on operationalizing these policies and regulations remain nebulous and several of them have not yet been enforced. For example, the progress of several positive provisions in NLUP is hampered by amendments to VFV Law of 2018, particularly provisions of Article 30A. (Refer to Indicators 1.1, 1.4 and 2.1).

The control, management, and ownership of land and natural resources between States/Regions and Union governments, are central to peace negotiations and federalism.²⁴ Security of tenure and resource access is intertwined with opportunities for peace, as they are at the center of longstanding struggles to secure equal rights and self-determination. Protracted armed conflict has led to a complex framework where the State and informal actors, along with community-based entities, manage resources in diverse settings. Over the past 60 years, the uplands, where forests are predominantly located, have been marked by armed conflict and evictions of individuals and communities from their traditional lands. The National Ceasefire Agreement (NCA) acknowledges the need for Myanmar to move to a federal system of government, but so far, only about half of Myanmar’s EAOs have signed it, and its slow progress is impeding resource governance.²⁵ (Refer to Indicators 1.3 and 1.4).

²⁴ Myanmar has two kinds of revenue mobilization and budget allocations: one, by the union government, and another by states/regions. For further details refer to Minoletti and Sandi (2018).

²⁵ Actual data on total number of EAOs who have signed the NCA is provided by the National Reconciliation and Peace Center. For updates, please refer to its website: www.nrpc.gov.mm for further details.

THEME 2: INSTITUTIONAL ARRANGEMENTS FOR ADMINISTERING/MANAGING/GOVERNING FOREST TENURE

This theme examines the regulatory environment governing land tenure in forest areas; the evolution of both formal and informal mechanisms for resolving conflicts on tenure; and the manner in which overlapping mandates affect the successful resolution of conflicts and challenges.

Myanmar's forestland and resource governance is characterized by multiple agencies with similar or overlapping mandates and responsibilities.²⁶ Currently, the FD/MoNREC, the GAD and DALMS/MoALI play a major role at all levels of non-forestland administration. The FD/MoNREC assumes primary responsibility in areas designated as forests and in protecting the land and resources under their jurisdiction from encroachment and squatting. At the state/region and township/district levels, the GAD acts as the union government's representative, helping to coordinate the work of different departments and agencies, and issuing grants/permits for specific land uses (Refer to Annex 1 for a summary of roles and responsibilities of different ministries and agencies in land administration). In addition, since the 1960s, the military has acquired large tracts for its encampments and retained control over “conflict zones” where it holds management responsibility. (Refer to Indicators 1.3, 2.1 and 6.1).

Mining is an important activity inside forest areas and overlaps with different forest tenurial arrangements but mining governance is regulated by different entities. Three different institutional and administrative arrangements and regulatory procedures govern mining: (i) normal minerals are managed by the Department of Mines of MoNREC; (ii) gemstone mining is managed by Myanmar Gemstone Enterprises of MoNREC, and (iii) quarrying of construction and building materials is administered by GAD. In theory,

²⁶

Refer to Annex 1 for a General overview and summary on distribution of roles and responsibilities in the land sector.

DALMS/MoALI is responsible for all maps and data. However, as each of these entities independently prepare and maintain maps and records, harmonized and aggregated map/data is not readily available. (Refer to Indicators 1.6, 2.1, 2.5 and 3.2).

Revision of laws means both the legal framework for the forestry sector and implementation procedures and guidelines are in flux.²⁷ In 2018, the government adopted the Forest Law and the CBPA Law. In addition, the CF Instructions were adopted in 2016 (and amended in 2018) and the VFV Land Law of 2012 was amended in 2018. All the legal instruments are effective but their enforcement is awaiting the adoption of rules for the Forest and CBPA Laws. (Refer to Indicators 2.1, 2.3 and 2.6).

Government capacities are stretched and rather limited. Whether it is policy-design or implementation, the capacities of civil servants are limited. An official working at a district or township level is required to perform a range of regular functions within his/her forest range. In addition, he/she is expected to support the work of land-investigation committees, Farmland Management Board, the VFV Land Body, and others in resolving tenure-related issues. At present, resources allocated are generally limited. In terms of responsibility, one forest official apparently covers about 91 square kilometers of forest area (or at least 30–40 villages) in addition to routine administrative work. This official cannot interact with communities regularly, which weakens communication between the staff and people. Communication happens only when people visit government offices or an issue crops up. Articles 7 (b) and 8 (3) of the NLUP provide policy guidelines on participation and transparency in land-use planning decisions. However, implementation guides and resources for FD officials working at district/township levels are lacking. In-house capacity and resources to independently undertake public consultations and communications are also limited. (Refer to Indicators 2.3 and 2.6).

Figure 1. Three Dimensions of Forestland Tenure

²⁷ The new challenges triggered by this “state of flux” were illustrated by the recent experiences of the mining sector. When 2015 Mines Law was adopted, a moratorium on issuance of new permits came into force until adoption of the revised implementation rules. In reality, this moratorium continued for over 24 months and only in mid-2019 were the rules adopted. However, remote sensing data and field evidence gathered by independent researchers and agencies showed that mining operations continued; in fact, some mines expanded their area of extraction. The government has no procedures and resources to prevent such activities on the ground (refer to NRGI, 2019; www.charltonsmyanmar.com). In a related crucial development, the Directorate of Water Resources and Improvement of River Systems in Mandalay called for banning 17 illegal gold mines along the Irrawaddy river (refer to The Myanmar Times, January 15, 2020).

Figure 1.1 Communal Forest Tenure

Weak governance frequently leads to informal payments and “conflict of interest” in administering natural resources. Since 2012, the government has been taking steps to improve forest governance, but it continues to be hampered by lack of adequate budget allocation and resources. At a macro-level, every year, close to about 15% of the union budget is allocated to States/Regions.²⁸ Allocation for forest administration and management is no exception to this general trend. This indicates lack of sufficient resources for any meaningful engagement at the community level. It is keenly felt at local levels as under-resourced civil servants tend to get involved in informal payments and that affects service delivery and governance. (Refer to Indicator 2.4).

The struggle between local communities, local leaders, and government officials over land and resource management has continued perennially. Community institutions manage the relationship between individuals/communities and land and resources through customary practices, especially in ethnic areas. Access and use rights for various forest areas and zones are also clearly identified by such traditional arrangements, which are not always formally recognized. Periodically, the government attempts to enforce formal laws but invariably local communities push back. Such attempts have, in fact, created a communication gap between grassroots communities and local authorities. The resulting institutional arrangements cannot effectively deal with people’s grievances effectively and more and more disputes are resolved through community-based negotiations via non-state protocols. Federalism and decentralization are critical to securing a political resolution in conflict zones. The challenge is reconciling customary practices and village administration (informal to an extent and formal otherwise) as one entity and incorporating local knowledge into modern methods to provide a unified structure for local governance. Such an effort is currently lacking. (Refer to Indicators 1.1, 2.1, 2.6 and 5.2).

²⁸ Minoletti, P and Sandi (2018): *Key economic issues for Myanmar’s peace negotiations*. International Growth Centre and reference S-53433-MYA-1.

Existing administrative procedures are not always seen as fair and independent. At the formal level, different institutions in Myanmar possess parallel and overlapping mandates and competencies to handle land-related conflicts/disputes both in case of forest and non-forestland tenure.²⁹ Membership of multiple committees, for instance, is a concern.³⁰ This represents not only lack of capacities but also probable conflict of interest that could affect fairness in due process. Committees at the state/region level have limited guidance on procedures for investigations and site visits to land in question, or even clarity on who can or must participate, the types of procedures that can be used, and

kinds of outcomes that are acceptable. This means they have to be escalated for resolution. This lack of guidance inhibits the potential use of collaborative problem-solving and early resolution of contested issues. Local committees also lack sufficient resources to undertake tasks systematically. (Refer to Indicators 2.4, 5.1, 5.2 and 5.4).

Women are underrepresented in land-related matters. Customary land governance follows socially defined practices, and community institutions related to land and resources are largely represented by men. This is reflected in the membership of the committees established by government mechanisms too. This trend of male-domination continues despite NLUP provisions that recognize the importance of women's inclusion in land governance. Few women, minorities, or members of other potentially vulnerable groups, serve as senior officials at any State/Regional committees. (Refer to Indicators 1.7 and 2.2).

²⁹ For example, the three administrative bodies currently functioning are: (i) the Central Administrative Body of the Farmland (CABF); (ii) the Central Committee for Management of Vacant, Fallow and Virgin Lands (CCMVFL); (iii) the Central Committee for Re-scrutinizing Confiscated Farmlands and Other Lands (CCRCFOL)

³⁰ Members of most committees mandated to receive, investigate, and resolve disputes and grievances are civil servants from relevant ministries/agencies with mandates to address the specific subject or concerned about it.

Figure 2. Tenure Jungle

THEME 3: EXERCISING RIGHTS TO FORESTLAND AND RESOURCES

This theme examines opportunities for communities to secure their rights through the formal system and explains the challenges involved. In doing so, it also describes the overlapping and often conflicting rules and regulations for the use and development of these customary holdings and suggests what type of support may help communities seek their rights.

Table 1. Community and Local Use under the Current Laws (Forest Law and Conservation of Biodiversity and Protected Areas Law)

Community Forestry	Forest Law 2018 CFI 2019	30 years use rights Need to develop management plan by CF user group	Subsistence as well as commercial purpose Enterprise development
Plantations	Forest Law 2018	30 years lease	Need to follow instructions
Village Firewood Plantation	2008 Constitution	Plantation for local village use	Can be established by each State/Region/ Union territory plan. Budget is allocated by their own government.
Subsistence use of forest products	Forest Law 2018	Domestic use and use not on a commercial scale allowed without a permit	DG must post allowed quantity for each forest products
Community Conserved natural forests and mangrove	Forest Law 2018	Traditionally used and conserved areas	DG has the authority to recognize them.
Community Conserved Protected Area	CBPA Law 2018	Community management according to management plan	New protected area type added in 2018 CBPA Law
Buffer Zones in Protected Area	CBPA Law 2018	Traditionally used and conserved areas designated as buffer zone; CF, community based ecotourism, community managed marine area with minimum impact or without any adverse impact in core zone	

Figure 3. Components and Coverage of the two Key Laws on Forests.
Adopted from LCG (2019) and MRLG (2019)

Figure 4. Some of the aspects covered by the Forest Law

There are several categories under which rights to access and use forestland and resources are granted.³¹

In Myanmar, (a) limited-period permits are granted for using land for development and production/extraction; (b) forestland is “encroached” by communities or investors (probably using force or political authority) without due process or compensation; (c) land is accessed, used, or acquired through a largely faulty process.³² Thus, clarifying forest tenure is important to ensure that local and ethnic communities can access vital livelihood resources. It is also equally important to understand forest tenure types, formal and informal. Different government entities have issued several types of land-use permits for agricultural development, plantations, and mining operations. Many small-scale plantations and mining operations have no formal document but operate on locally understood traditions and practices. Lack of clarity on forest tenure is the most notable feature of land-use management in Myanmar and one of the most significant challenges to the sustainability of national development.³³ (Refer to Indicators 3.1 and 3.4).

Mining takes place in PFE and non-PFE areas; and some of these are administered by EAOs and non-state actors too. Significant parts of PFE contain deposits of minerals, gemstones, and construction materials, but the FD’s role in administering mining operations is limited. Licenses for mining exploration/extraction have been issued for almost every state/region. Informal mines (gemstone in particular), generally small or artisanal,

³¹ As per legal text, Government entities use the term “permit” (or grant in some cases) to refer to a land parcel that is formally allocated to an investor or for development purposes. The term “grant” is used in case of CFs or when a parcel is given a tenurial right [refer to DALMS/MoALI grants Land Use Certificates for farmland use (as per Form 7)] and GAD grants land for residential purposes in town areas or village lands for small-scale, specific activities. However, professionals and experts and public debates in general tend to use the term “concessions” to describe land allocated for development purposes. The NLUP (2016) uses the term permits and grants too (refer to Part 4 on: Grants and leases of land at the disposable of the government).

³² In this section, for want of a better term to describe the situation, the term “lease of State land” or “State land lease” is used and refers to land areas claimed to have been allocated by the government to various entities for development, including land tracts compulsorily (or forcefully) acquired and cases listed by civil society as land confiscation. It also covers instances reviewed by different government committees.

³³ Frequent references to large-scale land permits/concessions dominate public discourse on tenure and resource governance in Myanmar. From 1991 to October 2016, approximately 5.1 million acres were allocated to agro-businesses and individual entrepreneurs and to individual farmers if the area was less than 50 acres. The largest share of land — 2.2 million acres — was allocated by the previous CCVFVLM (43%) and the military commanders (27%). The areas covered by land use permits for large-scale agricultural development were granted by the MoNREC, former chief ministers, authorized departments within the MoALI, and the newly established CCVFVLM. These represent 21, 4, 3, and 2% of the total, respectively. Despite a temporary moratorium, from 2012 to 2014, the granting of land-use permits on VFV land resumed from 2015. Permits for VFV land were granted for agricultural development to companies (54%) and private individuals (32%). Refer to: San Thein, Hlwan Moe, Diepart J.-C. and C. Allaverdian (2018). *Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes*. MRLG Thematic Study Series # 9. Vientiane: MRLG.

also operate in many resource-rich regions. It is also reportedly common for mining companies with a formal exploration license to be actively extracting, processing, and marketing ore and value-added mineral products. Many EAOs are also involved in the mining sector and operate a parallel permit and taxation system not recognized under the current Constitution. Such permits are not reflected in official databases or records, posing formidable challenges for tenurial reforms.³⁴ EAOs and ethnic communities manage forest lands in many States/Regions, and some EAOs have developed or are currently developing land use policies and forest policies, and establishing systems and departments to govern and administer territories, land and resources, and populations in their traditional territories. Examples include Karen National Union, Kachin Independence Organization, New Mon State Party, and Karenni National Progressive Party. For those with bi-lateral and NCA commitments, the Interim Arrangements and related commitments for joint coordination on land and natural resources provide a basis to operationalize coordination of efforts and activities on the ground.³⁵ Such coordination would need to reconcile alignment between UGRoM and EAO's stated policy objectives. (Refer to indicator 1.3, 1.6, 3.5 and 6.2).³⁶

Figure 5. Different types of Forest Tenure (formal and informal) in Myanmar

³⁴ World Bank and MEITI (2018). Myanmar Mineral and Gemstones Cadaster System Conceptual Design, a report prepared by Enrique Ortega for the Ministry of Planning and Finance and MoNREC.

³⁵ For example, Karen National Union has prepared its land use policy and forest policy too if UGRoM pursued implementing the Forest Law of 2018 in Karen areas, that would conflict with the policy they have created for their lands. Rather, a process of dialogue and comparing each Parties' policy objectives would be useful. In mid-2019 Director General of FD/MoNREC met with KNU's Forest Minister to discuss on aligning the policies. Follow-up dialogue is needed to develop consensus.

³⁶ Lands currently in use include forestland (PFE, non-PFE and forest edges outside PFEs). In addition, the government also issues permits for bamboo plantations, palm oil plantations, rubber plantations, or CFs.

Figure 6. Forest Tenure Types in Non-PFE areas

Box Item 5. Losing Forests to Oil Palm Plantations

In 1999, the then military-led government set a target of planting 280,000 hectares (692,000 acres) by 2030; some 63,000 hectares (156,000 acres), or nearly a quarter of that total, overlaps with forest reserves. A recent [study](#) published in *Scientific Reports* found that nearly 60% of concessions for oil palm plantations in southern Myanmar (where most plantations are concentrated) consist of forests or non-rubber tree crops. For example, researchers found that oil palm plantations with mature trees cover about 75,000 hectares (185,000 acres) of the Tanintharyi region. An additional 30% of Myanmar's plantations are concentrated across Kayin State, Kachin State and Mon State. Plantation expansion in each of these areas was greater than 70,000 hectares between 2002 and 2014, far higher than in any other state/region.

This region, along with other states/regions in the conflict zones, has seen more than six decades of civil war between the government and the Karen National Union (KNU). Indigenous populations have suffered as a result, from several human rights violations as well. A ceasefire agreement was signed in 2012. Currently, the villagers living within concession boundaries are under the joint administration of the Myanmar Government and the KNU, which has reportedly resulted in both bodies using civilians as scapegoats to shift the blame of the plantation's impacts. Villagers have been unable to register their lands with the Myanmar Government or the KNU due to the civil war, the resulting displacement and lack of land tenure security.

Box Item 5. Losing Forests (continued)

Available reports indicate that using the controversial Myanmar Stark Prestige Plantation (MSPP) project in Tanintharyi, oil palm companies have been awarded more than 1.8 acres of concessions and have also been allowed to cut High Conservation Value (HCV) forest, a result of poor land-use planning.

Within the concessions, images revealed the presence of rubber plantations as well as landscape designated as “other trees” (which in the study includes both forests and other tree crops, such as betel and cashew), shrub, bare land, and water bodies. While oil palm covers only 15% of concession areas in all the districts, “other trees” occupy 60% of this land. The report notes that many of these concession areas are in proposed national parks and that such concessions were allocated without taking into consideration the environmental or social impacts. Companies that own the concessions can legally clear the remaining forests, including some located in potentially intact forests and high biodiversity areas and high carbon-value forests. Tanintharyi National Park, in particular, has about 1,000 hectares [2,500 acres] planted with oil palm and rubber. Clearing the concessions within the proposed park would release approximately 150 million tons, or teragrams, of carbon dioxide equivalent (Tg CO₂e), according to the paper.

If these trends of Myanmar oil palm intensification continue, the macro economy may benefit but it will invariably result in higher biodiversity loss concurrent with industrial deforestation. Those disproportionately affected would be vulnerable, rural communities as they would lose access to forestland and resources.

Refer to Mogabay <https://news.mongabay.com/2019/11/myanmar-risks-losing-forests-to-oil-palm-but-theres-time-to-pivot/> (dated November 19, 2019).

K Nicholas et al, (2018): Palm Oil in Myanmar: A Spatiotemporal Analysis of the Effects of Industrial Farming on Biodiversity Loss, in *Global Health; Science and Practice*, March 2018.

Only permits/grants are registered whereas other types of informal or quasi-formal forest tenure are not properly registered and secured. In the past, customary land did not require formal recognition; flexible rights, restrictions, and conditions were assigned locally.³⁷ With increasing modernization, the situation has changed significantly. Access and land holding rights for customary holdings are recorded only at community levels but there is no standard, no update, and no harmonization of data with other overall forestland use. In the absence of an integrated land register for each village or group of villages, it is difficult to monitor ongoing land-use and protect and manage resources sustainably. A unified and coherent land register is missing for communal grazing land, water rights, forest rights, State land areas (held by Union and States/Regions), and even informal settlements. Such a register would have helped record respective rights, restrictions, and conditions in the land book. In the absence of a register, the threat of a settlement being declared an “encroachment” or illegal persists. The absence of such a database can be partly attributed to the lack of user-friendly procedures. (Refer to Indicators 3.4 and 3.6).

³⁷ For example, Article 64 of the NLUP recognizes customary land rights. The acts and regulations that followed NLUP (2016) do not explicitly support this provision.

Box Item 6. Oil Palm plantations and loss of access to forestland and resources

In Tanintharyi region, for instance, where conditions are considered particularly favorable, oil palm plantations with mature trees cover about 75,000 hectares. And companies that have purchased concessions are legally permitted to clear forests. The study notes that Tanintharyi National Park, which has a rich above-ground carbon stock, already has 1,000 hectares of palm oil and rubber. If the rest of the park is cleared as per concessions issued, 150 million tons, or teragrams, of carbon dioxide equivalent (Tg CO₂e) could be released. The study also used Google Earth Engine and satellite (Sentinel 1 and 2) data to determine that companies do not accurately report oil palm plantations.

At present, development has been stalled by conflicts over land ownership and lack of access to land due to security issues. Some land has also been found unsuitable. In some instances, companies lack requisite skill. However, land under oil palm cultivation continues to increase. Researchers predict that Myanmar could follow Indonesia and Malaysia in sacrificing its extensive forests to palm oil cultivation as global demand grows. The brunt of this will be borne by the environment and by local communities. Even if demand slackens, rubber offers as much of a threat, already accounting for a considerable portion of palm oil concessions in Tanintharyi. Thus, deforestation seems certain, whichever crop the operators of concessions choose to favor. Tanintharyi has lost 164,200 hectares of forests in just 9 years (2001-2010).

If these problematic concessions are repealed, carbon emissions can be reduced and endemic species (such as Indochinese tiger, now found only in Myanmar and Thailand) and the livelihoods of local communities can be saved.

References:

Nomura, K., Mitchard, E. T. A., Patenaude, G., Bastide, J., Oswald, P., & Nwe, T. (2019). Oil palm concessions in southern Myanmar consist mostly of unconverted forest. *Scientific Reports*, 9(1). doi:[10.1038/s41598-019-48443-3](https://doi.org/10.1038/s41598-019-48443-3)

Community preferences are not always considered, which creates a disconnect.

As required by Forest Law (1992), the FD identifies/notifies restricted tree species to be included in the “protected species” list. Regardless of where such trees are found, permission is required for cutting or exploiting them. Deliberations at State/Regional workshops also noted that many forest-dependent communities would like to improve the composition of the species they grow in CF areas. On the other hand, households aim to secure income from CFs and opt for a combination of short-term and long-term tree crops. The actual proportion could be negotiated by

communities with concerned local authorities. This negotiation rarely happened in the past but is apparently beginning to occur in some places (often where CSOs provide ground level support). Unless such local

negotiations are pursued to find appropriate solutions, CFs could be excessively burdened with ground rules. Households do not agree with these ground rules as communities lack resources to plant them.³⁸ They need government support in terms of resources and technical advice, in the absence of which such instructions will not have positive impacts. Forest Law 2018 has a new Section 7(d) which states that the ministry can recognize natural forests and mangrove conserved customarily (traditionally) by the local people [see Forest Law Chapter III Section 7 (d)]. In addition, Forest Rules Chapter II, and sub-section (d) of section 7 of the Forest Law, contain a provision and procedure for recognizing natural forests and mangroves conserved by local communities according to their customary practice. However, in the absence of regulations to recognize customary practices, this provision cannot be used by communities to protect their land holdings. Such provisions are yet to be elaborated to benefit forest-dependent communities.³⁹ (Refer to Indicators 2.2 and 3.1).

Formal mapping standards and procedures are heavily tilted towards State engagement rather than providing adequate space for community participation and level playing field. Land

in general, and forestland in particular, and resources are imbued with socio-cultural significance and their relation to them goes beyond the purely utilitarian modern approach that claims that everything is “exchangeable” once a monetary value is assigned. Local communities do not adhere to the concept of forestland and resources marked off with rigid and permanent boundaries, preferring instead to emphasize

the idea of community access over private ownership. However, there is no formal mechanism now to include community perceptions and values in mapping processes. Current mapping standards were established by the government that has embraced very high accuracy as the basis both for land-use planning and land tenure. The need for such standards will have to be evaluated against the intended use of the maps and the cost of the techniques required to prepare maps. In several cases, the high accuracy standards mean that it is too costly for most communities to participate both in land use and tenure-related decision-making processes (e.g., mapping and registration).⁴⁰ The mapping costs increase in mountainous and densely forested areas, highly contested areas, and conflict areas. On the other hand, participatory land-use mapping is gradually gaining acceptance at

³⁸ For example, in Kachin State, investors’ subtle push for banana-tissue cultivation has triggered disagreement among CF groups. In discussions, Kachin Conservation Network cited field instances and highlighted the higher risk of elite capture of CF benefits and argued for the importance of local capacities as a risk mitigation and accountability building mechanism. For further information on CFs, refer to www.eccdi.org.mm for several reports on the subject. Also refer to ECCDI (2015). CF producers’ association in southern Shan state: A case study of market-led approach to community forests. Macqueen (2015). *Community forest business in Myanmar: Pathway to peace and prosperity?* Pyoe Pin, UK Aid and others. Pyoe Pin (2015). *Community forestry in Myanmar: Progress and potentials*.

³⁹ Myanmar has no formal tree tenure system. However, in rural areas, disputes over the ownership of “toddy” trees are referred to civil courts.

⁴⁰ World Bank (2018), *Myanmar Land Sector Policy Notes: Towards a sustainable land administration and Management System in Myanmar*. Shivakumar S, and U Saw Hlaing (2015). *Land Tenure Issues and Impact on Rural Development in Myanmar*, UN-FAO.

the community level but still lacks formal recognition. The Farmland Law, VFV Law, CF Instructions (procedures for scrutinizing applications for land) assign responsibilities for mapping and surveying to different government departments (DALMS, FD, or GAD). The government has acknowledged that participatory mapping allows early recording and rudimentary analysis of rights and their links to tenure as local residents are engaged in mapping customarily held lands. However, it has not issued guidelines or mechanisms for including these maps in databases and those produced with external support were described as “unofficial maps with no legal status”.⁴¹ Hence, communities do not have formal mechanisms to participate and engage in defining and mapping land uses within their communities and claim tenurial rights too. (Refer to Indicators 3.2 and 3.3).

Despite improved options and opportunities, CF’s signals on participation and equitable access are ambiguous. The government has pursued programs to improve people’s access to and use of forests and forest produce through the CF program and CF Instructions in 1995. These were significant to the decentralization of forest management. The CF Instructions was revised in 2016 and amended in 2019. In revising CF procedures in the government attempted to provide more inclusive procedures to prevent conflict of interests and elite capture. At present, the government sees CF as an alternative livelihood program. However, communities are concerned about the limits possibly imposed by the 30-year duration of the grant. (Refer to Indicators 1.4 and 3.1).

For communities, wading through the complex web of legal/regulatory provisions is challenging. The lack of awareness and adequate access to guidelines and information pose formidable challenges in promoting dialogue and participation of all stakeholders. For poorer communities, the added pressure of frequent crop failures or natural disasters means they are least able to defend their livelihoods or establish legal tenure rights. Without external support, local communities are limited in their understanding of the different tenure-related laws and regulations and procedural instructions.⁴² (Refer to Indicators 2.6 and 3.1).

⁴¹ Communities receive issue-specific, location-specific assistance in preparing resource governance maps and plans. For example, IUCN has developed a global Natural Resources and Governance Framework providing a credible approach to assessing and strengthening natural resource governance, at multiple levels and in diverse contexts. IUCN’s Myanmar program has been orienting local communities on this framework and has been working with local CSOs to pilot it in Tantharayi region. Similar resource governance frameworks for policy advocacy are also piloted by CSOs engaged in mining (e.g., Myanmar Alliance for Transparency and Accountability, MATA, is one of the civil society networks working on strengthening governance around the country’s vast mineral resource deposits).

⁴² In Myanmar, authority for mangrove management rests with five different government agencies, which poses coordination challenges across line ministries. Although the legal framework vests the mandate in one agency (FD), enforcement practices have often pitted forest authorities against marine/coastal resources management and local authorities, resulting in conflict. At the local level, lack of

THEME 4: FOREST TENURE DATA/RECORDS MANAGEMENT

This theme looks at how government agencies are involved in data collection and record management on forestland and tenure; reviews the existence of and compliance with data standards and procedures for data sharing across different State entities and with the public; and discusses the possible adoption of new technologies and policies to develop modern geospatial information systems.

Most FD inventories on concessions (or mining) provide only limited information. Data on permits/grants is primarily based on information extracted from relevant agreements (or contracts) and therefore only has details from the time of signing the concession. After grants/permits are awarded, data is rarely updated. For example, data on mining permits are critical to prevent overlap of tenurial claims for forestland and resources. Most ministries and agencies (including FD) have yet to develop and operationalize effective and reliable license inventory systems. Currently, even the departments themselves find it challenging to get reliable and consolidated data on licenses they or others have granted.

There is no “mining cadaster” in place. At present, permits for mining minerals, gemstones, and construction materials are (i) independently processed and issued, and (ii) data is manual and paper-based and details on permits issued are maintained via a MS Excel file. The topographic maps used in Myanmar for issuing mining permits are very old and incompatible with GPS technology. Currently, cadastral data on mining is not shared and harmonized with other datasets such as forest, farmland, etc., limiting decision-making based on reliable data in the protection and recognition (or allocation) of tenurial claims or rights.⁴³

Approved licenses are usually stored in (often not centralized) paper-based archives.⁴⁴ Efforts to compile and archive data in a centralized system have been inadequate, thus making it difficult to access reliable data on licenses. With no prudent IT-based license management system in place, reliable data on updates and changes are difficult to obtain. Standard operational procedures to issue and license information are often inadequate, imprecise, outdated (e.g. ignoring advances in technology such as modern survey technology), and often open to

clear lines of responsibility appear to be tempered or even substituted by mangrove-specific regulations. Field studies showed that local mangrove management is hindered by active enforcement of mangrove protection policies, which has, over time, restricted local community access and use, banned mangrove harvesting or even evicted communities cultivating or settling in mangrove forest areas. Strict protection (i.e., forest reserves) has been challenged by expanding paddy rice farming, increasing demand for mangrove forest products, and limited human and financial resources (CIFOR, 2015; UN-FAO, 2015; also refer to reports published by MERN).

⁴³ Refer to World Bank/MEITI's Report of July 2018.

⁴⁴ Licenses are generally issued without a systematic field survey. Where data is available, lack of technical capacity often results in a downgrade/generalization or incorrect representation. Paper-based archives and data on licenses maintained by different offices are in dire need of upgradation/improvement. They must be included in an integrated Land Information System, on the use of forest compartment as location references etc.

interpretation, resulting in non-standardized, sub-optimal data that is hard to use. Data security is a major concern as well owing to inadequate backup systems, unclear data access and sharing protocols, and lack of qualified (especially IT) personnel. (Refer to Indicators 4.1, 4.2 and 4.3).

The current land-information system lacks reliable and updated information, and access to it is limited. At present, at least seven different government agencies are involved in mobilizing data on forestland and tenure-related aspects. DALMS/MoALI maintains all land data but primary responsibility for data management rests with respective ministries or departments. This database is limited to permits/grants or government-allocated use rights.⁴⁵ Only an aggregated and limited dataset of this forest data is shared with the public. Availability of updated data on land use/tenurial rights in conflict zones is limited. The lack of unified data is, in turn, attributed to different

classification schema, underlying data templates, and collection and data aggregation methods. Land-related spatial information, managed by separate government departments, is not standardized, and varies in quality, compatibility, accessibility, and usability, especially for non-technical users and citizens. Inconsistencies across spatial and temporal dimensions create problems when comparing land cover products and change analyses. Restrictions on data sharing exists, while multiple agencies are independently producing their own maps and data sets and tend to generate redundant data sets with conflicting statistics. This can be attributed to a lack of prudent SOPs and instructions, proper communication of geospatial science and related technologies at higher levels, and lack of resources for training and capacities at States/Regions and inadequate human resource management as government staff are either transferred for work or do not have incentives to stay. The organizational structures within departments often do not support the establishment and operation of modern (computer-based) land-management data systems. In the absence of sufficient and accurate data and access to it, forestland administration is perceived as opaque, inequitable, and therefore, dissatisfying for the people whose life it affects.

⁴⁵ DALMS is responsible for gathering data on farmland holdings (based on cadaster maps), agribusiness ventures, and other permits for State land leases; data on forestland are prepared by MoNREC and transferred to DALMS, but FD retains primary data/details. Similarly, fishery data is with the Fisheries Department of Rural Development (DRD) and residential data rests with GAD. The Department of Mines, Myanmar Gemstones Enterprises of MoNREC, and GAD maintains data on permits issued for mining minerals and gemstones and quarrying, respectively, while states/regions, in theory, should maintain data on small-scale mining permits issued by them.

Policies and programs for technological upgrades are planned for land and resource administration and management.⁴⁶ In recent years, the government has taken several steps to adopt modern technology and develop geospatial infrastructure and services in Myanmar. This vision and priority are broadly framed in NLUP and the e-Governance Master Plan (eGMP 2016-2020). NLUP and eGMP are interrelated, complementary, and consistent with Myanmar's pressing geospatial needs. NLUP calls for adequate capacity and sufficient resources to be channeled through a specialized fund that encourages piloting and research. Under NLUP, the OneMap initiative is already piloting several land-use guidelines to draft a OneMap policy that specifies and details a geospatial infrastructure and service policy in line with Myanmar's pressing needs. (Refer to Indicators 4.1, 4.4 and 4.5)

⁴⁶ Access to nationally consistent and complete geospatial data, through Myanmar's proposed Geoportal, has the potential to improve land governance and government accountability and transparency. One major data gap in the national inventory of land parcels is the cadastral data layer of NSDI. In 2017, the government established an inter-agency Technical Working Committee to develop a framework covering infrastructure, responsible agencies, and policies. It aimed to promote: data sharing, use, acquisition, and standards to facilitate nationally consistent land information of all forms (including land information for planning, land use, environment, marine, air, natural and built environments, agriculture, and forestry). Better implementation of the new laws and regulations will require migrating records and data management to digital systems. The best strategy for data conversion would depend on many factors including data availability and time and resource constraints.

THEME 5: MODES/MECHANISMS TO RESOLVE GRIEVANCES, DISPUTES AND CONFLICTS OVER FOREST TENURE

This theme examines the ability of the current laws and regulations and formal and informal governance systems to address and resolve grievances and disputes/conflicts over access to and use of land and resources. It also discusses these challenges in the context of land legacy issues (e.g., large-scale confiscations since the early 1990s and grant of large-scale concessions that curtailed customary tenure) and reviews different mechanisms and means available for affected parties to seek redressal.

Although land is always the central and obvious conflict issue, it often disguises other political-societal conflicts. Disputes over access to forestland and resources are often just the visible part of a more serious conflict, rooted in the country's turbulent political history. Often, conflicts over forestland and resources only reflect the general inequality or unfair distribution of wealth, voice, and power in a given community and/or the discrimination against certain groups, such as women or ethnic communities or those living in conflict zones. In Myanmar, it also reflects the aspirations of ethnic populations over power-sharing and federal governance arrangements. Importantly, the underlying causes for land related grievances/complaints/disputes/conflicts are addressed, and if in conflict/NCA areas, collaboration between UGoM and EAOs is pursued to define fair mechanisms. (Refer to Indicator 5.1).

Trust, familiarity, shared identity form the core basis for community-mediation in forest tenure disputes.⁴⁷ Community-based dispute resolution has existed for long in Myanmar and is still preferred in rural areas for managing and resolving conflict, maintaining harmony within the community, and establishing and maintaining security. A significant number of people in Myanmar continue to prefer resolving disputes or grievances on their own using informal talks or negotiation and to reach voluntary consensus-based agreements. If settlements cannot be reached by direct negotiation, parties frequently turn to either informal or formal “arbitrators” at the village level (e.g., elders or community heads or local dispute committees) for assistance in reaching negotiated and voluntary agreements. In case one of the parties in the dispute is a government entity, community leaders tend to discuss and arbitrate the issue with the respective official for a solution. Only when such efforts fail, is an issue escalated to administrative levels for a resolution. In recent years, many conflict areas have seen the introduction of community/ethnic group specific conflict-resolution mechanisms. This, coupled with the apparent shortcomings of the formal dispute resolution mechanisms and courts, has led communities to turn to traditional mechanisms as a potential way forward in peace-building too. (Refer to Indicators 5.2 and 5.5).

⁴⁷ There is a difference between intra-community disputes and disputes between the state (or supported commercial interests) and communities. Most intra-community disputes can be resolved at community-level.

Myanmar has multiple authorities to adjudicate disputes over forestland and resources but most disputes remain unresolved.

Conflict over the control of land and natural resources is particularly pressing in Myanmar's resource-rich ethnic territories and along its borders with China and Thailand. Policy and legal provisions for dispute resolutions are complex, characterized by legal pluralism with a wide range of justice providers, different co-existing legal systems, and varied justice perceptions. However, solutions to most tenure-related disputes are predominantly discussed and resolved at the community level. Official courts are seen as distantly located institutions and associated with high costs.⁴⁸ Access to and enforceability of formal, multi-tiered dispute-resolution committees

is also equally debated. Therefore, in reality, land disputes are addressed through: (a) the formal legal system or (b) the village system (community-based mediation).⁴⁹ (Refer to Indicators 5.2, 5.3 and 5.4)

Formal dispute-resolution mechanism is limited to administrative arrangements. Available data (along with field reports) showed that only a small number of disputes reach administrative bodies and much lesser cases reach the judiciary and these usually involve large-scale concessions and conflicts over access to and use of resources spread across a number of villages and communities. Courts may be able to remedy some cases during normal times but are not geared to manage less complex issues or demands. Situations like this demand an interface between formal and informal systems and practices. Local mediation and dispute-resolution mechanisms seem to be the preferred choice in Myanmar and these usually employ informal talks or negotiation for consensus-based resolutions. Most find community mechanisms to be simple, fast, culturally relevant, and appropriate to the local context. Limitations to these methods include lack of oversight, resources, and competent personnel. (Refer to Indicators 5.2, 5.3 and 5.4).

Accessible and affordable formal dispute-resolution mechanisms are lacking.

Until recently, formal government procedures to resolve forestland disputes above the village level were limited. Over the past decade, the government has taken some measures to address complaints and disputes, including the creation of three new institutions/committees with resolution mandates and mechanisms. However, a broad set of accessible and affordable formal mechanisms are still lacking and the government has little capacity and few resources to respond to growing demands for timely action and resolution of issues. Implementation

guidelines are often very technical and rarely drafted from a community- or gender-sensitive perspective. In

⁴⁸ Several commentators argue that there is a perception of bias in favor of the state by the judiciary.

⁴⁹ USAID/TGCC (2018): Community-based dispute resolution: Exploring everyday justice provision in southeast Myanmar.

addition, these guidelines are not always in compliance with the NLUP, which calls for recognition and protection of customary tenure rights. As a result, the space to elaborate finer aspects specific to a geographical location (e.g., land legacy; local traditions) is often missing. Officials often lack the willingness or knowledge to engage in community-mediation techniques. Lack of gender awareness among local officials dealing with land allocation, inheritance, and dispute settlement, sustains a male bias that prevents women from enjoying their rights. (Refer to Indicators 5.3, 5.4, 5.5 and 5.6).

There is no referral and appeal system between community-level mechanisms and official courts. In formal terms, the law stipulates that leaders at community or village/ward level should collaborate with local authorities in information gathering and judicial processes in case of disputes reviewed and adjudicated by courts. However, these provisions are not institutionalized and resourced. There is no procedure to integrate higher level, formal dispute-resolution procedures with community levels. On the other hand, the village committees in New Mon State Party and Karen National Union (KNU) areas are gradually integrated into the justice system in terms of referrals and appeals but the process is challenging.⁵⁰ There are procedures in place for sharing records and forwarding cases to higher levels, but in practice, human resource constraints and the mobility of court locations means that cases reach higher courts in a variety of ways. In mixed-controlled areas, some village leaders fear or decline forwarding cases to higher levels due to dual-subordination. (Refer to Indicator 5.2).

⁵⁰ For example, the Karen Land Policy of 2015 reflects more broadly how the KNU justice system grants a relatively large jurisdiction to the village level and allows for the use of customary law. The KNU has not codified any customary laws, so when customs are referred to, they are the rules and norms applied by respective villages, which may vary considerably. The village and village tract levels of dispute resolution constitute the base of KNU's justice system, but are not an integrated part of the justice committee systems. The New Mon State Party (NMSP) like the KNU also has a three-tiered system of justice committees (central, district and township), but these do not have independent judges, and they fall directly under the administrative department of the organization. At the central level, also referred to as "supreme court" in NMSP legal code, the justice committee has seven members and is chaired by the NMSP joint secretary. For several years now, this dispute-resolution mechanism has been addressing land and tenure-related issues referred to it.

THEME 6: PUBLIC PARTICIPATION, SOCIAL INCLUSION, AND SAFEGUARDS

This theme explores the current practices, gaps, and opportunities for the State to protect community-based rights. At the same time, it also examines the State's ability to formulate socio-economic development policies that may necessitate acquisition of land/forest while using safeguard mechanisms with which communities can engage. For example, the provisions in the newly adopted Forest Law (2018) and relevant rules and regulations are examined with regard to protection of forest tenure. The theme also examines the importance of continued engagement of State institutions with communities on aspects relating to tenure and resource governance.

General perception is that current instruments like the Environmental Impact Assessment/Social Impact Assessment (EIA/SIA) are unable to provide accessible, affordable, real, and achievable safeguards to protect communities' tenorial rights. Over the years, State-connected land acquisition has often failed to keep promises, sometimes even reducing real access to fair compensation for those with tenorial claims. The government has acknowledged that some confiscations and the absence of a consultative process have contributed to this public opinion. In recent years, landholders have

received some compensation for land acquired by the government, but various media and CSO reports assert that less is offered to those holding land on the basis of tax receipts or under customary law, and no compensation is offered to squatters and informal occupants. (Refer to Indicators 6.2 and 6.4).

Since State land is not clearly defined (or demarcated), the tussle between forest-dependent communities and the State persists.

Many recent reports indicate three overarching trends concerning land acquisition (and issuance of land-use permits) in Myanmar: (a) large tracts were compulsorily acquired and conceded over the past several decades of military rule that spanned 1962-2011; (b) additional tracts have been alienated since the present government took power in 2011 in accordance with the VFV Law of 2012; and (c) large tracts are likely to be appropriated due to expanding demands for economic and energy sources. The Land Acquisition, Resettlement and Rehabilitation Act of 2019 (Law no. 24 of August 19, 2019)⁵¹

allows the government to enforce the “*eminent domain*” concept to take over customarily held land for “*public purposes*” without adequately compensating the owner or community. Several concerns persist. Large-scale land acquisitions (LSLA) for commercial investment and designation of protected areas are two sources of overlapping tenure/land use and potential conflicts with indigenous and community forest tenure rights. There is

⁵¹ It replaced the Land Acquisition Act of 1894.

no process to ensure that new plantations are not established on customary land without sufficient consultations. EIA/SIA procedures for enforcement of the new Land Acquisition Act of 2019 remain untested.

In another instance in April 2019, the Ministry of Electricity and Energy released a statement on their intention to implement the Thauk Yay Khat Dam (II) hydropower project in early May 2019 in the Maung Nwet Gyi village tract. However, according to reports, the area is on the border of a PFE area and the union (or local) government failed to hold consultation meetings or obtain FPIC from local communities. According to local residents, if this project is implemented, over 50 villages spanning six village tracts located along the Day Loh Kloh (Thauk Yay Khat) River in Daw Hpa Hkoh (Thandaunggyi) Township will be destroyed. Peh Kaw Der, Koo Play Der, Leh Koh Der Ka, and Koo Thay Der villages will be most severely affected. Local communities could lose their land holdings to the proposed dam, subsequently resulting in displacement and livelihood challenges. These concerns are exacerbated by the fear of re-victimization and the ramifications of the construction of the Thauk Yay Khat Dam (II). The Asia World Company is an investor in both hydropower projects.

In 2002, the Shwe Swan Ain Company confiscated villagers' lands in Hto Boh village in the same township to build the Thauk Yay Khat Dam (I), which was completed in 2010. Over 1,400 acres of villagers' lands were confiscated and 63 households were displaced when the project was implemented; many still remain displaced. Additionally, the dam project flooded around 40,000 acres of land in the area, and the roads and P'Leh Wa Bridge that were destroyed then have not yet been repaired, posing challenges for villagers who travel for their livelihoods. Many still face livelihood challenges and currently work on lands previously confiscated for the Thauk Yay Khat Dam (II) but remain unused.

Case study 1 and 2 - Source: Karen Human Rights Group, Southeast Myanmar Field Report: Growing concerns about militarization, land tenure security, development projects and human rights abuses, January to June 2019, dated Sep 3, 2019.

The newly adopted Forest Law and relevant regulations have yet to elaborate guidelines to protect “safeguards” provisions provided for tenure security of local and ethnic communities and informal settlers. The provisions of Chapter III of the Forest Law tend to bypass internationally accepted Free, Prior, and Informed Consent (FPIC) principles prior to demarcating and notifying new forest areas.⁵² In addition, there is no clear provision to account for non-market values such as social, cultural, religious, spiritual, and environmental values. Additionally, international standards like the World Bank Environmental and Social Standards (ESS5) and International Finance Corporation's Performance Standard 5 (that compensation be based on the cost of replacing the expropriated property, i.e., replacement cost approach) are generally overlooked. Given political complexities and economic realities in Myanmar, it may not always be possible to determine compensation based on market value alone. There is a need to consider social costs on affected communities. Missing standards and procedures continue to impact public perceptions.⁵³ In support of the Land Acquisition, Resettlement, and Rehabilitation Act of 2019, enforceable procedures and guidelines in case of expropriation

⁵² The provisions in Forest Law should also be read in conjunction with Section 8 and 15 of the Land Acquisition, Resettlement and Rehabilitation Act of 2019. It has been widely commented that the 2019 Act itself is probably a threat to customary tenurial practices (Refer to MRLG, 2019).

⁵³ Currently, Forest Rules are being revised and likely to elaborate provisions on shifting cultivation areas. The right to protect or conserve an area, if it is not considered as being “enjoyed” with active use, may have to be similarly elucidated.

remain to be developed. There is concern that accompanying physical and economic displacement, in case of land acquisition, can result in long-term impoverishment and hardship unless properly managed and sufficient compensation and support provided. The Law therefore needs to strike an important balance between protecting land-owner and land-user rights while ensuring an effective and equitable process for compulsory acquisition in the public interest.⁵⁴ (Refer to Indicators 6.1, 6.2, 6.3 and 6.4).

Existing regulations and guidelines (e.g., Environmental Conservation Law 2012) provide a sample list of direct environmental and social risks and how they are expected to be minimized.⁵⁵ In case of forestland for investment purposes, when read in conjunction with Myanmar Investment Law of 2016 (Law no. 40 of 2016 and amended in 2018) and Land Acquisition, Resettlement, and Rehabilitation Act of 2019, two challenges emerge with the Environmental Conservation Law 2012. EIA is a multi-part exercise with little harmonization between “permits” issued by the Myanmar Investment Commission (MIC) and the enforcement of EIA recommendations. It does not explicitly consider different agro-ecological practices of customary/community-based tenure arrangements such as shifting cultivation.⁵⁶

In case of mangroves, lack of compliance with environmental screening and standards is affecting customary tenurial arrangements too. To start with, current estimates indicate that only 20% of the mangroves in the Ayerwaddy Delta remain. Most have been cleared for aquaculture or rice paddy fields and a large proportion of it in Tantharayi region has been granted for shrimp farming. Those that survive are in forest and wildlife reserves. To save the remaining natural forests, including mangroves, the Myanmar government issued a logging ban in 2016 for a year (logging ban in Bago

Yoma mountain range is for a 10-year period). Despite that, illegal logging persists, as people in many areas who lost seasonal access to mangroves continue to rely heavily on nearby forests for their livelihoods. Many recent reports assert that despite legal provisions (Forest Law), mangrove allocation for aquaculture has not complied with environmental screening requirements.⁵⁷

⁵⁴ Land Core Group (2017). *Technical review of the draft Myanmar land acquisition law*, 2016. Also refer to MCRB's submission to the government on the law (August 20, 2018).

⁵⁵ The National Environmental Policy forms the base for any plan/project to consider integrating environmental aspects into socio-economic development. In 2012, Environmental Conservation Law was enacted for the first time in Myanmar. By law, the National Environmental Conservation Coordination Committee (NECCC) was formed for effective coordination among stakeholders. The environmental safeguards and related processes are described in Rules for ECL of 2014. In general, the environmental law, its regulation and implementation are weak in Myanmar although the government has attempted to improve them in recent years.

⁵⁶ As per Myanmar Investment Law of 2016 (i) an application for "Permit" should be submitted if the proposed investment volume is significant or falls into one of the criteria defined in the law. Permit will be issued along with Permits for Tax Incentives and Land Rights Authorization. The word used is permit; it refers to licenses upon which tax benefits and land could be accessed. (ii) In case, the investment does not need a permit from MIC but only an “endorsement” (small volume of investment), then the endorsement application can cover tax incentives and land rights authorization too. The procedures for issuing permits/endorsements includes guidelines on environmental/social screening too.

⁵⁷ In 2017, about 200 acres of mangroves were allocated by MoALI (Kamrlee village tract, Chaung Zone township of Belu Island in Mon State) for aquaculture without prior consultation with local communities. There is no evidence of environmental screening or endorsement from the local FD prior to issuance of the permit. This allocation has now been contested by local residents as it has deprived them of access to secondary income sources (discussions with IUCN, October 2019). Refer to

Box Item 7. Protecting Mangroves

US-based non-profit Sustainable Surf uses “surf culture” to promote a sustainable lifestyle. One of its initiatives involves saving mangroves by engaging the global surfing community and notes that mangroves are super-ecosystems critical for food security, coastal protection, water quality and climate regulation. However, over the past 50 years, more than half of the world’s mangrove forests have been cleared. Mangroves have been found to be five times more effective at sequestering carbon emissions than land-based trees.

Sustainable Surf’s SeaTrees initiative provides an online portal to surfers worldwide to calculate and offset their carbon footprint and then become “carbon positive” by funding new mangrove trees. In Myanmar, the Worldview International Fund is using the funds thus generated to revive mangrove forests. According to Sustainable Surf, mangroves in Myanmar are disappearing at a rate that is four times faster than anywhere else. In the Thor Heyerdahl Climate Park in Myanmar, the work done under the SeaTrees banner has led to 5 million new mangrove trees in the park. This has helped restore more than 2,000 hectares of degraded coastal forest. In addition, hundreds of jobs have been created for locals and thousands of families are being provided with living and educational resources.

Refer to: www.sustainablesurf.org

Field evidence shows that adherence to social safeguards in most projects (hydropower, mining, plantations) is ambiguous. On the positive side, the 2011 suspension of Myanmar’s Myitsone Dam made Chinese dam developers realize that a project could be halted for lacking international-standard social safeguards. On the other hand, many investors claimed to adopt host country social safeguards (example: China’s Going Out Policy of 2001). This “importing” of standards, via bilateral agreements, creates a gulf between the (internationally reviewed and agreed) principles and practice too, as it is challenging to monitor enforcement/compliance at the ground level. The problem is that stronger standards will not necessarily change this state of affairs and will do little to create incentives among investors and government entities that are already under-resourced.⁵⁸ (Refer to Indicators 3.5, 6.1, 6.2, 6.4 and 6.6).

Government responsiveness to public participation in tenorial discussions is improving but is insufficient for triggering long-term solutions and institutional change. The government’s engagement in the CF process and its response to short-term measures are improving. However, its response to public participation in enforcing long-term solutions to tenorial issues tends to be tardy and uneven. Inclusion of stakeholders in policy dialogue and implementation remains limited to the union level, while space and opportunities for participation of States/Regions and local communities is limited to specific events. Increasingly the government is engaging

<https://www.asiatimes.com/2019/05/article/shrimp-farms-threaten-myanmars-remaining-mangroves/> and <https://www.eco-business.com/news/aquaculture-is-main-driver-of-mangrove-losses/> and also www.eco-business.com.

⁵⁸ Refer to Environmental Investigation Agency, Trip-NET and others (2016). *Green Desert: Communities in Tantharayi renounce the MSSP Palm Oil concessions*. Also refer to case study of Thauk Yay Khat Dam (I) hydropower project in early May 2019 in the Maung Nwet Gyi village tract in Kachin State. It demonstrated numerous challenges associated with lack of compliance with safeguards.

with CSOs to formulate policies and regulations (e.g., NLUP preparation in 2014-15 period, and drafting of rules for the Forest Law and CBPA Law; ongoing discussions on drafting of Land Law). However, considerable ambiguity persists over the role of CSOs in Myanmar. They exist in a limbo with only partial government acknowledgement of their role and nascent capacity. (Refer to Indicators 1.5, 1.7 and 6.6).

Box Item 8. FPIC application

Since the mid-2000s, CSOs have highlighted poor enforcement of land-acquisition principles and a fair and adequate compensation [within the understanding of Free, Prior, and Informed Consent (FPIC) although it is rarely cited directly] for land concessions.

Beyond standards for consultation in large-scale land acquisitions or establishment of protected areas, FPIC protects customary forestland and resource rights from infringement. It has been adopted in various international instruments on the rights of indigenous peoples and is increasingly recognized as best practice for safeguarding the tenure rights of project-affected people (Forest People's Program, 2013). It provides them a firm basis under national law to exercise their right to give or withhold informed consent on plantations, mining, logging, and other projects affecting their lands.

CSOs (e.g., CHRO in Chin state, 2018; TRIP-Net in Thantgarayi in 2017-18) have documented several cases where investors obtain consent in a manner neither 'free', 'prior' or 'informed'. In addition to insufficient information about social and environmental impacts of projects and future access and use of land and natural resources, local communities are rarely compensated for land acquired^{1 2}.

Of late, the government has agreed to apply FPIC in the context of REDD+, but not for large-scale land allocations. More concerning than traditional large-scale land allocation may be the processes associated with the government's (or EAOs) allocation of customary and/or forest areas.

Without a strong loophole-free FPIC provision, the ability of governments and communities to prevent violation of tenure rights will remain limited. A strong FPIC process will help guard against the efforts of vested interests to undermine tenurial rights of communities and reduce the risk of costly social conflicts.

¹ Refer to Bali Declaration on Human Rights and Agribusiness, 2011 in www.forestpeoples.org.

² Statement delivered by Sawit Watch and Forest Peoples' Program at the Asia Regional Consultation with the UN Special Rapporteur on the Rights of Indigenous Peoples on the Situation of IPs in Asia on their key concerns, March 12-13, 2013, Kuala Lumpur, Malaysia.

There has been progress in protecting and recognizing women's rights to forestland and resources, but enforcement is still lacking.⁵⁹ The Constitution of 2008 includes the guarantee of equal rights and equal legal protection to all persons, men and women (Article 347), and does not discriminate on the basis of sex. Similar affirmative provisions have been made in NLUP and some other regulatory frameworks. However, widespread lack of awareness of the policy and regulatory frameworks across ministries and communities still challenge

⁵⁹ Commonly, government programs tend to use the "head of family" concept, identifying a male for land or resource allocation. As a result, hardly any programs have significant female beneficiaries or even pay attention to gender as a critical category. Myanmar is no exception.

universal implementation and continue to deny women many of the fruits of Myanmar's formal commitments to participation, equality, and access to rights. On the other hand, some customary traditions subtly encourage women to conform to traditional gender roles as primary caretakers of families. Women's participation in different local committees and attention to gender concerns and women's participation in local committees and in peace negotiations are also limited. (Refer to Indicators 6.2, 6.3, 6.4 and 6.5).

Internationally recognized standards and principles are useful in guiding good forest tenure and resource governance but given complex and lengthy procedures, both the government and communities will not be able to secure favorable results without capacity building, resources, and external support.

Myanmar has signed international treaties and declarations on bio-diversity, climate change, rights of forest-dependent communities, and related areas. These include the Convention on Biological Diversity; REDD+; United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); FPIC principles; and Sustainable Development Goals (SDGs). Since the mid-2000s, CSOs have taken an active role in facilitating dialogue on pro-poor and impartial land reforms by highlighting historical land confiscation, fair and adequate compensation and pro-poor enforcement of land-acquisition principles. Several of these international instruments have also guided the government's positive engagement and dialogue on issues affecting tenure and gradual progress towards good land governance.⁶⁰ However, it is obvious that local authorities and communities are not always provided with sufficient legal information on their rights under provincial, national, or even international treaties (applicable to multinational investors). There is insufficient capacity in States/Regions to enforce international treaties and principles. Mainstreaming these principles and guidelines is at a nascent stage; much remains to be done with regard to capacity building and allocation of resources for systematic compliance. (Refer to Indicators 6.2, 6.3, 6.4 and 6.5).

⁶⁰ For example, continued dialogue and engagement in REDD+ has resulted in the government recognizing that for forestland programs to be successful and yield equitable and sustainable benefits, an early analysis of existing tenure rights is essential. In this context, the engagement of CSOs with local communities to enforce FPIC principles is also a positive point.

Box Item 9. Impact of Illegal Banana Plantations in Kachin State

In April 2017, the Laos government ordered the shutdown of “tissue culture” banana plantations funded by Chinese investors. Reports had suggested that excessive use of pesticides and chemicals by such plantations had damaged the environment. A study by the Laos National Agriculture and Forestry Institute also highlighted significant instances of respiratory illnesses among the laborers as well as pregnant workers going into premature labor or giving birth to children with deformities. Chinese investors then started paying greater attention to Myanmar, especially the Kachin State where conflict has affected legal oversight and people fleeing conflict has made land available.

In Kachin State, tissue-culture banana plantations were introduced in 2007 by Chinese business groups. Since 2010 such plantations have been encroaching on forest reserves, in violation of Forest Law. Chinese investments in banana plantations in Myanmar follow a cycle. Foreign investors buy or lease a large parcel of land (for example, 20 acres), hire local laborers through middlemen to work on it, and have the produce shipped back to China. Alternatively, a seasonal contract is signed with local farmers for the bulk purchase of produce at source. In both instances, the Chinese investor is an absentee grower.

While land acquisition by foreigners is barred under the Farmland Law of 2012, a number of Chinese nationals have leased land through local intermediaries. They have accessed significant swathes of forestland both in the dry zone and upland areas (e.g., places like Sintgain, TadaOo, and Myithar in Mandalay, and Chaung Oo, and the east side of Monywa township). Leases are generally for five to six months. The rate of compensation is 350,000 to 400,000 kyats per acre (1 USD = approximately 1,500 kyats); a lower rate may be offered in some areas.

In May 2019, media reports claimed that five Chinese nationals running banana plantations in Kachin State were charged with encroaching on a forest reserve in Waingmaw township. In an interview, the local police chief claimed that the encroachment amounted to around 3,500 acres of forest reserve land. Under Section 40(a) of the Forest Law such encroachment could be punished with imprisonment of up to one year, a fine of up to K300,000, or both.

The Chinese plantations have also been usurping areas abandoned by villagers fleeing armed conflict. These plantations are not registered and operate with the help of proxy firms. In an interview, U Naw Li, a local legislator representing the Waingmaw township claimed that around 40,000 hectares of land, mostly in PFE or on the edges, are under such Chinese banana plantations in the area.

Long-term conflict between government forces and the KIA has made law enforcement in Kachin State difficult. Banana plantations are thus proliferating rapidly, especially in areas under the control of the Kachin Independence Organization (KIO) along the Myanmar-China border. According to a government survey, there were 40-50,000 acres of banana plantations in Kachin State in 2019.

A woman from Ga Ra Yang village near Waingmaw claimed she fled to Mai Nar IDP Camp after the ceasefire broke down in 2011. Her land was transformed into a banana plantation without her consent. The company gave her US\$130 per acre in 2017 and 2018, then nothing in 2019. Some plantation companies are employing brokers to pressure IDPs to rent the land they have left behind, or risk having it seized by the government and rented out to investors under the Vacant, Fallow and Virgin Lands Management Law.

Other displaced people, such as Lashi Lu, 54, often have no choice but to work as daily laborers on banana plantations to support their children. “I injured myself with a knife while cutting the banana plants, and it was stained with chemicals used to straighten the bananas,” she recounted. “My wound became so infected that two of my fingers had to be amputated.”

Even if the grabbed lands are eventually redistributed to farmers, problems would arise in identifying original limits. Farmers traditionally marked their boundaries with trees and hills. All those markers disappeared when the landscape changed from forest and farms to banana fields.

Refer to May 21, 2019, Myanmar Times <https://www.mmtimes.com/news/five-plantation-managers-face-forest-encroachment-charges.html> (downloaded on December 14, 2019 and www.irrawaddy.com dated February 20, 2020.

IV. FTA Workshops: Conversations and Conclusions

This assessment attempted to provide an overview and details of prevailing administration and management of forest tenure in Myanmar as well as potential opportunities to move forward in the right direction. The past four decades have produced considerable literature on forest tenure and the importance of sustainable forest and resource management. In response, both the government and civil society have initiated numerous measures to address relevant issues. However, a legacy of flawed political and economic models continue to perpetuate uncertainty and hinder efforts to reform and strengthen forest tenure arrangements. In recent years, government has initiated some policy and regulatory measures such as inclusion of customary tenure in NLUP and CF arrangements. Civil society groups have striven to introduce forest tenure and related concerns into the national and local agenda with particular focus on the protection and recognition of customary rights, peace negotiations, and access to livelihoods. They have highlighted the plight of poorer groups living in both government and EAO-administered areas. However, their efforts are constrained by the lack of sustained political support for reforms, well-entrenched economic interests in forest and resource management, and limited concrete examples for sustainable forest tenure administration and management practices on the ground. However, discussions with several government officials, policy-makers, village leaders, community members, civil society, and academics during this assessment highlighted constituencies for change and reforms, which need to be supported.

This section summarizes the diverse issues discussed in the assessment and is divided into three parts. The first part provides a summary of findings of these assessments, while the second part highlights conclusions drawn from the assessment. The third part recommends specific engagement areas for the government, civil society, and development partners to strengthen forest tenure in the coming days.

THE ASSESSMENT'S FINDINGS

The FTA revealed significant challenges. Myanmar's forestland and resource governance is impaired by

- a complex policy and legal environment;
- institutions with imprecise responsibilities and inadequate capacities;
- weak enforcement of rights allocation and transfer;
- a fragile political environment and ongoing peace negotiations;
- the inability to safeguard customary tenure and tenurial claims of forest-dependent communities;
- people's inability to access justice and resolution;
- failure to ensure equity for all genders and ethnic groups; and
- opacity over the roles and responsibilities of the Union and States/Regions.

Protracted political strife in several forested and resource-rich States/Regions has led to rapid forest/resource alienation for local and ethnic communities. It has also hindered formal institutions from providing accessible and affordable services to secure tenure. Meanwhile, large-scale plantation and mining economies are being promoted.

The absence of a uniform land and land-use classification systems are impeding progress in strengthening good governance practices. Efforts to modify land and land-use classification have had limited success. In general, the existing regulatory framework does not allow local people to own forestland or to have a complete “bundle of rights”; instead, communities are only allowed to access, use, and manage forest resources.

In recent years, the government seems to be focusing on tenure security as stipulated in the current NLUP and other policies. However, challenges remain. In addition, ownership of forestland and resources and political decentralization issues anchor the central demands of ethnic stakeholders in the peace process. It is apparent that an effective, inclusive, transparent, and accountable forestland and resource governance system is currently lacking in Myanmar. NLUP

provisions on “transparency and inclusion” specific to land and natural resources have not been elaborated so far, and current clauses specific to forest tenure mostly serve to further centralize State control. Although recent policy and regulatory measures recognize the need to mainstream gender agenda, gaps are evident in enforcement since commitment at implementation levels are lacking and social norms subtly undermine these efforts.

The process for legal allocation and transfer of rights is weak and needs serious attention. Interestingly, policies related to REDD+ and climate change impacts are beginning to challenge tenurial governance, but their implementation is not adequate. Hence, the impact on the ground of some recent efforts such as CF and rehabilitation of mangroves is yet to be seen in concrete terms. Therefore, having a policy in place is insufficient to achieve desired goals.

Disputes related to forest tenure are often difficult to resolve and could trigger further social instability. It is also difficult to meaningfully move forward without addressing the historical scars of land confiscations and acquisitions. At stake are not just the overall economy and infrastructure, but also the country’s social and political stability and the future wellbeing of its people.

The findings coincide with the broader demands being made by local and ethnic communities, who consider protection and recognition of forest tenure rights central to the protection and recognition of customary and cultural systems. The challenge here lies in devising solutions that not only promote tenurial rights and conservation, but that also locate the undeniable importance of sustainable use of resources. In reality, as is evident from these findings, only a part of the challenges associated with the protection and recognition of forest tenure and the sustainable use of forests is located in and around forests itself.

Deliberating forest tenure in Myanmar: In November and December 2019, two state/region-level workshops were held to discuss the FTA; these saw 114 participants. A national-level workshop held in February 2020 had 92 participants. The government (Union and States/Regions), the private sector, CSOs, the academia, and the international donor community were represented at the three workshops. Forty percent of the participants were women and 10 percent were community leaders. Nearly 44 percent of those who participated in the States/Regions’ workshops attended the national one too, facilitating knowledge building on forest tenure over time.

The three workshops discussed the FTA over 57 hours; of this, 46 hours were devoted to gaining insights into and understanding tenure issues, ground realities and opportunities for the government and civil society to engage in strengthening policy, regulations, and implementation.

All the workshops featured comprehensive discussions on improving forest tenure governance in the country. The national workshop validated the findings of the state/region workshops, analyzed principal challenges and opportunities to protect forest tenure and identified ways to strengthen it. The final scores (provided by participants) for FTA Indicators along with a brief commentary are presented in Annex II. A summary of participants' feedback on the workshops is presented in Annex V.

Overall, participants acknowledged that several of Myanmar's recent policies and laws have considered gender, equity, and pro-poor approaches and are responding to climate change. However, the implementation of these policies was found to be weak.

CONCLUSIONS: TRENDS AND PATTERNS IN SECURING FOREST TENURE

A wider socio-legal-cultural-political discourse emerged from the discussion on forest tenure, particularly for resource-rich regions in Myanmar. This was about the difference in perspectives between forest-dependent communities and modern-day governments, governance systems, and indeed the modern nation state itself. How communities think about the actual management of forestland and other resources, the architecture of communities or even the idea of tenure is drastically different from the ideas promoted by the modern nation state and economic systems. While both forest-dependent communities and, to a lesser extent, the government is willing to accept changes to their perspectives and positions, the process remains fraught with tensions.

To begin with, for forest-dependent rural communities, economic prosperity is not linked to wealth accumulation but sustainable and shared use of resources. These communities do not consider land and resources to be property, marked off with rigid and permanent boundaries; instead, they emphasize the idea of community access and use over private ownership. For them, land and forests, in particular, are imbued with community "feeling" and spiritual significance and their relation to resources goes beyond the purely utilitarian, modern approach that claims that everything is "exchangeable" once a monetary value is assigned to it. Furthermore, forest-dependent communities are also keen to retain their socio-cultural values that are closely linked to their social and personal identities. Current forest tenure reforms have emerged, in part, from challenges to the centralized control of forests and the denial of traditional access to forestland and resources. The following sections summarize the main discussions and conclusions of the workshops.

Conflicting regulatory mechanisms. The issue of competition between different stakeholders and the need for regulation is complicated by a few factors. One is when the concerned stakeholders operate according to different standards. Another is the fact that forestland (and resource) uses are based on a wide range of tenurial claims, from private ownership rights to different forms of communally shared use. Yet another is the existence of diverse reference systems on access to forestland and resources, as well as their own standards and authorities.

Several participants drew attention to the provisions in the Farmland Law, VFV Law, and other laws and regulations that conflict (overlap) with each other. They urged the harmonization of the revised Forest Law of 2018 and subsequent draft rules of 2019 with the objectives of the NLUP of 2016 (and the National Ceasefire Agreement or NCA of 2015 and related interim agreements). It was highlighted that some provisions in the draft Forest Rules conflict with efforts to make land and environmental issues in ethnic areas part of the Union Peace Dialogue (21 Century Pinlong Peace Conference).

Simplified and streamlined policies, laws, and guidelines are lacking. Over the past six years, the government has sought to eliminate the overlap and duplication of policies and regulations as a way of “fixing governance”. As the assessment showed, the government has made some progress in the area of forest tenure by streamlining overlapping provisions and mandates. However, significant differences remain at all levels, even on a conceptual framework on sustainable forest and resource management. The complexity of the policy domain defies efforts to divide it neatly between jurisdictions, especially given the limited understanding of the ways in which systems work at the community level. Additionally, some discussions have been reduced to a debate on the merits of particular proposals rather than increasing institutional capacities and empowering communities.

The NLUP recognizes customary rights to land and seeks to define processes for resolving conflicts at the district level. NCA provisions forbid forcible land confiscation. The Forest Law of 2018 does not clearly address either. Thus, prior to implementation, principles should be clarified and differences eliminated. The workshops drew attention to the ongoing drafting of the Land Law. The Land Law aims to endorse the provisions of NLUP and other recent policy instruments and eliminate prevailing overlaps and inconsistencies. It will provide a basis for revising all laws related to land—and forests—to be consistent with the NLUP as well as the National Ceasefire Agreements (NCA) and other policy statements.

Participants noted that the Farmland Law and VFV Law of 2018 employs land and land-use classifications that do not recognize local community rights to forestland and runs counter to the recognition of customary land rights and the spirit of the NLUP. Article 30-A of VFV Law (amendment) 2018 asserts that land held under customary tenure should not be treated as VFV land. However, there is no regulation to support its implementation. Participants called for adopting and enforcing a regulation for the formal recognition and protection of customary land tenure rights and related local customary land management practices of ethnic

groups. The workshop also drew attention to the fact that the Farmland Law amendment is silent on customary tenure rights.

Several participants referred to statements made by the Karen National Union (KNU), which asserted that the VFV Law violated the 2012 ceasefire between the government and the KNU as well as NCA provisions. It was suggested that until the Forest Law and Forest Rules are aligned with the NCA provisions and the spirit of the NLUP, they should not be applied in NCA areas.

Application of the FPIC Principles. Forest Rules should define the function, access to information, and power of the local authorities in administering forest tenure. These should follow general FPIC principles and good practices which include adequate time to consult and sufficient consultation. Several participants indicated that under FPIC procedures the current provision of 30 to 90 days (for different types of land allocation and investments) for most decisions was insufficient and urged that the focus be on decision quality and ensuring that adequate consultation occurred. Forest Rules currently under preparation should also provide clarity on the role of State and non-State actors including business enterprises in strengthening forest tenure and respecting rights.

Ineffective institutions and weak enforcement.

Although weak enforcement of policies and regulations is generally acknowledged as a widespread and significant problem, the full complexity of the underlying causes for this is often not understood. In some cases, the laws may not be the issue, but their application may be considered illegitimate by local stakeholders who have not been adequately involved in decision-making. In such situations, community-led, co-management approaches may be necessary to build local support.

In other cases, the policies/laws may be generally accepted as appropriate and fair, but enforcement may be uneven, with the rich and powerful benefiting or government staff avoiding due process. This circumstance highlights the need for laws to be enforced more fairly. To argue the disparity in enforcement, legal assistance may be needed for those unable to afford lawyers themselves. Unequal application of the law may also be a symptom of poor governance and practices.

A key concern is the risk of enforcing unjust or counterproductive laws/policies. For instance, those holding customary rights may be unfairly “criminalized” when forest policy and laws fail to respect their rights and concerns, as has often occurred during the creation of logging concessions or protected areas by the government. The answer to unfair or counterproductive laws is legal reform and—depending on the circumstances—compensation for those holding/using the land areas.

A review of the “enforcement chain” indicates that lapses and weaknesses can be pinpointed and addressed. A holistic approach should be rooted in the understanding that enforcement does not consist of detection of the problem alone but following up the lapses and eliminating weaknesses. The “enforcement chain” includes subsequent steps such as improving capacities, revising guidelines and processes, and simplifying procedures. For an enforcement system to effectively support forest tenure, each of those steps must be efficiently followed.

Persistent gaps between legitimate tenure rights and those recognized and registered.

There is a dearth of application of approaches that are informed and guided by a framework of respect for rights and the values that underpin it. Participants emphasized the importance of power relations in forest tenure and the core principles of participation, sustainable access to use of resources, non-discrimination, and accountability. Growing pressure on forestland is likely to trigger disputes and destroy livelihoods of local communities. Uncertain tenurial

arrangements do not help either. For example, the workshops expressed concerns on the short duration of forest tenure rights granted to communities by the government (e.g., 30 years in the case of CF), which is often not enough to realize tangible benefits from the forests. Guaranteeing renewal of tenure is a must for continued investment by local communities that would not only ensure continuity but also protect and recognize their rights in perpetuity. Another aspect highlighted was the absence of a system to record tenure rights, valuation, taxation, and planning. Participants attributed this to the lack of policies and legal instruments needed for designing a comprehensive land-use plan. This can be addressed by current efforts to draft Forest Rules.

Weakening focus on sustainable forest management. With increasing competition for forestland and resources, there is rising pressure on forests for energy and subsistence farming. Increase in illegal activities pose additional threats, affecting progress towards sustainable forest management. The impact of this growing

crisis will end up spreading and widening tenure insecurity and the poverty gap, increasing the cost to the environment. Against this context, the legal allocation and transfer of rights, responses to climate change, gender and equity, and sustainable forest management were discussed at the workshop. Participants asserted that current laws and policies in Myanmar only moderately address these concerns. For example, there are no clear and precise objectives for forest management and use when forest tenure certificates (or permits) are granted. Implementation guidelines to ensure gender and equity while promoting CFs or forest-based enterprises are poorly understood. Village

communities need to be included as forest owners. Provisions under Farmland Law and CF Instructions indicate that the household's right to use natural forests is more limited than the right to use land. In many areas, the benefit-sharing mechanism is either non-existent or ineffective and is based on old and irrelevant forest management standards. Land-use rights overlap in special-use forest areas due to lack of clarity over land ownership between national parks and households/communities.

Community-led approach would be helpful.

Participants noted that community-led management of natural resources could help in sustainable forest management. However, the co-management of forest resources is not proceeding at a desirable pace partly due to the lack of guidelines and the lack of resources and technical support to communities. Although many recent reform measures have conceded some local decision-making rights over forest management, the State (both Union and States/Regions) continues to hold on to management rights in several ways. Better co-management approaches are necessary to promote better government-community

collaboration. Such arrangements should recognize existing resource uses rooted in local traditions and practices, while introducing new rules and standards to promote sustainable use. In general, however, the community should have greater decision-making powers, while State retains broader control. Overall, the FTA results alluded to a lack of recognition and support for community-led management systems that would empower local households to engage in sustainable management of resources. It also seemed to indicate more

weaknesses than strengths in current policies and legislation in Myanmar with respect to strengthening tenure for forest-dependent communities and individual households.

Strengthening Capacities of Institutions and Communities. The government's capacity to address climate change and natural disasters in forest areas is limited due to unsecured long-term funding, limited technical skills, and lack of clarity over the sustainability of finance mechanisms. In some cases, despite having policies in place, implementation is weak for multiple reasons, primarily weak institutional capacity, lack of commitment, and limited or no resources.

Although government organizations have modest overall capacity at the Union level, significant capacity gaps exist in States/Regions and at District/Township levels. Only limited support and resources are available to district/township level institutions working to ensure continuous technical and extension services are delivered to forest-dependent communities. Support from government institutions to develop market access for forest products and services are insufficient.

Favorable conditions exist to further promote and build upon community forestry. Since the CF Instructions were developed, opportunities to promote community tenure have significantly increased and more forest-dependent communities are willing to apply for formal recognition of their user rights and limited management rights. CSOs have supported forest tenure reform because of ongoing efforts to implement and expand community forestry, community-protected areas, and community fishery programs, as evidenced by CF Instructions, community-based fisheries, etc. However, CFs needs to emphasize the development of economic activities for improving the livelihoods and income of forest-dependent communities. The government can also develop local communities' skills to coordinate and organize themselves on tenure-related issues. Implementing CF requires political commitment to address direct and indirect drivers of deforestation, an adequate funding mechanism that is based on a thorough analysis of all costs and benefits, a transparent and equitable benefit-sharing mechanism, and government's ability to support a participatory decision-making approach in which local and ethnic communities can take part.

Peace is a critical platform for strengthening forest tenure and sustainable development. With regard to federalism and institutional development in Myanmar, one of the main drivers of forest tenure reforms has been peace negotiations, although tenure reform is not necessarily the main goal of that dialogue. Peace, rule of law and democratic governance are not only closely inter-related, but also mutually reinforcing and critical for securing forest tenure and achieving sustainable development. Decentralization and federal governance arrangements will impact tenure rights by altering the distribution of

decision-making powers, particularly in upland Myanmar where shifting cultivation and customary tenure rights are widespread. Conflicts between statutory and customary systems have sometimes increased insecurity.

Increasing government control will lead to further conflicts. Participants identified the failure of past governments as the fundamental reason for the conflict between communities and the State. Governments have failed to allow community use and access and management rights in designated forest areas. Instead they have actively prevented and penalized communities accessing designated forest areas. This can be resolved if the government allows community management of large forest areas. Participants reasoned that the courts could not resolve disputes on such matters, as community management is not allowed in State forests.

Resolution of Grievances and Disputes. Other capacity gaps identified relate to the support government organizations can provide in addressing disputes, conflicts, and grievances, especially in case of overlapping boundaries between investors and local communities and areas under community management. Participants felt that formal procedures fail to recognize and mention the role of ethnic governance and customary systems of dispute resolution. The union government can respect and make space for these institutions. Some participants asserted that many ethnic conflicts stem from past government failures in recognizing community rights over designated forest areas. Myanmar needs to stop evicting communities from forests and instead make them forest custodians.

Dispute resolution that fails to take into account genuine community ties to forestlands, both from an economic (livelihoods) perspective and a spiritual/cultural perspective, could easily lead to further disputes. Key challenges in dealing with conflict and grievance management are the lack of public access to the formal legal system (which is virtually non-existent in some areas) and the lack of local capacity to deal with issues of boundary demarcation, overlapping and competing claims, benefit sharing, and roles and responsibilities in forest management.

Documentation and information on conflict is inadequate and on-ground grievance management processes are insufficient. The workshop noted that monitoring and analysis of forest tenure conflicts are not always carried out properly by government agencies. This is the result of limited data available from case studies and limited conflict management support given the shortage of resources (expertise and information). Moreover, where programs provide direct support to forest-dependent communities, the response is a reaction to a particular instance and not preventative measures. CSOs lack the financial and human resources to respond to conflict on a long-term basis.

Managing competing interests and regulating the private sector. Participants also described capacity gaps in the government in terms of the numbers and capacity of staff as well as their ability to develop relationships and trust with the private sector and other stakeholders. This is more evident in the enforcement of safeguards. While the government regulates the role and accountability of the private sector to some extent, the implementation and monitoring and evaluation (M&E) of EIA/SIA is limited. This applies to support measures that aim at consolidating forestland and resources (in case of mining) for investors. The government's M&E capacity is weak and neither communities nor CSOs are actively involved in the process. Given the weak enforcement, the private sector does not provide sufficient and sustained cooperation.

Governance Challenges. Discussions identified poor forest governance and weak institutions as the major indirect driver of deforestation and degradation of natural resources in the country. Given the extent to which competition for forestland and resources has intensified, it is inevitable that discussion on forest tenure should include concerns about the numerous challenges confronted by those campaigning for land and resource rights too. Besides the many technical challenges involved in pushing reforms through, unclear tenure is daunting since there is a risk of elite capture of land and resources. This can pose significant risks to rural and forest-dependent communities.

Put simply, the challenge is to make policies and regulations work for society and not the other way around. There are many good examples of innovative, practical means of achieving this. However, vested interests inhibit their adoption and implementation at the required speed and scale. General improvements in governance and institutions in tandem with the implementation of legal and policy guidelines for sustainable forest management could contribute towards tenure reforms.

Management of forestland and resources and forest tenure generally relies on local governance, through the creation or use of community bodies that should ensure customization according to community practices. In this context, accountability mechanisms, key tools of good governance that can safeguard communities against arbitrary decisions, are lacking. It may not be helpful for laws/guidelines to prescribe a set model for all community forests across a country without considering regional variations. However, legal provisions can

enable the development of by-laws, which are rules generated by the community explaining how they aim to run the community forest according to their own structures and practices. There are some common elements to consider in supporting this process.

It is important that those in charge of implementing initiatives such as community forestry or those who hold decision-making positions are accountable to all forest users within the community. Within legal frameworks, particular attention must be paid to preventing the exclusion of marginalized groups. Enabling the participation of women in community forestry is essential to ensure the involvement of all community members. Legal frameworks mandate a certain degree of female participation in community forestry efforts but the enforcement of such provisions is key to social inclusion.

Despite advances in modern geospatial technology, Myanmar lacks a complete inventory of geo-referenced land parcels for forest and non-forest lands and available land information is scattered. While cadastral databases maintained by MoNREC (on forest and mining), DALMS/MoALI, GAD, and others serve as basic reference points, these are not updated with regular ground truthing. This situation, along with the large backlog in the formal delineation of land and the recording of relevant data present numerous challenges to good governance in the forest sector.

Role and contributions of civil society in strengthening forest tenure. Today, civil society plays a much greater role in Myanmar's public affairs, especially issues relating to land and natural resources. Farmers, ethnic associations, and community development organizations increasingly demand recognition of their tenurial claims and equitable access to forest and resources. However, recognition of the legitimacy of the claims of long-excluded groups, poor local governance, social upheaval, and economic marginalization of several communities continue to generate public concerns and fuel continued mistrust in the government.

CSOs have been working with local authorities and compensating for lack of resources and technical capacities in several areas. They provide support and expertise to union and local governments in promoting sustainable forest management and forest tenure. A number of CSOs also function as intermediaries between the government and forest-dependent communities in REDD+ efforts as well as climate change adaptation projects. CSOs have to support

forest-dependent communities in getting forest tenure rights recognized, which involves time-consuming and difficult procedures and policy requirements. They face challenges in facilitating sustainable working relationships between the private sector and forest-dependent communities where government capacities lag.

Discussions at the workshop acknowledged that CSOs have the capacity to strengthen forest tenure. However, analysis shows that this is not enough to ensure sustainable desired outcomes of forest tenure reform such as improved incomes and livelihoods of forest-dependent communities without simultaneously building up capacities of the government and communities.

At present, there is no integrated and coordinated capacity development system cutting across the three groups: the government, communities, and CSOs. Capacity development for strengthening forest tenure is ad hoc and some ongoing activities are not adapted adequately to local contexts. Although training materials are available and key personnel of the government, community leaders, and CSOs have been trained on forest tenure issues, the FTA revealed a need to strengthen their capacity to disseminate information about rights and responsibilities and strengthen the skills of forest-dependent communities and local government agencies for not only accessing tenure claims but also improving livelihood improvement and income generation.

Enabling community participation. The assessment noted that awareness-raising and dissemination of information about forest tenure and proposed reform measures was not at desirable levels. Public awareness raising is critical for an enabling environment that provides accountability, promotes participatory and inclusive processes for follow-up and review, and builds ownership. Raising awareness is necessary for local communities to understand existing policies, laws, and rights in relation to forest tenure and to avail of opportunities to participate and hold the government accountable. Raising public awareness on the SDGs is also essential to foster the political and social change needed to achieve its ambitious agenda. The policies/laws/guidelines should include specific provisions to encourage participation of all community members, especially vulnerable groups, such as women and indigenous people. Community members can be empowered to determine for themselves what mechanisms best suit them.

KEY MESSAGES

Engage and maintain diverse and multi-sectoral stakeholders prior to and during the process of developing and implementing the reform process.

This entails demonstrating that forest tenure security will not be compromised. Focusing on social gradients to tackle inequalities rather than on gaps between the extremes of the socio-economic spectrum makes this task more feasible.

Stakeholder participation should be varied and vast.

This means involving every sector, as well as civil society and local communities, using mechanisms that have wide reach. Engaging other sectors allows each participant to identify how their sector could contribute to strengthen forest tenure. Through such relationships, every sector will not only be able to discuss forest tenure but also promote consistency in their own land-related management policies.

Utilize and strengthen existing entry points for inter-sectoral work.

Inter-sectoral work has proven to be easier not only in populated areas but also among remotely located communities. Existing inter-sectoral mechanisms could be used as entry points for joint work, regardless of community size. Partnership with these societal structures can contribute to the development, communication and implementation of forest tenure.

Prioritize while implementing and look beyond the short-term.

Tenure reforms are comprehensive in their nature. Therefore, it is critical that yearly priority and objective setting take place with concrete and measurable targets with a focus on long-term goals. Identification of future challenges, needs and opportunities during implementation can help to prepare the ground for future forest and resource administration and management too.

Achieve accountability by means of an updated information system with performance indicators.

The system should have sufficient capacity for national and international comparisons (benchmarking), as well as meet data requirements of Government's plan for strengthening forest tenure.

Face data challenges head on.

Challenges posed by forestland and resource information systems (e.g., a lack of disaggregated data) to be addressed through joint data collection, joint reporting with local communities - and monitoring progress on agreed sets of core indicators.

Seek opportunities for sharing experiences, disseminating information and problem solving.

Regular dissemination and (appealing) communication to external audiences through both scientific and lay mechanisms (reports, presentations, papers, etc.) will help build support for strengthening communities and tenure arrangements.

Map out the country's capacity-building needs for forest tenure reforms.

Systematic training and capacity-building efforts with a focus on Forest Tenure will help them employ a so-called tenure lens when making policies and implementing programs within forest and other sectors. Ensuring continuous training of government staff both at Union and States/Regions through the development of a continuing forest tenure reforms will result in better informed and more satisfied staff in the long run.

Seek out support from development partners to support and facilitate the policy dialogue process and its implementation.

POLICY RECOMMENDATIONS AND NEXT STEPS

The assessment demonstrated that protection and recognition of forest tenure rights is critical if forest-dependent communities are to play an increasingly important role in forest and biodiversity preservation. Such a measure will also enable regulated use of forest resources and respect for customary and traditional practices and laws. The assessment also recognizes some pro-people and pro-reforms work done by the government and its agencies. It is almost impossible to achieve forest management (economic, environment, social) objectives without dealing with policy and capacity gaps and without involving local communities in the protection and management of forests. Most importantly, the government and other stakeholders should recognize the role of the community in protection and management of national forests.

Some of the key recommendations discussed at the workshop:

- The FTA's results and findings should be integrated into the national land law while it is being formulated.
- The FTA's final report should be published immediately so that findings and suggestions can be reflected in the forest tenure rules being developed.
- The FTA's findings and results should be considered as inputs for developing policy briefs and strategic plans related to forest governance.
- Relevant thematic sub-committees at the Hluttaw (Parliament) should be informed about the FTA's findings/results.
- To further mobilize data/information, online survey methods should also be deployed for the FTA. However, the limitations of this method should be noted.
- Pilot implementation of collective/communal titling of forest tenure with the support of literature and culture associations and/or CSOs of respective ethnic groups can also be part of the multi-stakeholder FLEGT initiatives in the area.
- Myanmar's development partners, donor organizations, and CSOs should continue to support the FTA process financially and with technical advice.

In implementing the above recommendations:

- Those that benefit the local communities the most should be prioritized;
- Different working groups, one for each theme, should be formed to carry out specific work plans;
- FTA results and findings should be widely disseminated in timely fashion; and
- Information dissemination and orientation workshops (for local authorities and communities) should be held at the State/Regions' levels across the country.

Weak institutional capacity impedes development or implementation of forest policies. Therefore, even good policy statements have far from adequate implementation. What is critically needed is comprehension of the policy gaps and capacity needs to ensure successful strengthening of tenure for forest-dependent people. A progressive future scenario envisions a well-funded and coordinated implementation of tenure forms that involves all State and non-State actors. Another challenge for implementation relates to benefit sharing and improvements in the welfare of local communities.

Discussions elicited a few critical principles that should underpin future initiatives. Firstly, **community empowerment** is central to strengthening forest tenure; participation should be encouraged and the marginalized given a voice in the process. It is an interactive socio-political process. Closely linked is the second principle: the notion of **sustainable use of resources**. This involves making forestland and resources available for those with little or less access to livelihood opportunities. It relies on the understanding that communities can treat resources as communal property and are willing to work with the government to use, conserve, and preserve forestland and resources as renewable and generative. The third principle relates to **dialogue and partnership**, because only such reciprocal processes will allow the government and people to discover and test their own capacities to manage resources for equitable benefit. This dialogue should include periodic consultations/dialogue to develop policies, regulations, and programs that would help implement different policies and programs. All these principles strengthen people's relationship with forestland and resources and will lead to better decision-making approaches and governance.

The current policy, implementation, and capacity gaps in forest tenure in Myanmar require comprehensive short-, medium-, and long-term action plans. They should be focused on strengthening forest tenure. Long-term recommendations would relate to the peace process or the land law. Sustained dialogue and multi-stakeholder processes make this a likely long-term affair. Issues beyond the scope of the FD would probably take some time to resolve (and would probably involve a new forest policy/law) and would, therefore, fall in the medium-term category. Over the short-term (1-3 years), recommendations such as better grievance redressal mechanisms, capacity building, access to information, and revision of instructions and standard operating procedures could be implemented.

Protecting and recognizing forest tenure and claiming it are powerful ways of contributing to a stronger community that more fully embraces social inclusion. Furthermore, as experiences in different States/Regions in Myanmar demonstrated, such an approach facilitates sustainable outcomes because it strengthens social relations and uses their strength to advocate their aspirations and needs. Also, it is important to understand drivers of deforestation as Myanmar considers strategies to mitigate challenges arising from intense competition over resources while ensuring forest and resource conservation within the context of global climate change using benefit-sharing mechanisms. Growing evidence suggests that communities and households with secure forest tenure rights protect,

maintain, and conserve forests.

This review throws up the following key conclusions and recommendations aimed at strengthening forest tenure security for farmers, upland communities, and forest-dependent communities in general, and for strengthening governance of forests and resources overall. These include steps to enhance the policy, legal, and regulatory environment to protect and recognize land rights; field-level measures; policies to support the development of land information systems; and steps to develop capacity and facilitate changes at the national and local levels. The recommendations underscore the fact that protection and recognition of forest tenure is linked to sustainable development of natural resources in Myanmar, which, in turn, requires pragmatic solutions to tenure issues. Such solutions must take into account political economic, technical, organizational, legal, and socio-cultural factors.

The set of recommended engagements proposed here are directed at the government, civil society, and its development partners for consideration and action.

The adoption and enforcement of a comprehensive policy and legal framework is the first and critical step in reforming the forest tenure. The government should be encouraged to reiterate its commitment to implement a domestic comprehensive legal framework that protects tenure security and promotes equal access to tenure for local and ethnic communities, women, rural poor, and other socially vulnerable groups. This in turn will promote the protection of rights to forestland and resources. For example, the proposed new land law should reduce existing multiple and overlapping forest tenure regimes into manageable number with clear and concise criteria for their administration and management. The draft of the new land related legislations should include support for the development of locally based dispute resolution mechanisms to address the land conflict. These mechanisms should be built around local traditions and mechanisms to be responsive to needs of communities – and made as legally enforceable and realistic. The government, while preparing the new land law, should consider the ‘custodianship’ model for forestland and resources administration. There should be parallel efforts made to strengthen NSDI through implementation of OneMap and streamline work on all land databases. In addition, the government will have to prepare and issue thoroughly revised set of regulations and guidelines, replacing the existing ones, on land and land-use classification.

Mainstream forest tenure of local and ethnic communities. The government should initiate systematic strategies to safeguard and promote the rights of forest-dependent communities to land and resources in forest areas in the most cost-efficient and effective manner. Towards this end, the government must: (a) build in-house awareness on access and use of forestland and resources and management rights and existing concerns; (b) support community-based efforts like land mapping and employ participatory processes; (c) gradually increase the number of staff recruited from local communities in the field, the back office, and in decision-making positions (this should include proportionately recruiting more women from local communities too); (d) reach out to various actors, within and beyond the government, through constant information dissemination to foster

public support and build confidence in the concept and process; (e) maintain regular monitoring, quality control, and audit of access/use of forest resources and government's own compliance with its national and international commitments; and (f) establish and manage community/area-specific databases and indicators on forestland availability/use and socio-cultural rights at the grassroots level with aggregated results available for management and policy decisions.

Engage all stakeholders and political leadership in the implementation of forest tenure reforms, to ease the shift from isolated measures to coordinated governance strategies. The establishment of a network of civil society and community leaders, under government responsibility, will play such a role and keep the track of reform implementation. Empowerment of local authorities and communities should be promoted by governments with due regard to the poor and women. Public awareness is important to increase enthusiasm and support, stimulate self-mobilization and action, and mobilize local knowledge and resources.

Improve local capacities (of government, community and civil society actors) to gather information on forestland holding patterns and socio-cultural factors affecting them. Sufficient information must be gathered on pre-existing use and ownership conditions. A thorough classification and analysis of available information could help enhance local and ethnic communities' claims on forestland and resources. Such an evidence-based effort will help effectively target policies, programs, and resources. Taken together:

Policies supporting forest tenure in Myanmar must focus on: empowering marginalized groups; developing the capacity and technical skills of States/Regions', local institutions and community actors; enhancing accountability and transparency; broadening the options and scope of development; and creating livelihood options for the poor.

Securing benefits for forest-dependent local and ethnic communities and marginalized groups should be a stated priority: It should be difficult for local elite and others to usurp community benefits.

Empower local and ethnic communities by adopting community-based forest management as its overall strategy for managing and protecting forests, forestland, and resources: There is an urgent need for effective action to minimize negative upstream-downstream and on-site-off-site impacts of forest management externalities. In recognition of this, such an initiative will

democratize access to forests and forest resources, improve the socio-economic conditions of upland communities, decentralize and devolve forest and forestland management, and conserve biodiversity and maintain environmental services of forests and forestlands to both on-site and off-site communities.

Recognize linkages between land, forests, and resource tenure regimes: Policies/laws/regulations should ensure that communities have strong and clear tenure rights in order to benefit from community forestry. It is important, in particular, that they reflect communities' customs and uses of forests and land, including those of local and ethnic communities. Such steps should include simplifying the process of allocating community forests and related rights.

Protection and recognition of forest tenure should include technical and advisory support for productive activities and ensure timely flow of benefits to communities: If the scale of benefits is too small, poorer groups have no incentive to participate. Government investments should be linked to the creation of productive activities with a clear timeline for generation and flow of income for the households.

Supporting internal community governance: The law can support community governance by providing for general principles of accountability and transparency, while foreseeing that specific mechanisms of implementation will be developed by local actors. A simple process should allow communities to follow the process themselves and seek support if they choose to do so. It is important that the procedure remains streamlined and inexpensive.

Sustainability should be enhanced. In piloting forest tenure, initial success may wane if support is not sustained. Consistent support will ensure follow-up and sustainability through clear plans and delivery of scheduled inputs.

Adopt a national strategy to develop a national Land Information System: This strategy must include detailed guidelines for managing land information (textual and spatial) throughout States/Regions and at the union level. A minimum standard of information access for forestland and resources must be incorporated in the forthcoming umbrella land law and other policy/regulatory instruments. The government should also put in place national LIS guidelines to set the technical basis upon which MoNREC, DALMS, and other government institutions manage their respective land and resource information.

Participatory forestland mapping and registration process should be simplified and strengthened: Community and governmental capacity must be built up to demarcate forestland, gather evidence, register properties, and formalize tenure through participatory and inclusive processes.

Government staff must be continuously trained and educated: in mapping and in sustainable forestland-use practices. Training should be appropriate for the local context, equitably available, operationally focused, and easily applicable.

Adequate funding should be allocated: from the very start, so local departments can launch and implement proposed benefit-sharing activities. Local government capacity must also be built up to mobilize revenue through taxes and/or fees related to land and government provision of services to communities.

Systems and culture for in-house transparency need to be built: Training must be provided to build positive values and attitudes (such as accountability, work ethic, etc.) to counteract opportunistic behavior by a small group of people within communities or local areas. Local officials should be encouraged and allowed to comply with fiduciary accountability as a first step towards transparency and accountability with incentives for good practices too.

Civil society should be supported and strengthened to become part of improved forest tenure administration and management: Support must be provided to CSOs that educate individual communities and neighborhoods about their rights, help them to demarcate their territories and prove tenure, and provide legal aid to enforce rights. They must be encouraged to disseminate information on land rights and how to protect them, especially to marginalized (women) and disadvantaged sections within forest-dependent communities. Government agencies must also disseminate information on forest tenure, in a user-friendly and positive manner, building on good practices.

Government should be encouraged to prepare and disseminate periodic monitoring reports on progress made in enforcing forest tenure rights (e.g., UNDRIP, FPIC or SDGs), etc.: These reports should be discussed with civil society and public at large so that follow-up actions are specific and reported.

It was recommended that Myanmar's development partners (including donors) pay particular attention to support, as a minimum, the following:

- Capacity building to enable government (Union and States/Regions and local authorities) and local communities to engage in a dialogue on forestland and resource administration and management. They need to be able to access information and make and defend their own assessments and proposals.
- Strengthening of national research capacities and public and independent expertise likely to contribute to knowledge of the issues at stake and policy formulation and monitoring. Designing and implementing forest tenure policies requires knowledge of local situations and the capacity to evaluate them. Since it is important for civil society groups to be able to mobilize communities and independent expertise, this could be the focus of an annual training program for officials and experts. Networks moderating the debate on land tenure should also be given institutional support.
- Launch of initiatives to debate forestland and resource tenure policies using inclusive approaches to do so. Shared policy development assumes that there is sufficient agreement on the diagnosis and main thrusts of the action. The objective is for local and ethnic communities that are often excluded from the debate to be involved in participatory processes, something that requires long-term investment and engagement.

Poor land and forest governance, conflicting legislation, and the lack of political will to adequately address socio-economic inequities and bias are major barriers to fulfilling the livelihood needs and rights of forest-dependent communities. Capacity building among marginalized groups, especially women, will help them better understand and accomplish change. Civil society can serve as an interface, galvanizing political will to ensure that all legislation is coherent on sustainable use of forestland and natural resources.

Some stakeholders may push for blanket recognition of the initiatives of local communities as a model for securing forest tenure. Such calls overlook potential elite capture, the need for gradual improvement of standards through checks and balances, and the importance of addressing inherent weaknesses in the operation of community-based actors identified by this assessment. The cornerstone of forest tenure should be a broad-based approach with clearly enumerated medium- to long-term local development objectives and a reasoned advocacy for compliance with internationally and nationally recognized standards and commitments. Such objectives must focus on compiling evidence to strengthen tenure security and community participation. To fully realize such objectives, the government must practice careful thought and planning, better sequencing of tenure reforms and inputs, and transparent management. However, the fundamental goal of securing forest tenure should be to deliver equitable and sustainable benefits to everyone, particularly local and ethnic communities. Such efforts must be considered a part of securing sustainable peace, social cohesion, and nation-building with valuable contributions from all stakeholders and communities.

Participants suggested that efforts be made to strengthen existing dialogue and collaboration between the government and communities. Actions to reinforce ongoing forest tenure reform should be prioritized. Particular attention should be paid to engaging investors and increasing their responsibility in achieving livelihood improvement. Existing capacity development efforts of different actors and stakeholders should be better coordinated at the national and local levels to address knowledge and skill gaps in forest tenure. Priority areas for strengthening capacity should include conflict and grievance management and enforcement of FPIC principles. Participants also recommended the government roll out different models for allocating and registering tenure rights. While the workshops acknowledged the work of the CSOs, they also urged them to take the lead in awareness-raising (including training for local communities) that targets all actors including the government on the importance of and priorities for strengthened forest tenure.

POLICY ROADMAP

The two States/Regions' Consultation Workshops and the National Multi-stakeholder Consultation and Validation Workshop acknowledged that Myanmar's forest-tenure arrangements are undergoing a major, unprecedented transition. For the government, this offers an opportunity to make headway in establishing the conditions needed for effective forest conservation and protection of resources while recognizing the tenural claims of local communities. Following the workshops and based on the findings of the FTAT, the Working Group suggests the following action points:

1

Support the work of the National Land Use Council (NLUC) to reinforce the tenure reforms. In doing so, increase political and financial commitment as a central strategy to achieve development goals related to forest tenure reforms such as poverty, climate, and food security.

Assessing community claims, mapping tenure, delimiting property, reforming legal frameworks, devising regulations and establishing new enforcement mechanisms are expensive. The government must thus dedicate considerable resources to tenure reform. Civil society can serve as an interface, galvanizing political will to ensure that all legislation is coherent on sustainable use of forestland and natural resources.

2

Utilize and strengthen existing reform measures (as entry points) to encourage tenure reform.

At present, the government is drafting a set of land and related laws/regulations (e.g., umbrella Land Law; preparation of Forest Rules, Rules for the Conservation of Biodiversity and Protected Areas Law) as part of the reform measure. Such ongoing efforts should be an opportunity to include forest tenure issues and thereby strengthen protection and recognition of local and customary practices that would realistically respond to the needs of communities. In addition, the government must prepare and issue revised regulations and guidelines on land and land-use classification. National Spatial Data Infrastructure (NSDI) Framework should be developed and strengthened by implementing the OneMap policy and streamlining standards and work on all land databases.

3

Develop, implement, and mainstream strategies and programs to safeguard and promote the land and rights of forest-dependent communities.

Through the adoption and implementation of the new Land Law, Forest Rules, Rules as per CBPA Law (and existing Environmental Conservation Law of 2012), government and civil society stakeholders will be able to secure their tenural claims. The ongoing EIA/SIA efforts should be made more participatory and reports shared periodically with the public and affected communities. This is critical not only in achieving effective and efficient forest conservation but also in protecting the rights of forest-dependent local communities and customary rights. In doing so, the government must maintain regular monitoring, quality control, and audit of access/use rights while complying with national and international commitments. Information on pre-existing use and ownership conditions must be collated in community/area-specific databases. This helps enhance local and ethnic communities' claims on forestland and resources and effectively target policies, programs, and resources.

4

Engage all stakeholders in implementing forest tenure reforms to ease the shift from isolated measures to coordinated governance strategies.

A network of civil society and community leaders, under government leadership, can keep track of reform implementation. The government must: (a) support community-based efforts like land mapping and employ participatory processes; (b) gradually increase the number of locally recruited staff to fill various roles; and (c) through constant information dissemination, foster public support and build confidence in the process. Investors must incorporate tenure considerations in their due diligence and aggressively support investments that address community tenure issues.

5

Allocate sufficient budgetary resources to improve/build up local capacities (of government, community and civil society actors; including NLUC and other multi-stakeholder bodies that engaged in promoting forest tenure) to gather information on forestland use and holding patterns and socio-cultural factors affecting them.

Community and governmental capacity must be built up to demarcate forestland, gather evidence, register properties, and formalize tenure through participatory and inclusive processes. Government staff should be given context-appropriate training, which should be equitably available, operationally focused, and easily applicable. Local government capacity must be built up to build accountability and capacity and including guidelines to capture revenue through taxes and/or fees related to larger forestland holdings. National research capacity must be enhanced for better data gathering and analysis, based on which effective policies can be designed.

6

Federalist governance arrangements are central to peace negotiations.

Security of tenure and ethnic land rights is intertwined with opportunities for peace, as they are at the center of longstanding struggles to secure equal rights and self-determination. Protracted armed conflict has led to a complex framework where Ethnic Armed Organizations (EAOs) and ethnic communities manage forest lands in many States/Regions, and some EAOs have developed or are currently developing land use policies and forest policies, and establishing systems and departments to govern and administer territories, land and resources, and populations in their traditional territories. For those with bi-lateral and National Ceasefire Agreements (NCA) commitments, the Interim Arrangements and related commitments for joint coordination on land, environment and natural resources provide a basis to operationalize efforts and activities on the ground, but it takes working together. The ongoing peace dialogue should be nurtured as it provides an opportunity for resolving political conflict and defining governance arrangements for land, forests and natural resources.

V. Annexes

ANNEX 1. DISTRIBUTION OF RESPONSIBILITIES ON LAND-RELATED FUNCTIONS WITHIN THE GOVERNMENT (AS OF JANUARY 2020) ⁶¹

S no	Ministry/Agency	Responsibilities
1	General Administration Department of the Ministry of the Union Government (GAD/MoUG)	Town land, village land, religious land, river banks, ponds, grave lands (cemetery), village common lands, grazing ground and disposable State Lands. Responsible for issuance of permits for quarrying construction materials.
2.	Ministry of Agriculture and Irrigation (MoALI) through DALMS	Department of Agricultural Management and Statistics (DALMS), a division of MoALI, is responsible for all land related data gathered from different ministries and entities. Specifically, DALMS is responsible for (i) farmland management and crop statistics (basis for revenue mobilization); (ii) cadaster for all land areas and land revenue registry. In case of CDCs, it manages Deeds Registry.
3.	Ministry of Natural Resources and Environmental Conservation	Forest Department is responsible for administering and managing Reserved Forests, Protected Public Forest Areas, Protected Wildlife Areas, and Botanical Gardens, Watersheds. Responsible for the implementation of policy and legal instruments such as Forest Law, CBPA Law, Wildlife Law and others.
4.	Department of Mines of MoNREC	Administration and issuance of mining permits in case of protected mine land and gem stone land areas.
5.	Ministry of Construction	Residential Urban Land under Housing Department Primary roads as per Main Road Law.
6.	Ministry of Rail Transport	Railroad areas.
7.	Ministry of Culture	Cultural Heritage Zones and Protected Heritage Zones.
8.	Ministry of Transport	Riverine, river banks, and strand areas.
9.	Ministry of Energy	Oil and gas field areas.
10.	Department of Rural Development	Fishery, fishery water, aquaculture area, fresh water fishery areas.
11.	City Development Committee of Yangon, Mandalay and Nay Pyi Taw	Land under the management of the CDCs, land of Private owned, Grants, Lease, Permits and land disposable by state, land and assets held by various government departments, revenue free land and religious land areas within the City Development area.

⁶¹ For further details refer to: www.president-office.gov.mm and also https://en.wikipedia.org/wiki/Category:Government_ministries_of_Myanmar

ANNEX 2. A LIST OF POLICIES, LAWS AND REGULATIONS THAT AFFECT LAND SECTOR IN GENERAL AND FORESTLAND AND RESOURCES IN PARTICULAR

Land-related Laws in Myanmar

1. Canal Act (Act No. 2/05)	36. Vacant, Fallow, Virgin Land Management Law (2012 and updated in 2018)
2. Oilfield Act	37. Farmland Law (Law No. 11/2012)
3. Yangon Water-Works Act (India Act No. 19/1844)	38. Protection Law from Danger of Chemical and Related Elements (Law No. 28/2013)
4. The (Lower) Burma Land and Revenue Acts 1876 (India Act 2/1876)	39. Protection Farmers' Rights and Raising Peasants' Benefits Law (Law No. 32/2013)
5. Revenue Recovery Act (India Act No. 1/1880)	40. Special Economic Zone Law (Law No. 1/2014)
6. The District Cesses Act (Indian Act No. II/1880)	41. Multi-transportation Law (Law No. 3/2014)
7. Boundaries Act (India Act No. 5/1880)	42. Myanmar National Aviation Law (Law No. 52/2014)
8. Transfer of Property Act (India Act No. 4/1882)	43. Myanmar Coastline & Local Riverine Route Transportation Business Law (Law No. 10/2015)
9. The Land Acquisition Act (India Act No. 18/1885)	44. Myanmar Harbour Authority Law (Law No. 21/15)
10. The Upper Burma Land and Revenue Regulation 1889 (Regulation III of 1889)	45. Highways Law (Law No. 24/2015)
11. The Revenue Recovery Act (India Act I, 1890)	46. Law of National Committee Relating to Myanmar Dams (Law No. 41/15)
12. The Lower Myanmar Town and Village Land Act 1898 (Act No. 4/1898)	47. Antique Materials Protection Law (Law No. 43/2015)
13. Yangon Development Trust Act (Act No. 5/20) replaced by YCDC Law of 2018.	48. Antique Buildings Conservation Law (Law No. 51/2015)
14. Underground Water Act (Act No. 4/30)	49. Road Transportation Law (Law No. 3/2016)
15. Unmovable Properties' Transferring Restriction Law (Law No. 1/1987)	50. Railway Transportation Law (Law No. 4/2016)
16. Law Relating to the Fishing Rights of Foreign Fishing Vessels (Law No. 11/1989)	51. The Insecticide Law (Law No. 14/2016)
17. Aquaculture Law (Law No. 14/89)	52. Law Relating to Collective Owned Buildings (Law No. 24/16)
18. The Law relating to Aquaculture (Law No. 24/89)	53. Myanmar Investment Law (The Pyidaungsu Hluttaw Law No. 40/2016)
19. Myanmar Marine Fisheries Law (Law No. 9/90 amended in 1993)	54. Water and Embankment Tax Law (Law No. 9/2017)
20. Fresh Water Fisheries Law (Law No. 1/1991)	55. Myanmar Sea and Sea-Zone Law (Law No. 14/2017)
21. Promotion of Cottage Industries Law 13/1991 amended in 2011	56. Law Relating to Oil Hand-scooped Well (Law No. 15/17)
22. Salt Production Law (Law No. 6/1992)	57. Embankment Law (Law No. 22/2017)
23. The Co-operative Society Law (Law No. 9/1992)	58. Irrigation Canal Law (Law No. 27/2017)
24. Plant Pest Quarantine Law (Law No. 9/1993)	59. Treaty Registration Law (Law No. 9/2018)
25. Animal Health and Development Law (Law No. 17/1993 amended in 2010)	60. Biodiversity and Conservation of Protected Areas Law (The Pyidaungsu Hluttaw Law No. 12 of 2018).
26. Myanmar Mining Law (Law No. 8/94)	61. Law Relating to Explosive Substances Used in Work Process (Law No. 17/2018)
27. Cultural Heritage Sites Conservation Law (Law No. 9/1998)	62. National Planning Law (2018-2019 Budget Year) (Pyidaungsu Law No. 28/2018)
28. Road Law (Law No. 8/2000)	63. Forest Law (Pyidaungsu Hluttaw Law No. 29/2018)
29. The Fertilizer Law (Law No. 7/2002 amended in 2015 by Law No. 15/2015)	64. Myanmar Gem Law (Law No. 4/2019)
30. Municipal Laws	65. Boundary Demarcation Law (Law No. 11/2019)
31. Nay Pyi Taw Municipal Law (Law No. 4/2009)	66. Cultural Preservation Law (Pyidaungsu Law No. 6/2019)
32. Fort Municipal Law (Law No. 32/2010)	67. Law Relating to Land Acquisition, Resettlement and Redevelopment (Pyidaungsu Law No. 24/2019)
33. The Seed Law (Law No. 1/2011 amended in 2015 by Law No. 5/2015)	68. National Planning Law (2019-2020 Budget Year) (Pyidaungsu Law No. 26/2019)

34.	Dawei Special Economic Zone Law (Law No. 17/2011)	69.	New Flora Species' Protection Law (Law No. 29/2019)
35.	The Environmental Conservation Law 2012 (The Pyidaungsu Hluttaw Law No. 9/2012)	70.	Rural Development Law (Law No. 39/2019)

Land-Related Policies of Myanmar

1. Myanmar Forest Policy 1995 (Notification No. 21/96)
2. Myanmar Development Assistance Policy 2018
3. National Land Use Policy 2016
4. Myanmar Agriculture Development Strategy (2017)
5. National code of practice for forest harvesting (2000)
6. Myanmar Timber Enterprises Extraction Manual (1936)

Land-Related Rules of Myanmar

1. The Upper Burma Land and Revenue Regulation Rules, 1892
2. Forest Rules 1995, on going process for updating
3. Farmland Rules (Notification No. 2/2012)
4. The Environmental Conservation Rules (Notification No. 50/2014)
5. Protection Rules from Dangerous Chemicals and Related Elements (Notification No. 85/2015-2016)
6. Ancient Buildings Preservation Rules (Notification No. 14/2016)

Land-Related Instructions/Procedures of Myanmar

1. Myanmar Timber Enterprises Extraction Manual (1936)
2. Fishing Procedures for Foreign Fishing Vessel (Notification No. 4/49)
3. Fish Culturing Procedures (Notification No. 5/89)
4. National Code of practice for forest harvesting (2000)
5. Instruction on Chemical Utilization in Aquatic Culture (Notification No. 6/2011)
6. Executive Order to Degazette Forests (Registration number 13 (1/7), President's Office 2013)
7. Instruction on Demarcation Closed Season and Closed Area in the fishing square of the sea (Notification No. 3/2013 and 4/2013)
8. Forest Resources Assessment (FRA), UN-FAO (2015)
9. Community Forestry Instruction (1995; revised in 2016 and amended in 2018)
10. Instruction on Chemical Utilization in Aquatic Culture (Notification No. 1/2017)
11. Demarcated Notification No. 1/2017 on Locally Managed Marine Area (LMMA)
12. Instruction No. 1/2018 on Conservation of Aquatic Mammals
13. Demarcated Notification No. 1/2018 on Co-management Area for Onshore fishing

ANNEX 3. ASSESSMENT OF THE INDICATORS

Theme 1: Policy/legal frameworks and their implementation (in formal and informal systems)

Indicator 1.1

Recognition and protection of ‘bundle of rights’ as part of forest tenure.

S No.	Parameters	Score			
		1	2	3	4
1.	Policy and legal frameworks recognize traditional and customary rights to forest resources.		X		
2.	Existing frameworks allow communities to use forest resources (without barriers).	X			
3.	Communities can access timber products for domestic use.		X		
Overall Score:		1.7			

Justifications/Remarks:

Generally, policy and regulatory frameworks are in concise language but the principles and details are not accurately stated. It was often found that one law allows access/use – but another law or regulation remains unclear and therefore cannot be enforced (e.g., CF permits). This contradiction is more in case of “restrictions” (and eligible areas for access and use). Customary tenure is another area where ground level guidelines are unclear with regard to recognition and protection. In addition, the VFV law is posing a big challenge both in terms of what it intends to achieve and how it is being proposed to be enforced by the government.

Suggestions:

Principles and guidelines should be described in definite language (and not vague words and terms). In most regulations, the procedures for inheritance (or its eligibility) is not stated clearly which leads to governance issues at the household level and for local authorities.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

At the Bago workshop, participants recommended complete withdrawal or overhaul of the VFV law. It was felt that longer the VFV is in existence, more uncertainties would arise as the law itself is ambiguous and seen as arbitrary State action without due process.

Some participants highlighted the fact that “restrictions” on access to and use of forestland and resources is a moving trend. What is allowed today may not be allowed tomorrow. In this regard, the use of “public interest” (or for public benefit) by the government at times is a questionable move.

Some participants reasoned that the government has defined “public interest” in a broad sense as the interest of the whole nation and the state, and the interest of all the people. This broad definition of the concept of ‘public interest’ was changed in 1990s with the issuance of Wasteland Instructions. This move by the then government resulted in subtle land grabbing in many areas. Since then the term ‘public interest’ has acquired not-so-good meaning among the citizenry. Currently, debates around land acquisition gradually swings between the authority of the Union and States/Regions too.

There are numerous debates on decentralization and empowerment of local institutions within a federal system within the context of National Ceasefire Agreements and peace negotiations. Various matters pertaining to land use are affected by unclear mandates to States/Regions and districts/townships. In reality, the States/Regions play important roles in periodically preparing and updating land use plans and economic growth plans, albeit in a small way but lack capacities and guidance.

Over the past 10 years, particularly since the birth of the Reforms era in 2010, democracy is gradually deepening, bringing newer voices, especially from the marginalized sections, and regional governments are seeking greater autonomy. In this era, civil society and the private sector wield influence in different ways, rather than through crony capitalism which was/is a political reality. All these add up to growing skepticism over public interest. These clarify local roles in policy decisions including facilitating land acquisition for public purposes.

Indicator 1.2**Protection of secondary and seasonal rights to forestland and resources¹**

S No.	Parameters	Score			
		1	2	3	4
1.	Communities can independently prepare management plans to access and use forest resources (e.g., non-timber forest produce).		X		
2.	Formal/local authorities periodically coordinate with communities on matters affecting secondary/seasonal rights (e.g., cooperation and coordination between local officials and communities).	X			
3.	Government's conservation measures (or similar steps) protect these rights.	X			
Overall Score:		1.3			

Justifications/Remarks:

Outside of the CF areas, communities have limited access to secondary and seasonal rights. Information dissemination and legal/advisory support to communities to access/use secondary and seasonal rights are also lacking.

Local FD units and local authorities lack resources to provide technical and support services too.

Suggestions:

Role and responsibilities of district level FD and other departments should be clear. There should be periodic orientation to officials on the importance of secondary and seasonal rights to the livelihoods of local communities.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Formally, these rights were provided in Forest Law 2018 vide Article 15 for establishment of village fuel wood plantation and Article 20a for NTFPs. The key problem is that the local communities are not sufficiently aware of their rights and provision of forest land for commercial purposes, effectively limiting their access. However, in recent years, due to declining farmland productivity and lack of income earning opportunities, secondary and seasonal dependence on forests are increasing. But the recent wave of concessions/permits to forestland areas and even issuance of new Community Forestry (CF) permits are limited in scope and do not readily favor continued recognition of seasonal and secondary rights.

The impacts of too rigid regulations on seasonal rights to forestland are best captured in Agricultural Surveys and other Socio-economic data. The available data set shows not only the magnitude of the phenomenon but also illustrates the impact of continued neglect of seasonal rights to forestland and resources, and gender and urban-rural divides.

Secondary and seasonal rights require an enabling environment at the ground level (village or township level, so to say). But these frameworks are not well-elaborated in the policies and regulatory frameworks. On the other hand, access to NTFP and summer time farming in PFE areas is common among forest-dependent communities.

The government should consider promoting "summer time" or "riverbed farming" to improve livelihoods and income-earning opportunities among land-poor forest-dependent households. Land distribution and allocation for riverbed farming and appropriate training for farmers should be considered. This will allow farmers to make the most of large areas of fallow land inside or on the borders of forest areas, which are normally uncultivated. Alluvial soil and moisture makes such land areas and riverbeds suitable for seasonal vegetable cultivation, particularly during the dry season.

Given the "informality" of the access and use arrangements, within the local governments, "seasonal and secondary" rights to forestland and resources are described as "softer" (or 'come and go') tenure rights receive less attention because they are associated with access and use claims rather than entitlement over control and transfer. More often than men, women are much engaged in secondary activities (e.g., collection of produced from minor forests or

¹ Secondary and seasonal rights include access to and use of non-timber forest produce (NTFP), seasonal cultivation along river banks and/or sites adjacent to watershed areas that dry up in summer, and others.

processing of fruits) and therefore are the reason for their higher level of invisibility in their participation in maintaining forest tenure. Based on the physical requirement of the work, for example if it is for honey collection, men normally do. If it is related to collection of firewood women and children normally do.

At present, tree tenure is limited to those species notified in Article 33 of the Forest Law. However, it is a requirement of the FD/MoNREC that all trees on private land must be registered before any may be harvested. At present tree registration is a lengthy process that requires time, effort and payments – consequently, it is common among households to view tree tenure as a ‘burden’ and ignore ‘tree registration’. The result is that they only seek to sell small numbers of trees and sell them locally to avoid detection during transport. But at present tree registration is a lengthy process that requires time, effort and payments to be made, if any, under the current system. In view of this, it is common among households to view tree tenure as a ‘burden’ and ignore ‘tree registration’. Anecdotal evidence is that landholders are ignoring tree registration because it is too complex and liable to manipulation by officials or police forces. The result is that they only seek to sell small numbers of trees and sell them locally to avoid detection during transport. While much of the FD/MoNREC motivations for tree registration are designed to reduce illegal logging of native forests and promote revegetation, these provisions appear to be having a negative impact on people’s willingness to plant trees for fear of not being able to harvest them. DALMS/MoALI officials recommended formalizing tree tenure (e.g., palm trees) to ensure more livelihood opportunities.

Due to the seasonality (and nature dependent factors) of these rights, formal systems have not been able to legally recognize the details of everything that involve with them. One other point is the commercial collection of NTFP such as felling a lot of trees for orchid collection to sell to China, collection of animal such as gecko, monkey, snakes, elephant skins, etc. threatening ecosystem sustainability which is also directly linked with rights and benefits of the local communities.

Indicator 1.3

Sharing of responsibilities for managing/governing forest and natural resources, between the union and states/regions²

S No.	Parameters	Score			
		1	2	3	4
1.	States/Regions role in managing forests is clearly defined.
2.	Political will exists to include the views of EAOs in forest policy and forest law.
3.	Traditional community lands are held in reserve for IDPs or returnees.
Overall Score:		1.3			

Justifications/Remarks:

There are different political and vested interests that prevent adequate inclusion of EAOs in forest dialogue. Unless forest administration and management is included in national ceasefire agreements/negotiations, the issue of good and shared governance will remain as a challenge. The provisions agreed in the national ceasefire agreements should be reflected in the bundle of rights.

In addition, the formal policies and laws overlap with regard to mandates for managing different land categories and forestland (mostly because of poor land use classification and lack of accurate delineation of forest boundaries at ground level).

² This is an important element in peace negotiations and discussions on the federalist approach to decentralization and governance in Myanmar.

Suggestions: Parameter 1.3 is not appropriate here and should be deleted. And because of that no overall score gave.	
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group): <p>Forest tenure is closely linked to national ceasefire agreements and the ongoing peace processes. Improved governance of forestland and natural resources (particularly mining) can support peace-building in Myanmar by 1) mitigating conflict risks associated with natural resources that have blighted Myanmar's previous inter-fire periods, 2) promoting pluralism through the recognition and reinforcement of the identities, rights and practices of ethnic minorities, and 3) supporting the devolution of governance (in this case forestry management) to sub-national authorities, including non-state actors, consistent with the peace process's stated goals of creating a democratic federal union. Strengthening gender inclusion and community participation in natural resource management will also contribute towards a positive peace. These peace-building goals can and should be pursued consistent with the goals and ongoing processes.</p> <p>The success of the peace process hinges good governance of forestland and resources that have been the root cause of armed conflict in most ethnic areas. In that sense, economic growth based on natural resources will fail in the long-term if peace cannot be sustained. There was consensus that clarity on forest tenure is a critical piece in securing peace.</p> <p>Many EAOs are involved in the mining sector, and operate a parallel permitting and taxation system, which is not recognized under the current constitution. A realistic dialogue, as part of peace negotiations, will help to address several issues raised by EAOs with regard to the mining sector and harmonize currently informal mining practices into a more formal and beneficial arrangements that would help the communities.</p> <p>Untangling the governance challenges of customary forest tenure goes hand-in-hand with securing forest tenure and in fact the national peace process. It is estimated that, ethnic minorities make up 30-40% of the population and their states occupy some 57% of the total land area. Customary laws and institutions administrate much of this land. The weak protection for customary tenure of forest and other land and related resources has been and continues to be a point of contention for many ethnic minority groups.</p>	

Indicator 1.4					
Disseminating information about governance arrangements on forest tenure to the public.					
S No.	Parameters	Score			
		1	2	3	4
1.	Rules governing community rights, roles, and responsibilities over forest tenure and use of forest resources are publicly communicated and understood by communities.		X		
2.	Forest policy is regularly reviewed and updated.	X			
3.	Stakeholders can provide input on the formulation of forest policies, public forest management plans, and subsidiary rules.		X		
Overall Score:		1.7			
Justifications/Remarks:					
Stakeholder inputs are not always readily accepted and restrictions continue to exist. With regard to stakeholder inputs. The Forest Policy of 1995 has not been updated/reformed so far though context and conditions have changed a lot. Government engagement with stakeholders is still weak despite some progress.					
Suggestions:					
Two further parameters should be added to assess on quality and completeness of the bye-laws, procedures and					

Government Notifications/Directives. The second parameter to be added is on frequency of information dissemination.

The parameter 1 and 3 should be consecutive and parameter 2 can be moved to another Indicators too.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

At the ground level, CSOs continue to be the leading dissemination source and provider of information to communities in most States/Regions. Though in recent years Government ministries/departments at Union and States/Regions have improved capacities to disseminate information, it is still considered as inadequate and ad hoc. It is acknowledged that the lack of resources and capacities constrain government's ability to engage with the public.

In addition, Government's information dissemination (and community outreach) systems are limited to common methods such as radio, tv etc. There is a further gap in reaching out to women and communities living in remote areas or those controlled by EAOs where formal structures have little presence. Sometime, the government information is also seen as a State propaganda or biased. This perception is balanced by CSOs disseminating information in some instances.

With regard to seeking and/or mobilization of inputs from stakeholders in policy formulation, in recent years Government in some sense has made progress in reaching out to civil society and local communities. For example, formulation of NLUP witnessed good participation and outreach from all stakeholders. Yet this is not happening in case of all priority areas or activities. That is a reason for concern too. In addition, at times laws and policies were seen as "dropped" and adopted without any due course of consultations. Critics pointed out government's approach to amending the VFV law as an example of poor consultative processes.

There are some ad hoc (or event specific) platforms available for sharing information between the government and civil society. However, there is no permanent forum for periodic engagement. The situation is rather complex and challenging in EAO administered areas where the platforms are limited.

The forest policy is not periodically reviewed and updated. However, within the context of formulating the revisions to the Forest Law 2018 and Draft Rules, there were discussions on the existing forest policy that did not lead to any changes.

Indicator 1.5

Recognition and protection of women's rights to forest tenure³

S No.		Parameters	Score			
			1	2	3	4
1.		The unique roles of women in forest management and utilization of forest products is specifically acknowledged in and protected by law.			X	
2.		Formal and community-based mechanisms are available to support and encourage women’s participation in forest tenure decisions.		X		
3.		Women’s rights to land and resources are communicated to the public.		X		
4.		The government and traditional authorities actively promote joint holding of tenure rights.		X		
Overall Score:			2			
Justifications/Remarks:						
Some progress made in recognizing women’s roles and representation in tenure rights. Gender discrimination is less in						

³ It includes women representation and participation in respective decision-making bodies at all levels.

practice at local levels on practical terms. However, policies and regulations are not proactive and hence social norms continue to impact on women's participation in decision-making roles. It is the social practice and traditions important for women too. Hence education important which government should be doing.

Suggestions:

A parameter on resources and efforts to include/increase representation of women should be added. Also, look at how much money given to mobilize women to join activities should be considered.

The parameter 1 and 3 should be consecutive and parameter 2 can be moved to another Indicators too.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Commonly, government programs tend to use the "head of family" concept, identifying a male for land or resource allocation. As a result, few have significant female beneficiaries or even pay attention to gender as a critical category. Myanmar is no exception. This situation is gradually changing since 2010 as more advocacy efforts are now undertaken by the government, CSOs and different stakeholders highlighting the importance of enforcing gender concerns within the context of tenure rights. A mention of this was made in NLUP and different government policy statements too. But more needs to be done.

With regard to parameters 2 to 4, it was argued that the government has not been taking focused or special efforts to address women's special needs in a consistent or systematic manner to ensure their understanding of and participation in forest governance. In addition, little information was provided to women on different options to access forestland and resources. Thus, the challenge remains not only in putting in place multi-mechanisms to improve women's rights but also continuously disseminate information on their rights and how to claim them.

In recent years, CSOs are pushing the government on gender concerns and seek commitment, but women's representation in many forums are very marginal or even absent. It is important to increase women's representation in policy dialogues and in development forums – which will eventually lead to better mainstreaming of gender concerns with regard to land and property rights – including access to and use of forest resources.

Over the past few decades, national political-economy and development debate have been characterized by the political, economic, and social exclusion of many marginalized groups, who deserve a say in how the country's future is shaped. These include ethnic people, upland communities, marginal farming households, women, and youth. The result of such exclusion is an unhelpful paradox.

Evidence suggests that ongoing peace negotiations between the government and ethnic armed groups (thereby addressing the socio-economic situation of internally displaced persons) are an example of inadequate women's inclusion/representation in such forums/discussions. It is important to include women in such discussions/forums (and in resettlement of IDPs), who in reality assume responsibilities at household and neighborhood levels. The negotiations should also explicitly assert its respect for customary practices to access and use land and resources.

Against the above background and in understanding women's participation in forest tenure governance, three critical questions were raised: How do and in what way, women are included in forums that represent civil society and community voices? How much space do they have to influence policy makers and government? What more can women do to make a difference in forest governance in the country?

Participants noted that SDG5 on achieving gender equality and empowering all women and girls will remain a distant dream in the current context. They recommended that dialogue on forest tenure should enhance mutual trust and stimulate shared understanding of specific issues, perspectives and approaches to the effective promotion of protecting and recognizing women's rights to forestland and resources.

Theme 2: Institutional Frameworks (formal and informal)

Indicator 2.1					
Decentralization of responsibilities for protecting forest tenure rights (Union and States/Regions’ and to communities)					
S No.	Parameters	Score			
		1	2	3	4
1.	The Union provides sufficient resources and incentives for States/Regions, districts and township government units to function independently.		X		
2.	Local authorities have adequate powers and authority for decision-making.		X		
3.	State and regional authorities have adequate capacity to draft and implement local and regional guidelines on protecting forest tenure.	X			
Overall Score:		1.7			
Justifications/Remarks:					
<p>Parameter 1: Government does not allocate/provide adequate resources to different departments/line agencies. In some cases, local authorities have sufficient powers to make decisions – however, authorities are reluctant (and afraid of penal action by higher ups) or they have own interests. Different departments do not coordinate on time – and inter- and intra-departmental coordination is still very weak.</p> <p>Parameter 2: This is much linked to peace negotiations (decentralization and federal, power-sharing arrangements). The political will to share powers between Union and with States/Regions’ is seen as ambiguous. Because of this situation, peace negotiations are progressing rather slowly.</p> <p>Parameter 3: The Union Government itself lacks adequate/optimal capacities to draft and implement guidelines, plans and programs. The capacities are much lower at the States/Regions’.</p> <p>In moving forward, the Government should allocate more resources and time building local capacities. Government should also create opportunities for communities to actively participate in protecting tenure rights. Across all government and non-government institutions in Myanmar, capacities are weak. It is important to share powers with States/Regions and decentralization should be encouraged. CFs are now more clearly defined in the rules.</p>					
Suggestions:					
<p>Government should make clear how far they would hold “reserved” areas without giving rights to communities. A parameter on the functioning of the Farmland committees should be included as they are relevant to administration of forestland areas – and also implementation of Government Instructions of 2013 on degazettmenet of forest areas where more than 50 households live and use land.</p>					
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):					
<p>Myanmar is caught in a vicious circle of long-drawn political conflict, poverty, weak institutions, low levels of legitimacy and local economic growth rates. While Union government has acknowledged that decentralization is part of its development strategies (e.g., Myanmar Sustainable Development Plan of 2018-2030), the progress has been slow. Thus, high levels of centralization continue to prevail. Of the key resource-related issues, land, forests and related resources emerge as most relevance for Myanmar’s peace negotiations as it relates to power-sharing and federalism. The ethnic nationality regions maintain a large share of natural resources (forests, mineral resources and others) and largely practice shifting cultivation too. But Myanmar’s legal framework for land on general and tenure rights is on decentralization and unclear on protection and in recognizing shifting cultivation practices. This not-so clear position has pushed local authorities to elevate all land and resource related issues to Union level – thus, decision-making is more centralized rather than local. This situation has facilitated widespread land grabbing/expropriation throughout Myanmar. The situation also fails to adequately recognize shifting cultivation,</p>					

which is still commonly used in many conflict and EAO-controlled areas, particularly uplands. Such land-and resource related issues interact with discussions on decentralization (federalism) and need to be clearly addressed in the peace negotiations.

Thus far, natural resource ownership, management, and allocation of revenues has not been directly addressed in the UPC and UPC-21Cs. At the May 2017 UPC-21C 10 principles were agreed under the land and natural resources sector focused on land policy, land rights, and environmental protection. Natural resource ownership, management, and allocation of revenues was also not explicitly addressed under the economic sector. Since then the Peace Conference (Panalong 21) and related dialogue are giving better attention to addressing issues with regard to natural resources – such details are also part of National Ceasefire Agreements and other protocol agreements intend help to address root causes of conflict, proposed federal arrangements and lay a foundation for peace and a sustainable socio-economic framework for the country. However, precisely which forestland and resource issues (e.g., mining or plantations) are important to be included in peace negotiations and agreements depends on the individual State/Regional context. Many believe that it is unlikely to be a good idea to proceed too far with political negotiations while decentralization of tenure related matters remains to be resolved.

In its recent publication entitled National Resource Governance Reform and the Peace Process in Myanmar (Forest Trends, 2018) argued that land and resource ownership and political decentralization issues anchor the central demands of ethnic stakeholders in the peace process. However, the 2008 Constitution and Union level laws and policies block progress. Unless reasonable levels of federal decentralization and good governance of the resource-sector is secured, the current impasse in the peace negotiations will continue. It will be difficult to reconcile the gap between what the country's legal documents allow and what ethnic stakeholders demand. The current stalemate is exacerbated by inequitable power structures and opaque decision-making within the national peace process itself: Myanmar's military has hampered meaningful discussion and adoption of reform measures and Union Accord peace principles that meet EAO demands.

Overall, it was acknowledged that Myanmar would benefit from subnational governments being given greater powers over natural resource management, and control over natural resource revenues. However, the introduction of such a decentralization framework should be accompanied by the introduction of mechanisms that would enable greater civic participation in the natural resource sector at the local levels. It is vital that policies are adopted that challenge the rampant corruption in the sector. Policies that promote transparency and reduce corruption are also badly needed for government budgeting more broadly.

Indicator 2.2					
Inclusivity and independence of existing formal/informal governance mechanisms on forest tenure					
S No.	Parameters	Score			
		1	2	3	4
1.	Formal governance mechanisms recognize and cooperate with informal mechanisms at the community level.			X	
2.	Informal institutions (community-based) operate freely and without undue influence by the government or others.		X		
3.	Formal and informal institutions periodically meet for discussions on forest tenure.		X		
4.	Formal institutions respect and include from informal institutions and communities.			X	
Overall Score:		2.5			
Justifications/Remarks:					
Parameter 1: Community level cooperation between formal and informal mechanisms has always been cordial (after all, most civil servants and members of formal institutions are also members of the community themselves). In spite of this, community rights are not always protected or recognized (because of rigid rules or water-tight interpretation of					

rules; both civil servants and communities are also afraid of penal action in case of wrong enforcement).

Parameter 2: Informal institutions are always influenced by the government mechanisms (because of the political nature of the past government regimes). In EAO administered area, community mechanisms operate in alignment with EAOs but not always as there were differences too. Some of the regulations are not appropriate for the current time and context.

Parameter 3: Formal and informal institutions do not meet periodically (unless a big event or emergency occurs) and there is no structured process for such meetings too.

Parameter 4: The interaction between formal and informal institutions much depend on quality and spirit of the local officials and community leaders. Thus, it is always person-oriented – sometimes, protocol driven too (just to fulfill a requirement officials tend to interact).

Suggestions:

There is a need for more participatory approaches for formal institutions to engage with informal institutions. The engagement between formal and informal institutions should be monitored and supported to improve their engagement. More facilities are needed to local levels to engage with informal mechanisms.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Community-based institutions and traditions dominate administration of customary tenure to administration of forestland and resources. The relationship between individuals and communities with their land and resources is commonly defined through customary regulations and practices in several states and regions, like Chin or Karen, or by dividing various geographical domains into zones and specifying their function and management as the upland communities do. The access and use rights for various forestland areas and zones are also clearly identified by such traditional arrangements. Local agreements, customary law, and tradition governed land use. The Union (or local authorities) government tried to control farming or timber harvesting inside forest areas, but in practice cultivators and local leaders made their own decisions. The struggle between local communities, local leaders, and Government officials continued perennially. From time to time, the Government would attempt to enforce formal laws but invariably local communities pushed back and continue their traditional practices.

The general understanding – and actual functioning - of the formal and informal institutions may not reflect ground realities. This is particularly true in case of areas under EAO administration. As far as local communities living in EAO areas are concerned, the EAO's administrative units are socially accepted and deemed as formal. However, in the views of the Union government, EAO's administrative units are informal.

Apart from seminars and workshops, where government-CSOs-communities meet and discuss on tenure issues, there is no established platform for regular interaction. At the Union level, the National Land Use Council –is providing a platform but it does not hold discussions on a regular basis. At present, forest-dependent communities are not readily incentivized to seek their claims/rights too. Apart from the CFs, there is no reliable and simple mechanism available to communities to seek their claims. Hence the gap between the formal and informal institutions are bit large and no hands-on mechanisms are available to fill that gap.

Government has recognized that several of the existing regulations are not appropriate for the context and now engaging in consultations with the public. The ongoing public consultations on framing Rules for the Forest Law and CBPA Law (2018) have shown that the manner in which mechanisms are established and managed have major implications on the benefit to local communities to seek their tenurial claims and rights. Main issues include: criteria for participation, accountability of decision-making processes and financial management; uncertain laws and regulations; lack of mechanisms for dispute resolution; and distribution of liabilities with lesser burden on poorer groups. Often, too rigid mechanisms failed because decision-making and implementation was dominated by a few elite, was highly politicized, or lacked accountability. In sum, compliance with principles like Free, Prior, Informed Consent (FPIC) and the government's own safeguards are vital to build safety nets and public confidence.

In this regard, Myanmar would benefit from strengthening capacities of States/Regions and District offices to engage

with community groups in a structured manner so that interactions are on solid grounds. The introduction of such a decentralization framework should be accompanied by the introduction of mechanisms that would enable greater civic participation in the natural resource sector at the community/VTC/township levels. It is vital that policies are adopted that challenge the rampant corruption in the sector. Policies that promote transparency and reduce corruption are also badly needed for government budgeting more broadly.

As part of the peace negotiations, federalism and decentralization are central-pieces for securing a political resolution in the conflict zones. It includes approaching development challenges in the exercising of power, the allocation of resources, and the sharing of benefits within the rubric of participation and empowerment of local communities.

Indicator 2.3

Availability of institutional capacity to design and implement policies at the Union and States/Region levels⁴

S No.	Parameters	Score			
		1	2	3	4
1.	Parliament has capacity and resources to create a vision for fair and equitable policies, legal frameworks, and mechanisms (in support of forestland and resources).			X	
2.	Parliament has capacity and resources to engage with multi-stakeholders on issues that affect forestland and resources.			X	
3.	Executive (at union and states/regions) has adequate capacity and resources to develop procedures and mechanisms for equitable implementation of forest tenure policies and regulatory frameworks.		X		
Overall Score:		2.7			
Justifications/Remarks: Parliament members (and their sub-committees and departments) do have commitment and interest to engage in policy and legal development. In recent years, parliament members have shown increased activism in budget making too. But they are overloaded with numerous tasks and responsibilities. There are budgetary and capacity limits too. Those representing States/Regions’ have much lower capacities, resources.					
Suggestions: In order to benefit from different dialogues and groups, parliament members should open themselves and engage more with the local authorities, CSOs and public on different tenure issues. That will help them to learn from ground level realities. Parliament also should consider to select only those with relevant expertise and skills on special themes and subjects to help them formulate policies and laws.					
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group): Institutional development (Legislature, Executive and Judiciary – and community groups) are a catch-all concept. Because Myanmar’s reform agenda is so broad and multi-faceted, it requires significant levels of capacity building and resources to support institutions at all levels. As of now, this important subject suffers from various challenges – there is no magic bullet. The better the parliament works, it is easier for decision-making too. In the reforms-era, the institutions are still evolving. In parallel, colonial and military-era legacies persist. Hence currently institutional capacities to independently plan and develop policies is much limited both at Union and States/Regions. While some capacities have been built in recent times at Union level, it is much more limited at					

⁴ Adequate funding, good coordination between legislature and executive wings of the government and civil society, and capacities for participatory decision-making and communication are part of this indicator.

States/Regions levels. Allocation of resources for policy development is also very meager. These are the gaps the government and its development partners should be addressing together so that capacity of the public sector is built in the coming days.

It is to be noted that for Myanmar to move away from the remnants of executive dominance and top-down directives in order to deepen the democratization process, the Union Parliament must be sufficiently resourced and oriented to play a central role and its institutions must be strengthened to do so. Despite the numerous challenges facing the Union Parliament and the inexperience of many of its members, the Union Parliament has surprised many domestic and international observers with its active legislative agenda and open discussion of issues once untouchable. It is a critical moment to provide support to Parliament to further reform its institutions and practices and build its capacity to become a genuinely professional and independent legislative body. To fulfill its representative function more effectively, it requires more elected representation and greater technical capacity.

The parliament should be nurtured to evolve as a forum for free and fair debate on all issues affecting the country. Despite considerable progress, accountability is an issue with regard to parliament's work and decision-making.

Indicator 2.4

Maintenance of reliable mechanisms by formal and informal institutions to prevent “conflict of interest” among officials⁵

S No.	Parameters	Score			
		1	2	3	4
1.	There is political will to prevent ‘conflict of interest’ among civil servants at all levels.			X	
2.	Disclosure policies that reflect institutions’ ethical and legal responsibilities are available.		X		
3.	Government has mechanisms to identify and resolve, appropriately and transparently, conflict of interest issues arising from time to time.			X	
Overall Score:					
Justifications/Remarks: <p>Parameter 1: There is some political will to prevent ‘conflict of interest’ in decision-making when compared to past regimes. However, there is a general recognition that it is not sufficient to strengthen good governance and systems to support it. There is lack of ‘disclosure’ of conflict of interests among legislature, executive and judiciary too.</p> <p>Parameter 2: Government increasingly includes disclosure clauses and mechanisms in recent laws and regulations (e.g., ECLaw for EIA/SIA procedures). There is no follow up monitoring too on proper enforcement too.</p> <p>Parameter 3: Government is aware that ‘conflict of interest’ is a serious problem within the formal (and in some areas informal) institutions. However, the ability of the government to tackle that problem is weak so far and more needs to be done. With a weak judiciary and complex administrative practices, this subject of preventing conflict of interest continues to pose formidable challenges. This is further complicated by “legacy” issued that confront the country in every aspect.</p>					
Suggestions:					

⁵ Current policies and guidelines should help sustain public confidence in the professional judgment of leaders of formal and informal institutions and prevent informal payments, if any.

Government capacity to resolve conflict of interest is weak and that is not scored.

Parameter 3 has two parts – only part one is scored here. It was suggested that the parameters be split into two parts to properly score.

More orientation to government staff and communities are needed on ‘conflict of interest’ issues so that their understanding and compliance are improved.

Public should have opportunity and access to discuss about conflict of interest issues periodically.

There is no mechanism to monitor (M&E) to regularly track issues and take action. This is a serious concern.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

The real problem is that the government’s definition of “conflict-of-interest” (particularly about public servants) is far too narrow, thereby ignoring the overwhelming conflict-of-interest which defines the entire relationship between the Government and citizenry. Thus, there is no discussion about the extent to which government policies enrich special interest groups. Therefore, citizens are unaware that the hidden economist cost they absorb from different policies each years far exceeds benefits, if any. Government should enforce ‘code of ethnics’ across all levels.

In moving forward, the government should take efforts to identify/list what situations constitute unethical conflicts and charge a committee with the responsibility of implementing the policy by screening for the conflicts listed. Such a policy should also clearly state all the potential resulting actions the institution/department may take in response to any conflict of interest found in regard to any individual already associated with the institution.

Indicator 2.5

Institutions make decisions based on reliable data and a sound statistical process.⁶

S No.	Parameters	Score			
		1	2	3	4
1.	Executive has adequate capacities to systematically collect data from the field and other sources required for decision-making.		X		
2.	Executive has necessary capacity to process and analyze data collected.		X		
3.	Decision-making is open and transparent and follows discussions and consideration of relevant data.			X	
Overall Score:					

Justifications/Remarks:

Only a few officials, particularly at the Union level, possess sufficient capacity to gather data and analysis them. Otherwise, such a capacity is limited at all levels. The first step is to identify issues and/or opportunities for gathering data for planning and management purposes.

It is to be noted that it is not only capacity for data gathering but capacity for credible data analysis is lacking.

There is no clear procedure or guideline – or transparency - as to how data from different sources were/are gathered - combined/aggregated. While some improvements have been made since 2010, government capacities to mobilize and analysis data for policy and decision-making is scattered and weak. There is no standard procedure for data sharing among government entities too.

⁶ Informed decision-making is an important component of the ability of the government and community-based institutions to protect forest tenure.

<p>Suggestions:</p> <p>There is an urgent need to improve government capacities at all levels on data gathering and analysis. Departments should know how to operate a data base and benefit from it. There is need for training.</p>	
<p>Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):</p> <p>There is a growing sense within the government that ‘Governance is about delivery’. In that sense, the Union Government will have to come up with a clear and coherent set of ideas—a vision—and use available resources and instruments as efficiently as possible to produce the results that citizens expect. Some felt that the risk taking involved in articulating and defining a progressive vision for the future is what defines great leadership. Achieving that vision as effectively as possible requires effective risk management—in other words, good governance. It demands increased investment too.</p> <p>Overall, Government will have to put standard procedures and methods for data gathering. Policy making should connect legislature and executive to larger data sets and research streams shaping the idea of evidence-based policymaking. That interface between the policy makers and data/information is lacking in Myanmar – largely due to its late start of the IT sector in Myanmar too. The government is struggling to address the three themes of data culture within public organizations such as digitization of public services and big and open data policy instruments. It is important to link each policy theme back to specific themes – and the question whether big data is a short-term trend or a long-term force changing policymaking down the line. Use of reliable data should be linked to building e-governance too.</p> <p>Further examination is needed with regard to: First, the role that institutional capacity has within government to utilize big data analytics; second, government use of big data analytics in the context of digital public services; and finally, the way that big data information enters the policy cycle, focusing on substantive and procedural policy instruments. Examples from land administration and land use management domain highlight the opportunities and challenges for each of these themes. Exploring the various aspects of big data and policymaking shows that big data is here to stay, but that its utilization by government will take time due to institutional barriers, lack of guidelines and capacity bottlenecks.</p>	

Indicator 2.6					
Government has capacity and resources to support communities for claiming tenurial rights.					
S No.	Parameters	Score			
		1	2	3	4
1.	Government agencies responsible for confirming tenurial rights have outreach and education programs to prepare communities for claiming these rights.		X		
2.	Clear and transparent procedures exist for communities to claim tenurial rights.			X	
3.	Financial resources are provided for government departments and local authorities to support communities (who intend to claim rights).	X			
Overall Score:		2			
Justifications/Remarks:					
<p>Parameter 1: Since 2010, the government institutions are slowly developing outreach activities but not seen as sufficient and more will have to be done. With regard to support to communities, the situation has gradually changed and sometimes organizes access to resources and technical support for communities to claim their rights. However, this is not sufficient and there is no space for dialogue and learning of the opportunities to claim tenure. One cannot say that the progress is significant in providing information or training to communities as to how to claim their rights.</p> <p>Parameter 2: Current procedures are not clear and transparent – so, in reality we can say ‘non-existent’.</p> <p>Parameter 3: Fund allocation to departments to support communities is always small and ad-hoc and mostly outside of</p>					

the work plans. Hence communities cannot rely on such funds – and there is no continuity or follow-up.

Suggestions:

Guidelines for CF instructions will have to be periodically. More orientation to Parliamentarians is also necessary on the importance of helping communities to claim tenure rights. Reserve forests cannot be forests forever and change should be adopted as the context changes too.

More capacity building work is needed.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

This indicator fuelled debate at the two States/Regions' workshops and also at the National Workshop on Government capacities and efforts to support communities to realize their economic and social rights (and more so in conflict areas). There was a general view that officials working at the grassroots levels are not well updated on policy or regulatory revisions. If new regulations adopted, local officials largely remain unaware or ignore – and they tend to “do business as usual” applying outdated procedures. This creates tension and conflict between officials and CSOs working in the area or communities. Overall, the ability of local officials to inspire or motivate communities to seek their tenurial claims is much limited.

Commonly, local authorities lack resources and capacities as budget allocation is limited and orientation to local officials are limited too. Government has no ‘community support fund’ system too. Even if such funds are provided through new projects or programs.

Government departments were not ready to engage with communities without ‘green signal’ from the Union government. That said, Indicators and benchmarks on progress are seen as a form of democratic participation and build power to engage state authorities using diverse tactics and strategies to deliver measurable change.

Discussions among government institutions showed a lack of confidence in the efficacy of existing participation frameworks applied by CSOs. In many areas, subtle resistance of local authorities to provide support to communities was seen as palpable but often never hostile to community-agenda too.

One participant explained that for local authorities and officials do have informal power but that relates not only to their ‘personality style and personality but also the ability to exercise a range of political brokerage skills at the township/district level for themselves within the community and outside of it’.

Theme 3: Tenurial rights to forests and related resources⁷

Indicator 3.1

Clear guidelines are available for communities to access forest tenure.⁸

S No.	Parameters	Score			
		1	2	3	4
1.	Legally prescribed administrative procedures for claiming tenure avoid unnecessary complexity and minimize opportunities for administrative discretion.		X		
2.	Tenurial claims of local and ethnic communities over publicly owned forests are recognized and protected.		X		

⁷ In Permanent Forest Estate (PFE) and non-PFE areas, formal and informal as well.

⁸ The ultimate goal of every ‘guideline’ is to provide the communities with a clear and easily plan of action required to access their tenurial claims. A well-written procedure guideline (or procedure) will also help eliminate common misperceptions.

3.	Use rights of local and ethnic communities over publicly owned forests are recognized and protected.	X			
4.	Fees and other legally prescribed requirements are reasonable and affordable for most households and are publicly posted.				
Overall Score:					
Justifications/Remarks: <p>Parameter 1: There are some regulations that prescribe procedures. However, given the ground level realities, these are by nature complex and much depend on administrative discretion.</p> <p>Parameter 2: Tenurial claims of local and ethnic communities are known to everyone but there are no ground level procedures for their protection or recognition in a systematic manner.</p> <p>Cannot comment on parameter 4.</p> <p>Some policies and instructions tend to protect and recognize tenurial claims but enforcement is the main challenge. This means positive legal provisions are not turned into actual recognition of claims.</p> <p>Ground level situation with regard to parameter 3 is actually not good.</p> <p>With regard to customary tenure, the situation is ambiguous though there is better recognition of the issue among formal system. Therefore, parameter 3 is very important to consider than others in terms of priority.</p>					
Suggestions: <p>Parameters 1 should be separated into two parts – simple procedures available or not – and procedures are able to prevent discretion. But even combined score is only 2 now.</p>					
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group): <p>Current mechanisms for communities to gain and maintain access to forest tenure are through CFIs or tree tenure (to a limited extent in dry zone areas; refer to provisions in Chapter III of Forest Law) – and registration via DALMS or GAD (in case of residential plots) is possible if the land is degazetted by FD through reclassification of land use category. These mechanisms currently available are helpful, but their proper application is not happening. The existing procedures are also seen as complex and not easily enforceable. Therefore, the ability of local communities to secure tenure security for their claims is much limited and has not reached its potential.</p> <p>In addition, some of the tenure related programs are specifically designed for farmland or forests, who invariably remain incompatible and do not provide complete support for diverse locally-managed systems that include agroforestry, seasonal and secondary uses, grazing land, sometimes in rotation. In addition, these mechanisms do not provide a practical statutory framework for protection of customary and traditional forest tenure.</p> <p>Further, communities use customary tenure systems to manage agriculture, forests, water, fisheries, and other resources all together in an integrated system. The current legal tools to recognize community and household use rights within the PFE and unclassified forests – however, at local level, officials are not aware of the provisions well – and therefore, disinclined to take action without approval from Union level on a case by case basis. This is not only delaying the processing of claims but also place excess burden on the system per se.</p> <p>With regard to parameter 3 – the use rights are not readily protected and recognized by local officials largely due to lack of familiarity with the updated regulatory frameworks – and also due to fear of repercussions. Hence most communities informally access PFE resources.</p> <p>The government must define its jurisdiction with regard to “authority over land” to enable claims by local communities processed appropriately. However, government must not expand its jurisdiction to cover land claims and rights commonly allowed under customary arrangements. This balance is difficult to strike. The best definition of jurisdiction would be one that is readily apparent to landholders and farming communities. The definition should also be comprehensive enough to prevent reinterpretation of government jurisdiction. Large scale land acquisitions (LSLA) for commercial investment and designation of protected areas are two of the main sources of overlapping tenure/land use, and potential conflicts, with indigenous and community forest tenure rights.</p>					

Analysts have noted that some policy and governance reforms have failed to curb external threats to forest tenure rights, in particular competition for natural resources, such as the influence of capital in financing large-scale land cover-land use changes that continue to affect forest-dependent communities. Finally, in cases where rural communities have been granted significant rights, poorer members and women often do not benefit from these rights due to persistent social inequalities within communities. (Refer to Bibliography for references).

At present, the access to forests and related resources for rural communities is often based on customary rather than formal forest tenure. Customary rights have often sufficed to grant secure tenure through locally legitimate social institutions; sometimes, this is seen as more secure than formal forest tenure. Legal pluralism associated with parallel customary and formal legal systems generates complex challenges.

Indicator 3.2

Procedures required for mapping and registration to claim forest tenure are accessible and affordable to local and ethnic communities.⁹

S No.	Parameters	Score			
		1	2	3	4
1.	Local authorities make adequate efforts to raise awareness about mapping and registration procedures.	X			
2.	Communities have access to additional legal, technical, and financial assistance to undertake and complete mapping and registration efforts. ¹⁰		X		
3.	Communities have access to capacity building services and technical support from local authorities to fully exercise their rights.			X	
Overall Score:		2			

Justifications/Remarks:

Parameter 1: Most local authorities do not see community awareness as a precondition for mapping and registration procedures but perform their tasks in a mechanical manner. They do not see raising awareness as their responsibility too.

Parameter 2: This aspect demands resources and only in some areas, CSOs provide communities access to information and technical support to under mapping and registration. Apart from funds, there is also a question technical capacities of CSOs themselves which at present is much limited. Hence community access to legal, technical and financial support is not assured for all.

Parameter 3: As illustrated by a few communities in Dawei (through local CSOs), they do have willingness and capacity to learn about mapping and seek their rights. However, opportunities to learn about procedures are much fewer. Some CSOs are providing training to communities on land mapping techniques and procedures. This is helping but it is not happening in every place.

Parameters 2 and 3 can be rephrased to be clearer.

Suggestions:

Government should encourage community participation in land mapping and provide support and resources.

⁹ Procedures identify specific actions, explain when to take actions, describe alternatives, gives examples, shows how to complete forms, are normally written in user-friendly language.

¹⁰ In several areas, communities may not have access to technical and advisory support from CSOs. In such cases, support of the local authorities to respective communities is critical.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

In 2013-15 period, there was a nation-wide effort to issue Land Use Certificates (form 7) for farmland parcels. At that time, several agencies and local authorities invested time and resources to raise awareness about registration procedures (not about mapping). A number of forest dependent communities were able to secure LUCs for their farmland holdings at that time but those holding what is classified in official documents as forestland missed out due to lack of 'evidence' required to claim their holdings.

Only a handful of CSOs provide support to communities on land mapping work (e.g., Tharthimayay's work in a few villages in Shan and Kachin States). However, such maps are used locally and could not be readily used to secure formal land use certificates as there is no formal mechanism to apply/enforce for it. In EAO administered areas, the respective land offices of EAOs have been empowered to issue land use certificates but the efforts are limited to a few villages. In any case, the mapping work helped to mobilize communities and increase awareness on current land use and their rights.

Some CSOs limit their mapping efforts to support community/village development work. There is a recognition that community land mapping can definitely help in social mobilization.

The current and available classification of land use and land cover data is still too coarse and prevents community participation in the mapping process too. More assessment is required to understand how plantations of woody species such as rubber and oil palm are classified. For instance, rubber is considered an agricultural crop, though a forest cover assessment may code it as forest, as it contains woody biomass. This is unclear in the current forest cover change assessment.

In moving forward, there is a need to clarify the importance of community land mapping and a formal set of guidelines and Standard Operating Procedure (SOP) for mapping of indigenous territories as a step towards the recognition and protection of customary tenure is required. More work is needed to understand and transmit to policy makers the importance of community land mapping from past experience. There is a danger that the attention being paid to community land mapping and tenure rights could be treated as short-sighted fixes. This will have to be avoided. CSOs can provide policy advice and methodologies to ensure that these processes are able to reach the necessary scale to impart real mitigation benefits while respecting local tenure systems and rights and providing fuller tenure security and lessons learnt from pilot work shared. Finally, continued research on the role of CLM and tenure in resolving forest tenure issues and strengthening land administration systems will be essential to future endeavors.

Indicator 3.3

Current procedures adopted (and applied) for community land mapping to establish tenure claims/rights are acknowledged as acceptable (by the Government).

S No.	Parameters	Score			
		1	2	3	4
1.	Community land mapping is used as the basis for establishing tenurial rights.	X			
2.	Simple standards (developed by the ministry/department) establish minimum requirements for securing legal status for land maps prepared by communities.	X			

3.	Guidelines ¹¹ are provided to communities on how to prepare acceptable land maps to claim and protect their tenurial rights.	X			
Overall Score:		1			
Justifications/Remarks: Government has legal backing to use community maps as the basis for establishing tenure rights. Since no provision is made for community land mapping – parameter 2 and 3 are redundant.					
Suggestions: Government should consider policies and guidelines to acknowledge and recognize community land mapping techniques. That will help in accelerating mapping of all land areas and help in some ways.					
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group): At present, there is no recognition of community land mapping approach and products generated via that methodology. As a result, there is no operating manual, benchmarks for mapping, mapping and data standards and budget estimates for communities to prepare/engage in mapping and submit claims. In fact, under current laws and regulations, community participation is limited to adding some information onto maps prepared by the government entities. Among formal institutions, there is very limited acknowledgement that community land mapping could help to establish forward linkages with reforms to secure tenure security for ethnic and customary land, as part of the ongoing drafting of land law and other legislations. However, at present, communities are unable to anchor a community mapping program to build a counter policy and political discourse. On the technical and participation side, it is acknowledged that modern-day government systems do not readily respond to immediate and long-term needs of the poor, the ethnic communities, and the upland communities. The formal mapping system is expensive and time-consuming too. This does not mean that these communities are not open to adapting modern day techniques or models. The production of thematic maps (e.g., ongoing oil palm or rubber plantation areas) can help delineate boundaries and engage in a dialogue to resolve boundary issues. Regardless, ethnic or local communities cannot always participate in this exercise since they have various economic and livelihood concerns to address. In this regard, in the long run, government has not been able to propose a built-in livelihood incentive (area-specific) or other type of tangible incentives into mapping initiatives to ensure strong and sustainable community participation. It will also lead to more equitable and sustainable resource use. That said, prevailing community interest on mapping is an opportunity and other stakeholders and government may like to consider that as they begin to engage in higher level policy discussions in the coming days.					

Indicator 3.4					
Forestland tenure permits (including concessions) are allocated through a process consistent with relevant laws and regulations.					
S No.	Parameters	Score			
		1	2	3	4
1.	Permits are allocated in ways that create understanding and cooperation among existing rights-holders or customary forest users and promote benefit sharing with local communities.	X			
2.	Information about the allocation process, applicants, and final decision is publicly disclosed.		X		

¹¹ A guideline is a statement by which to determine a course of action. A guideline aims to streamline particular processes according to a set routine or sound practice. Guidelines may be issued by and used by any institution (governmental or community) to make the actions (of its employees or members) more predictable, and presumably of higher quality. A guideline is similar to a rule.

3.	Conditions for issuing permits include satisfactory completion of all technical requirements related to forest management, exploitation, or conversion.				
4.	As part of item 3 above, EIA/SIA reports are made available to the public.				
Overall Score:					2
<p>Justifications/Remarks:</p> <p>Parameter 1: Since the adoption of the new law on environmental conservation in 2012, the process to allocate permits has seen some improvements and transparency. However, progress is not sufficient to be marked as good governance. For example, despite mandatory EIA/SIA provisions, there is no platform for developing a better understanding and cooperation between permit holders and communities. Do EIA/SIA create understanding and cooperation is another question.</p> <p>Parameter 2: There is a provision for disclosure but it is not always followed and some time only partly disclosed. The disclosure sites and timing are not well communicated to local communities and stakeholders too.</p> <p>Parameter 3: Yes, conditions exist – but one cannot say that they are satisfactorily enforced as there is no information shared as to what extent those conditions were complied with. Unless a systematic review is undertaken such views may not reflect ground situation.</p> <p>For example, there is no real mechanism to engage in benefit sharing of yields or profits. In fact, many communities are not even aware that benefits could be shared via some formal agreements (so that they do not have to fight all the time). In fact, some areas there is benefit sharing arrangement in place it is not described that way.</p>					
<p>Suggestions:</p> <p>Implementation of FPIC should include ‘community welfare’ and ‘benefit sharing’ as key elements. Benefit sharing arrangement should consider local context and the process appropriately designed to match those ground realities. It should be made mandatory that EIA/SIA reports are disclosed in Myanmar language and not only through websites. Governance of benefit sharing system is critical. The manner in which BSMs are established and managed have major implications on the benefit to poor people. Main issues include: criteria for participation, accountability of decision-making processes and financial management; uncertain laws and regulations; lack of mechanisms for dispute resolution; and distribution of liabilities with lesser burden on poorer groups. Often, BSMs failed because decision-making and implementation was dominated by a few elite, was highly politicized, or lacked accountability. In sum, compliance with principles like Free, Prior, Informed Consent (FPIC) and the government’s own safeguards are vital to build safety nets and public confidence.</p>					
<p>Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):</p> <p>In Myanmar, four related terms recur in discussions on forest tenure: concessions, permits, encroachments, and confiscation. These highlight (a) limited-period permits granted for use of land for development and production/extraction; (b) forest land “encroached” by communities or investors (probably using force or political authority) without due process or compensation; (c) land accessed, used or acquired through a largely faulty process. It is evident, therefore, that clarifying forest tenure is important to ensure that local and ethnic communities can access vital livelihood resources.</p> <p>In the past, forestlands were allocated to investors (or expropriated by the Government) without a due process. As a result, the impact of forestland concessions has been the subject of intense debate over a decade. There is sufficient evidence that State land leases/concessions have been negotiated and awarded in haphazard and inconsistent ways with negligible quantification and qualification of their impacts. The government’s experiment with land concessions has yielded little positive economic or social results. Investors are reluctant to invest anything more than nominal sums on land. Consequently, few concessions have generated expected revenue streams for the government. These concessions are often believed to undermine alternative approaches to rural development that respect customary or legal claims of local communities to their historical lands. In this context, despite a focus on generating revenue from forestland, discussions on forestland administration are dominated by the need for the recognition and protection of customary tenure arrangements, enhanced support for community access to forests and forest resources, and for programs like community forestry.</p>					

In recent years, the government is increasingly aware of the negative results of lack of advance interaction with communities on land allocated. In response, the government has enforced EIA/SIA process since 2014 but still dissemination of information continues to be challenging. Several respondents reported that disclosing the reports via a website should not be deemed as dissemination to public as the contents are technical (need to be explained to public) – and often times communities may not have access to internet facilities too.

Parameter 2 – disclosure to public is not occurring at reasonable levels and in understandable ways and means. Several respondents felt that the dissemination does not mean posting on the internet (website) or pasting a copy of the cover page of the EIA/SIA reports in an office. Parameter 3 –most of the administrative and field procedures are available – however, compliance continues to be an issue as short-cuts are usually adopted to complete the process.

Indicator 3.5

Opportunities for public to comment on granting of permits (or concessions) that may have significant social or environmental impacts

S No.	Parameters	Score			
		1	2	3	4
1.	Pending permit applications are publicly announced and locally posted, and public comment is requested			X	
2.	Permits include provisions on environmental protection, impact assessment, or mitigation obligations of the agreement.			X	
3.	Implementation of the provisions (“risk mitigation plans”) are periodically reviewed (to assess compliance).			X	
Overall Score:					

Justifications/Remarks:

It is important to note that this indicator relates to theory. Group members said that Environmental Conservation Law and rules are available for enforcement since 2012 onwards. However, quality of implementation and engagement with the public are issues. Hence scoring here can be a distortion.

Plans prepared are good on paper but we should examine quality of implementation and enforcement. That require periodic monitoring. In that sense, progress is not significant. Within the group, there was a question whether plans are prepared for all permits issued but did not discuss further .

There is no periodical posting of applications received, under process or approved.

Parameter 2: EIA/SIA are enforced since 2014 on a regular basis. However, there is no way public would know about the quality of these efforts and how the results will effect on them.

Parameter 3: The reviews are carried out by the respective departments.

Suggestions:

More and multiple times information should be disseminated to public to build awareness and understanding.

Group members suggested that given ambiguous nature and quality of enforcement of EIA/SIA, the scoring of parameters 2 and 3 should be downgraded.

The Indicator should be split into two parts (availability of procedures and quality of enforcement).

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

The term “transparency” is a popular catchphrase in Myanmar ever since its democratization initiatives since 2011. Transparency is a critical component of good forest governance, in particular in view of the scarcity of clear and

credible information on permits (concessions) issued and transactions, and the poor dissemination of public information on policies and investment plans. There is widespread frustration that precise and reliable information are lacking – and that the administrative requirements communities have to fulfill to submit a claim to obtain formal tenure, the length of time to process their application, the cost involved, and the status of their application at any given time add a further layer of concerns.

In recent years, the government has been periodically sharing details on proposed investments or applications received for issuing permits. However, much more remains to be done to ensure timely and coordinated sharing of the details too.

The risk of informal payments and inequalities in distribution of land to different economic groups are very real in land allocation and management practices in the country. The consequences to the poor often take the form of difficult access to forest resources, lack of awareness of land policies and legal frameworks, ignorance about government-investor transactions, overlapping or misallocation of land rights, and allegations of land/resource grabbing and abuse. When systems needed for transparency are in place it can encourage civic engagement and stakeholders' accountability by rendering public decision-making arena more accessible. This in turn strengthens confidence in government and public agencies, and has a positive economic and social impact.

Available information and case stories emerging from hundreds of local leaders and community members, parliamentarians and other stakeholders during the course of the FTA and earlier work, suggests there are constituencies for change at the local level and decentralization, with checks and balances, could be one of the tools in the hands of these change agents. The recent efforts to share information with public and progressive members within the government and bureaucracy support these change-seeking groups. They should be encouraged to advocate for comprehensive forestland and resource related policies and regulations, and for more inclusive and accountable multi-level governance of land and land-based sectors.

The discussions also raised questions on the quality of the risk mitigation plans prepared and methods used to enforce them. Though the risk mitigation plans are reviewed by the departments the reports are not that readily shared with stakeholders and local communities that has been one of the persisting concerns among CSOs.

Indicator 3.6

Recognition and implementation of tenure and use rights of local and ethnic communities over publicly owned forests

S No.	Parameters	Score			
		1	2	3	4
1.	There are clear provisions to officially recognize tenure and land use rights of communities over publicly owned forests.	X			
2.	Local and ethnic communities are able to exercise such rights unimpeded.		X		
3.	Data is collected and maintained on the number and size of tenure and land use rights recognized		X		
Overall Score:					
Justifications/Remarks:					
Parameter 2 was not clear the group members and hence a general scoring was given.					
Parameter 3: It was assumed that the government has data (whether publicly shared or not).					
Suggestions:					
Due to lack of time, the group could not discuss this indicator in detail but provided oral feedback at the plenary.					

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

There was consensus that existing procedures are rather unclear for communities to process their claims. Often times, local leadership played a critical role in communities being able to exercise their claims. Village Tract Administrators also function as interface between the communities and local forest departments, DALMS or GAD.

However, the ability and commitment of the newly elected local leaders has raised serious concerns. Numerous responsibilities including chairing the VT Land Management Committee and identifying and overseeing preparation of claims in conjunction with the communities and officials do not help mitigate these concerns. Existing complaint mechanisms relating to the 2012 Farmland Law and Vacant Fallow and Wasteland Law do not provide an adequate substitute for a court of law and, as a result, failure to properly notify individuals of proposed land projects (or land allocation) often results in a nearly uncontested legal transfer of land without input from those currently utilizing the land. These challenges are more jarring in ethnic areas where reforms and additional technical support are vitally needed.

While FD has maintained data on permits and CFs, these are not easily accessible to public.

Theme 4: Forest Tenure Data/Records Management**Indicator 4.1**

Systems for data recording and management for both formal and customary tenure rights.

S No.		Parameters	Score			
			1	2	3	4
1.	The government has established a centralized database to track all data/information related to forest tenure (e.g., permits, CF, and others).				X	
2.	Data/information about forest tenure rights is regularly maintained and shared with other departments/ministries.					
3.	The public can easily access data/information on forest tenure permits, CF grants, and others (such as permits/contracts issued by FD; community forestry, community protected areas).					
Overall Score:						
Justifications/Remarks: While the data base is established, it is not clear to the public whether it is functioning or operating regularly. This is a weakness. Note: The group initially mistook the data base to be only CF data but later it changed its views. However, scoring was retained as it was.						
Suggestions: The government as a priority should ensure that tenure related data sets are better organized and more accurate, with all mapping and holder details using a common reference. This should include defining fundamental core data sets to be maintained by each department and procedures as to how such data should be shared across agencies.						
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group): Only forestland/resource permits/grants are registered and recorded whereas other types of informal or quasi-formal forest tenure are not well registered and recorded. Customary land does not have its own special form of formal tenure with flexible rights, restrictions and conditions assigned by local decision-making. In case of ‘access and land holding rights’ of tenures held by groups, families, communities or individuals as appropriate for the particular situation are recorded only at local levels but there is no regular updating or harmonization of data with other overall forestland use. In the absence of an integrated Land Register for each village or group of villages, it is difficult to						

protect and manage resources sustainably. The issue is more challenging in ethnic areas where an integrated land register is lacking.

Similarly, an unified and coherent Land Register for communal grazing land, water rights, forest rights, State land areas (held by Union and States/Regions), and even informal settlements, is not in place. Such a register would have helped in recording respective rights in the Land Book, each indicating their own unique set of rights, restrictions and conditions. The numerous overlaps and confusion are the result of an unified Land Book this is a necessary step to move out of the confusion at present. Such a deficiency can be partly attributed to absence/enforcement of user-friendly procedures.

A further disadvantage is that FD personnel are not that well-versed with client relations and prefer to strictly follow administrative procedures. On the other hand, common citizens are not familiar with administrative traditions or laws/regulatory frameworks. In addition, the business processes are mostly manual and tedious for general citizenry to well engage. Further, apart from FD, the tenure administration services are primarily delivered through three different Ministries: GAD of the Ministry of the Office of the Union Government; DALMS in MoALI; Survey Department in MoNREC. Ministry of Mines has a role in case of mining permits. This makes inter-agency cooperation and co-ordination more tedious, often times less responsive and less complete.

Indicator 4.2

Data/information is periodically updated and shared among all responsible government ministries and agencies.

S No.	Parameters	Score			
		1	2	3	4
1.	Data on forest tenure rights are periodically updated by concerned agencies. (e.g., permits/contracts issued by FD; community forestry, CF protected areas).			X	
2.	Field visits are periodically undertaken to verify data on use of forestland and resources.		X		
3.	Procedures to systematically collect and record data (by local authorities and departments) are available and the public are informed about this.	X			
Overall Score:		2			

Justifications/Remarks:

Parameter 1: Data updated for CFs and permits only. The group could not comment on mining and other data sets.

Parameters 2: Field visits are undertaken – however, there is always a challenge with regard to methods used for verifying data and how it is reported – and follow up action taken. Hence this parameter is not that inclusive of all steps.

As part of field visits, though meetings are frequently held, it is not always on time and most often only some matters are covered.

Parameter 3: In the absence of NSDI, the ongoing OneMap effort is trying to put some procedures in place but progress is slow. There is no systematic effort to inform the public too.

Suggestions:

It is important to promote not only periodic data updating by agencies concerned by also sharing those updates with relevant stakeholders. Given that government focus on data management is increasing (also e-governance focus) – more facilities and resources should be allocated to developing data systems on a regular basis.

There should be methods to review how user groups use data. This should be done systematically.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

FD maintains a database on forest cover, concessions/permits granted, extent and location of protected and conservations areas while MoNREC's Myanmar Timber Enterprise and other divisions maintain data on timber

harvesting, mangrove areas, and REDD+ etc. However, available information is often not harmonized, outdated, ad hoc, or at times conflicting – and not readily shared among different key stakeholders. Major data discrepancies in forestland use (trade data including wood products or those with secondary rights) make in-depth analysis difficult. This has affected the government’s ability to respond to grievances and discontent over State land leases on forests. A large backlog in formal delineation of forest and non-forest land adds to the challenges in recording relevant data. While FD and MoALI databases provides broad details on the number of concession permits issued, no consolidated database on their performance exists. The prevailing systems and processes for assessing and issuing concessions are opaque, with little oversight. Public access to information and details on tenurial rights or concessions (proposed or ongoing) is very limited. There is no common portal to share data across ministries and agencies even. This situation impacts on popular perceptions and governance as a whole.

The government’s recent focus on One Map (and the National Spatial Data Infrastructure, NSDI) is encouraging in terms of unifying and standardizing geospatial information to a common platform and contact point.

In general, there is insufficient commitment and allocation of resources at the national level to geospatial reforms and consequently to the provision of resources, building of capacity, and setting up of unrealistically tight timelines for work for geospatial applications. The e-Governance Master Plan of 2016 is still struggling to make progress in key areas.

Within the identified gaps, lack of coordination leads to disconnected workflows, which reinforced many of the other, stated challenges. The interrelated shortages were found to be lack of data access, computing power, availability of technical capacity and proper procedures, as well as modeling and use of consistent land cover maps. With respect to data challenges, lack of consistent (spatially and temporally), pre-processed satellite data was expressed as a common obstacle, which oftentimes led to production of outdated maps. This also meant stakeholders were not able to meet user requirements or provided inconsistent products with respect to user needs.

Another byproduct of the above practices relates to the production of multiple maps and data sets gathered for different agency needs, which were not based on the same underlying data. Participants also cited political/bureaucratic issues which are often entangled with scientific procedures and decisions—often these limitations are undocumented or unacknowledged (e.g., reference data collection and compilation, mapping procedures, etc.).

Indicator 4.3

Accessibility of forest management plans

S No.	Parameters	Score			
		1	2	3	4
1.	The government regularly updates forest management plans.			X	
2.	Forestland inventory, management plans and budgets for state-owned forests are available to public via accessible methods.	X			
3.	Communities are allowed to prepare and regularly review and update their management plans for forest areas in their village.	X			
Overall Score:		1.7			

Justifications/Remarks:

While government departments may be updating data on forest management plans on a regular basis, the plans prepared are not always shared publicly – and also updates not verified systematically. Because of this gap sometime people do not readily accept plans provided.

Departments do not provide timely responses to enquiries to public – and also sometimes local departments may not be aware of new guidelines or procedures to share information to public.

There is no space for communities to prepare plans (except in case of CF applications) in a formal sense

Suggestions:

Departments are not the only stakeholders – hence public feedback is necessary to ensure that forest management plans are disseminated to them and inputs received and incorporated. In ethnic and conflict areas, departments should take additional steps to ensure that community views are incorporated well.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Existing weaknesses in spatial planning processes result in inappropriate land use decisions. For example by allocating old growth forests to be cleared for palm plantations or timber harvesting while degraded land is set aside for conservation purposes. Inaccurate and inaccessible spatial plans can indicate that land is available for plantations where in reality this is not the case. A possible governance intervention that responds to the issue of poorly implemented spatial plans, including inaccurate and inconsistent maps, is to make accurate spatial information publicly available. Up-to-date, technically sound and legally accurate spatial data, including license and permit data is an important foundation for the spatial planning process.

Theme 5: Grievances and Dispute Resolution Mechanisms (formal and informal)**Indicator 5.1**

Availability of independent mechanisms to address causes of land-related grievances¹²

S No.	Parameters	Score			
		1	2	3	4
1.	A central record of all land related grievances is maintained (union and states/regions) for monitoring progress			X	
2.	Formal institutions (at union and states/regions levels) undertake field research to identify and analyze causes of the grievances		X		
3.	Formal institutions have capacities to independently develop appropriate, simple mechanisms to address such causes		X		
4.	An independent body or institution free of any ‘conflict of interest’ is available to resolve escalated grievances			X	
Overall Score:		2.5			

Justifications/Remarks:

Parameter 1 – Though departments maintain a record these not necessarily reflect actual number of cases that come up.

Parameter 2 – Field research is undertaken only in case of serious issues. Otherwise, most issues are resolved via desk research and discussion with concerned parties.

Parameter 3 – Most institutions possess minimum capacity to address the grievances that come up for resolution. However, complex cases do pose challenges and these are invariably sent above to higher authorities for resolution. There is no regulation mandating follow-up of any of the cases resolved (or deemed as resolved). Given that the procedures for resolution of conflicts are complicated, recording is also not easy.

Parameter 4 – It is hard to say whether institutions are free of conflict of interest - but progress made in recent years should be noted and that should be acknowledged.

Because of the above factors, the scoring of this indicator should be understood.

¹² The term ‘grievances’ means and includes: complaints, disputes, and conflicts. For brevity, only the term ‘grievances’ (or disputes, as per context) is used here.

Suggestions:

Reports on claims resolved should be disseminated on time to build public confidence on the system. The best practices in resolving cases should also be shared periodically among different stakeholders. There should be a system to monitor follow up efforts (otherwise disputes or complaints may come up again). The independence of the formal mechanisms will have to be strengthened.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Parameter 1 and 4 – participants questioned score of 3 given by the group. and reasoned that the Group members had misunderstood the spirit of the parameters. In case of parameter 4, the existence of conflict of interest free institutions should be demonstrated to public rather than a statement made.

Much of the civil society and media have been periodically highlighting the plight of those who lost land to land grabs or confiscation by the military and the lack of independent mechanisms to address their complaints. This is a structural problem and cannot be addressed by one or two local mechanisms established and operated by States and Regions or local leaders or civil society or some well-meaning government bodies. Independent and reliable institutions, systems, and tools are needed.

Vast literature is available on the importance and relevance of both formal and informal dispute resolution mechanisms in Myanmar. However, there is no reliable database on disputes/grievances/complaints received and resolved. In the absence of a referable and dependable data base, the assessment relied on published field studies/reports from sources such as: International Alert (2019); My Justice Program (2018); MATA Reports (refer to www.mata-nrg.org); Myanmar Extractive Industries Transparency Initiative (www.myanmareti.org); www.lcgmyanmar.org; Point and others. It is important to define as to who has authority to settle or mediate a dispute. Though there is a complementary role between formal and informal systems, there is no formal mechanism that can help to coordinate or regulate each other's efforts (e.g., appeals on decisions of the community mediation). This is much illustrated in the tenure issues currently confronted by upland communities who practice shifting cultivation wherein almost all issues are locally sorted out with formal system playing almost a nil role. Important to note that customary, community-based institutions also resolve conflicts at local levels.

In addition to the formal system, in the conflict zones, EAOs provided an additional platform for dispute negotiations. The EAO platforms are developed and administered by respective groups with the communities they are engaged with. These mechanisms are available in all areas, though access to formal institutions, as most of them are based in the town/urban centers, is restricted by distance in the case of rural residents and probable low quality services provided by the departments. That said, for customary tenure systems, such as those in Chin, Shan or Kachin States, family structure, marriage and civil laws (including inheritance practices) are most influential. The common cultural belief is that even though customary processes vary between and sometimes even within neighboring communities, the basic methodology for forestland and resource allocation and dispute resolution is consistent throughout the specific ethnic or geographic area. With regards women's rights, in addition to customary practices and are equally important.

The question is not whether the formal institutions have capacities to develop mechanisms to resolve disputes and manage them. Only a structured and systematic development of dispute resolution mechanisms will help. Ad hoc development of policy guidelines and regulations has not contributed to systematic improvements in equality and dispute resolution. Policies, guidelines, and regulations on dealing with land disputes are somewhat ad hoc and developed in response to high-intensity cases or much reported instances incidents in the media. Policies and guidelines aimed at preventing disputes is limited. Highly inequitable systems undermine trust not only in the government but also within communities, cementing socio-economic disadvantage and triggering more disputes. It is also well known that tenure disputes, more in case of forestland as the borders and buffer zones demarcation is uncertain and therefore, serious issues persist

Indicator 5.2

Ability of formal (Union and States/Regions) and informal institutions to resolve complaints/disputes in a timely, fair and transparent manner.¹³

S No.	Parameters	Score			
		1	2	3	4
1.	Formal institutions have adequate capacities to hear complaints/disputes		X		
2.	Formal institutions are able to effectively resolve disputes within the prescribed timeframe		X		
3.	Formal institutions function without external influence or interference		X		
4.	Community-based institutions periodically receive information and training (from local authorities or CSOs) to adequately address grievances			X	
5.	Local mechanisms are available to address inter-community grievances			X	
6.	Community-based institutions function without external influence or interference			X	

Overall Score:**Justifications/Remarks:**

This indicator can be separated into two parts i.e., formal institutions and community-based mechanisms. Formal institutions do not have sufficient capacities to resolve complaints in a fairly and timely manner (this view is a bit in contradictory of opinion included in Indicator 5.1 but different context here should be understood).

In case of community-based mechanisms – the situation is a rather mixed because of the work done by CSOs either independently or in cooperation with local authorities. Because of this, most grievances are resolved locally and not elevated to higher levels.

In most cases, community-based local mechanisms independently function and are able to resolve issues - but these institutions are subject to “presence” and interest of vested groups. In a few areas, local leadership may be committed here community mechanisms perform better than formal ones.

Then the case of how you categorize EAO mechanisms in conflict areas? Are they formal or informal? In the eyes of the people, EAO mechanisms are formal but as per law it is not formal! This grey area was elaborated by the presenter as a challenge. The other challenge relates to “appealing mechanisms” – At present, there is no procedure to appeal in a formal way against decisions of informal mechanisms and hence procedure will start from zero again.

Suggestions:

As the government will not be able to resolve all the complaints and grievances (in any case, some complaints are minor too) these should be encouraged to be addressed at local levels. Formal institutions can support informal mechanisms to be effective.

Capacity building is very important for both formal and informal mechanisms to be effective and helpful in the long-run.

Important that the mechanisms are seen as independent in their functioning and decision-making. That requires some effort on the part of all stakeholders. Unless seen as independent, no mechanism can gain public trust on it.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

¹³ A community-based informal institution is often called upon to address and resolve three types of disputes: intra-community (between households within the same community), inter-community (between neighbors), and between the community and outsiders (e.g., government or investor). Resolution of each of these types of disputes demand different resources and capacities.

First of all, majority of the commonly known disputes are historical in nature while grievances are triggered by weak State responses in recent times. Several tenure-related issues often result from grievances, disputes and conflicts are triggered by legal uncertainty that either predate or result from the current conditions. Firstly, for long, set of disputes with an indirect but powerful effect on tenure occurred as a result of the eviction of individuals and communities from their land and its confiscation and occupation in their absence. Such historical longstanding land grievances/disputes remain very much alive. Secondly, disputes often arise in areas where resources are extracted extraction of resources without the agreement of all affected groups. This is primarily the case in conflict zones where controversial ways by which permits are approved adds to the challenge. Thirdly, recent efforts of the Government to settle IDPs (or returnees) in forest areas or privatize forestland and resources through grant of for plantation or other land development purposes have also led to tensions between public authorities and local communities. Lastly, Government efforts to claim State Land for public purposes has always triggered dispute and discontent among the population. The responses and scoring of the four parameters above should be discussed against this background of factors.

Communities prefer non-state mechanisms as a first point of contact for resolution of grievances or disputes. Such mechanisms not only able to address intra-household issues but also inter-community or village issues too. These are seen as accessible, affordable and timely in resolving issues. In areas where strong traditional practices are in place, non-state, community-based mediation mechanisms are popular and preferred because they are accessible, familiar to people and can resolve most of the grievances and disputes that arise within a community. Despite probable leaders' bias, gaps in understanding of the nuances or even traditions, people tend to prefer that mode – these are seen as free of external influence too. On the other hand, State (formal) dispute resolution mechanism is generally approached when the area involved is large and may involved more than one community or village (multi-sites). That said, there are many recorded cases that the formal Village Tract authorities such as FAB or LARC are requested to help resolving the issues within the community. In some instances local parliamentarians were approached to assist in mediation. In all instances, local community maintained faith over the fairness of the said authority.

Indicator 5.3

Perception of existing formal dispute-resolution mechanisms

S No.	Parameters	Score			
		1	2	3	4
1.	Formal dispute resolution mechanisms are accessible and affordable.		X		
2.	Alternative dispute resolution methods are accepted by communities.		X		
3.	Information on existing formal dispute-resolution mechanisms are made available to the public in simple and user-friendly language.		X		

Overall Score:

2

Justifications/Remarks:

Parameter 1: Formal institutions are not that easily accessible and affordable (e.g., costs because of multiple visits). At present services may be provided by the law or guidelines but are not that easily accessible and affordable to local households. The situation is more difficult in case of upper Myanmar areas where access to towns are limited.

Parameter 2: Awareness about alternative dispute resolution is limited. And people are not sure how far the formal/government institutions accept alternative mechanisms. That is a block.

Parameter 3: Information materials are not available in ethnic dialects – and sometimes meetings may be conducted only in Myanmar language. These are challenges as public views swing.

Suggestions:

More efforts should be taken to increase public awareness and participation in the dispute resolution processes. Without participation of stakeholders, dispute resolution will not succeed. It is important to give attention to ethnic socio-cultural beliefs and practices as part of these mechanisms. Unless, culture is respected, the barriers will remain in all spheres to engage well.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

The mechanisms and instruments provided by the formal institutions are often seen as unaffordable and located at distant places. Further, the formal dispute-resolution system is generally seen as favoring the State agencies, they are less effective in settling disputes between communities and the State. Local political issues, geographical conditions, costs, or lack of familiarity with procedures hampers access to justice. In EAO administered areas, formal institutions have no access too. In fact, EAO established administrative bodies are seen as formal in those conflict areas. Several of the formal bodies, though familiar with local customary practices, rely on broader Government templates, often inappropriate to the context, to address disputes. Appeals are costly and time consuming. People thus tend to look for alternative dispute-resolution mechanisms. Informal and community-based dispute-resolution methods have yielded some positive results, particularly in upland areas where customary traditions are respected. The government must examine available informal and quasi-formal, community-based dispute-resolution mechanisms and pilot them to resolve land conflicts. A proper dispute-resolution mechanism would strengthen good land governance if well managed and resourced. On the other hand, serious gaps found in the formal system has strengthened informal and community-based systems which are viewed as accessible, affordable and reliable to an extent too.

In recent times, Government has acknowledged that building federalism and decentralization of powers to States/Regions to resolve disputes in land and natural resources is critical in building public trust on State (formal) mechanisms. This is truer in case of conflicts triggered by political factors and those found in the conflict zones. Another issue relates to local authorities not being able to secure adequate compensation for land areas acquired for public purposes. Elaborating on the attitude of village leaders, several CSOs cited the hurdles that they confronted in negotiating a reasonable compensation. There was anecdotal evidence that poor communities, particularly women-headed households, paid serious economic costs for merely relying on local mechanisms with limited reach and relevance. The inability of the village leaders to prevent misuse or abuse of village resources is a good example.

The alternative dispute resolution mechanisms are relatively new to Myanmar and will need time and more pilots to gain public confidence.

Until recently, information on dispute resolution was rarely shared or disseminated. In recent years, there has been some improvement in sharing information but still more remains to be done.

Indicator 5.4**Participation of ethnic communities and women in the dispute-resolution processes**

S No.	Parameters	Score			
		1	2	3	4
1.	Responsible agencies post information (or inform the public) about land-dispute resolution processes that affect ethnic communities and women.				
2.	Public meetings are organized by local authorities to hear land-related disputes that affect ethnic communities and women (and deliver decisions in a fair and timely manner).				
3.	All results and decisions on land-related disputes that affect ethnic communities and women are made available to the public.				
4.	Meetings are held in local ethnic language/dialects.				

Overall Score:**Justifications/Remarks:**

Parameter 1: Rarely information is posted at specific sites and visible to stakeholders who matter the most in that particular case.

Parameter 2: Since agencies are trained to run the processes in a bureaucratic manner, attention to participation of ethnic communities and women are limited (mostly left to leaders of that particular area). In turn, the agencies are not that trained to engage well with ethnic communities and women in the dispute resolution processes. This situation creates a perception on lack of transparency and public confidence on the mechanisms and decisions. Add to this, information is provided in complex language and legal terms.

Parameter 3: It is difficult to

Parameter 4: Some meetings are held in local or ethnic dialect but it depends much on the leaders.

Suggestions:

Reports on claims resolved should be disseminated on time to build public confidence on the system. The best practices in resolving cases should also be shared periodically among different stakeholders. There should be a system to monitor follow up efforts (otherwise disputes or complaints may come up again). The independence of the formal mechanisms will have to be strengthened.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Parameter 1 and 4 – participants questioned score of 3 and reasoned that the Group members had misunderstood the spirit of the parameters. In case of parameter 4, the existence of conflict of interest free institutions should be demonstrated to public rather than a statement made.

Much of the civil society and media have been periodically highlighting the plight of those who lost land to land grabs or confiscation by the military and the lack of independent mechanisms to address their complaints. This is a structural problem and cannot be addressed by one or two local mechanisms established and operated by States and Regions or local leaders or civil society or some well-meaning government bodies. Independent and reliable institutions, systems, and tools are needed.

Vast literature is available on the importance and relevance of both formal and informal dispute resolution mechanisms in Myanmar. However, there is no reliable database on disputes/grievances/complaints received and resolved. In the absence of a referable and dependable data base, the assessment relied on published field studies/reports from sources such as: International Alert (2019); My Justice Program (2018); MATA Reports (refer to www.mata-nrg.org); Myanmar Extractive Industries Transparency Initiative (www.myanmareti.org); www.lcgmyanmar.org; Point and others. It is important to define as to who has authority to settle or mediate a dispute. Though there is a complementary role between formal and informal systems, there is no formal mechanism that can help to coordinate or regulate each other's efforts (e.g., appeals on decisions of the community mediation). This is much illustrated in the tenure issues currently confronted by upland communities who practice shifting cultivation wherein almost all issues are locally sorted out with formal system playing almost a nil role. Important to note that customary, community-based institutions also resolve conflicts at local levels.

In addition to the formal system, in the conflict zones, EAOs provided an additional platform for dispute negotiations. The EAO platforms are developed and administered by respective groups with the communities they are engaged with. These mechanisms are available in all areas, though access to formal institutions, as most of them are based in the town/urban centers, is restricted by distance in the case of rural residents and probable low quality services provided by the departments. That said, for customary tenure systems, such as those in Chin, Shan or Kachin States, family structure, marriage and civil laws (including inheritance practices) are most influential. The common cultural belief is that even though customary processes vary between and sometimes even within neighboring communities, the basic methodology for forestland and resource allocation and dispute resolution is consistent throughout the specific ethnic or geographic area. With regards women's rights, in addition to customary practices and are equally important.

The question is not whether the formal institutions have capacities to develop mechanisms to resolve disputes and manage them. Only a structured and systematic development of dispute resolution mechanisms will help. Ad hoc development of policy guidelines and regulations has not contributed to systematic improvements in equality and dispute resolution. Policies, guidelines, and regulations on dealing with land disputes are somewhat ad hoc and developed in response to high-intensity cases or much reported instances incidents in the media. Policies and guidelines aimed at preventing disputes is limited. Highly inequitable systems undermine trust not only in the government but also within communities, cementing socio-economic disadvantage and triggering more disputes. It is also well known that tenure disputes, more in case of forestland as the borders and buffer zones demarcation is uncertain and therefore, serious issues persist.

Indicator 5.5

Ability of formal (Union and States/Regions) and informal institutions to resolve complaints/disputes in a timely, fair and transparent

S No.	Parameters	Score			
		1	2	3	4
1.	Existing mechanisms function in an independent manner, free from the influence of those who may cause conflict.		X		
2.	Space and opportunity is available for forest-dependent communities to participate in affordable conflict-resolution mechanisms.		X		
3.	Existing procedures/guidelines are made available to the public in a simple and user-friendly language.		X		
Overall Score:		2			
Justifications/Remarks: Parameter 1 and 2: These aspects were commented earlier and those views stand as valid here. Parameter 1 and 3: As indicated earlier, lack of consistency in procedures and complex language of the guidelines (which people cannot understand easily) – most decisions made by formal institutions are seen as not independent. The situation is same in case of informal institutions if the cases involve high value land areas or if the leadership lacks knowledge and patience to resolve an issue. Because of non-use of ethnic language, poor information dissemination and public perception on the decision-makers – participation continues to be weak. This is a cycle of problems and challenges that should be addressed.					
Suggestions: Procedures should be clearly developed and disseminated in clear and understandable language and terms to both government and other stakeholders. Unless information is shared properly, institutional abilities will remain in doubt.					
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group): Perceptions of significantly higher levels of external influence pervades formal dispute resolution mechanisms. Government agencies and staff that are members of all the three institutions’ dispute and grievance mechanisms are from relevant ministries and departments with mandates to address, or that are concerned about, land issues – this membership is seen as a conflict of interest and hampers fairness. In many cases, the same government agencies, and frequently the same personnel at appropriate levels, serve on all three bodies or committees. Representatives of the Tatmadaw are on a number of committees down to the District level. This represents not only lack of capacities but also probable influence of external factors and conflict of interest that could upset fairness in the due process. There is little space and opportunity provided for forest-dependent communities to periodically engage in conflict resolution mechanisms and processes. CSOs do support community engagement in some cases these are limited in nature too.					

Theme 6: Safeguarding Forest Tenure Rights (of local and ethnic communities; formal and informal)¹⁴

Indicator 6.1					
Clarity over responsibilities to resolve overlapping claims and uncertainty					
S No.	Parameters	Score			
		1	2	3	4
1.	Responsibilities for implementation and monitoring are clearly established at union and states/regions' (local) levels.			X	
2.	Periodic reviews are undertaken to identify unclear lines of responsibility, jurisdictional overlap between formal institutions and any uncertainty around provisions in the policy/regulatory frameworks.		X		
3.	Procedures, strategies and plans are in place to allocate resources to support formal safeguards' work at community/primary level.		X		
Overall Score:					
Justifications/Remarks:					
<p>The Environmental Conservation Law (2012) and relevant Rules have established the responsibilities and procedures to some extent but implementation is an issue. In addition, the periodic reviews, where needed, are provided in the law but compliance is limited due to lack of capacities and resources. The reasons are: lack of resources for periodic reviews and EIA/SIAs are not always disclosed properly and often times follow up turns out to be a complex task and that communities remain unclear as to how safeguards would work to their benefit. Many times, safeguards' instruments remain as "it is" and no modifications made to meet changing needs. In view of all of these, clarity is not secured with regard to overlapping and uncertain claims.</p>					
Suggestions:					
<p>Developing clear linkages between different procedures and actors (formal and informal) – and their timely implementation - is important. There should be mechanisms to periodically update the safeguards approaches based on lessons learnt. The ability of safeguards to protect claims – and provide clarity over claims should be communicated well to the public.</p>					
Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):					
<p>Despite several new laws and guidelines in recent years, roles and responsibilities across Union and States/Regions are not clearly defined and agreed between them with regard to safeguards. Stakeholders involved in forest resource management both internal and external to the government, consistently experience uncertainty about which agency directs forest tenure administration and whether States/Regions' advice on safeguards and community rights are accepted or adopted.</p> <p>FD has the primary role in forest tenure administration but interpretation of the safeguards' at times takes a different focus. For example, relevant line departments manage land acquisition and compensation too. Ultimately this affects the efficiency of the respective units in the long-run.</p> <p>One challenge relates to addressing the threat of deforestation for "conversion timber" when companies use agribusiness concessions as a way to log natural forest. At present, both Forest Law and CBPA Law and other regulations are silent on EIA/SIA safeguards' procedures with regard to logging. However, non-enforcement of</p>					

¹⁴ Formal safeguards exist to protect vulnerable local and ethnic communities from unwanted expropriation that could materially damage their well-being. Ethnic communities support current forest tenure frameworks and consider them as safeguards against unfair or unjust appropriation of their forest resources from outsiders. Often, enforcement reportedly remains the main challenge.

provisions in Chapter VI of the Forest Law 2018 with regard to logging is widespread. In fact, the results of the Community Monitoring Surveillance Reporting (introduced recently) has showed that most of the small-scale logging outputs are aggregated at a later stage (crossing check posts without detection).

At present, there are insufficient resources and capacities to undertake periodic field visits and reviews. In addition, steps and procedures for revising the existing regulations and guidelines are also lengthy and time-consuming – which renders any effort to learn from experiences and revise the existing ones not so easy.

Indicator 6.2

Tenure rights of ethnic communities are well-defined.

S No.	Parameters	Score			
		1	2	3	4
1.	Current legal frameworks adequately allow for ethnic communities to sustainably manage their forest areas		X		
2.	Ethnic communities largely agree with current legal frameworks and consider that they safeguard them against unfair or unjust appropriation of their forest resources from outsiders.		X		
3.	Legal safeguards exist to protect vulnerable ethnic communities from destruction of livelihoods resulting from forced State expropriation of forest resources.		X		

Overall Score:

Justifications/Remarks:

Parameter 1: Current legal frameworks may provide some rights to ethnic communities but lack of clarity and weak institutional technical and institutional support do not encourage people to engage in sustainable management of forest areas.

Parameter 2: This parameter will have to be understood against the national ceasefire agreements, EAOs and peace process.

Parameter 3: In most cases, the current legal frameworks are unclear or half clear only. Some cases ethnic communities are not even aware of the formal frameworks – and hence the question of agreement or disagreement over formal frameworks does not arise at all. Some communities are indifferent to the formal frameworks too as officials may not be able to enforce them!

While new Land Acquisition Act of 2019 is more clearer than earlier versions and provisions, still existence of legal safeguards to protect community's remains to be tested and confirmed.

Suggestions:

Apart from recognition of customary tenure, the frameworks should be revised to clearly allow ethnic communities right over the forestland and resources. The legal safeguards provided should be communicated to the public – and legal aid should also be provided where necessary (this is a weak area now). The Land Acquisition Act should be tested in different places and projects and revised appropriately.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Discussions on this indicator should consider the background as a start.

Myanmar is still working to emerge from the world's longest-running civil war, with arguably the most complex peace process in modern history. This conflict involves at least 21 armed groups, numerous militia, and border forces. Some ethnic armed organizations (EAOs) have signed a Nationwide Ceasefire Accord (NCA), some have not, and some are in active conflict. The EAOs, whether signatories to the NCA or not, share an aspiration for some form of local autonomy or a less centralized form of government. The actual characteristics of a federal state are part of the discussion at the Twenty-First Century Panglong Peace Conference (see below), including the right to manage or benefit from natural resources, mineral resources, and agricultural land in general, which has always been a flashpoint.

Against this background, the current legal frameworks are seen as inadequate to allow ethnic communities to manage their areas. In fact, EAO-administered units continue to wield power in respective areas rather than departments assigned by the Union Government. Building on such perceptions, current legal frameworks are seen as unfair (or non-

inclusive) of the rights of ethnic communities. It is further aggravated by widespread grant of concessions (or permits) issued to investors without public consultations – in which case EAOs are seen to be protecting the rights of local ethnic communities rather than the distantly located government departments.

There is a general criticism that current formal safeguards mechanisms (EIA/SIA included) are not able to provide accessible, affordable, real and achievable safeguards for the communities to protect their tenurial rights. In some instances of land acquisition, State-connected mechanisms has been presented as a key solution, but it has mainly failed its promises, sometimes even reducing real access to fair compensation to those holding tenurial claims.

Current regulations and guidelines (e.g., ECL of 2012) provide sample list of direct environmental and social risks and how they are expected to be minimized by strengthening mitigation measures. It includes community participation and information dissemination to enhance support and improve legitimacy of investment or other proposed processes. Such a process is also expected to boost validity of physical and legal data gathered, which forms the basis for protecting tenurial claims, as a safeguard measure, at a later date. In order to mitigate risks, ECL and other regulations have proposed site-screening processes as a first step. This site-screening and risk mapping work will ensure that areas likely to trigger disputes/conflicts are: i) identified; and ii) avoided until disputes/conflicts are settled and/or additional resources and risk mitigation measures are in place. Screening is included as a mandatory step in the Safeguards processes, however additional pre-screening steps would be required to more thoroughly identify and anticipate risks and impacts. The proposed site-screening and risk mapping is expected to help local government create a risk profile that covers all risks prevailing in a particular location or community, who are likely to be affected by the proposed investment or project.

Indicator 6.3

Existing Safeguards' (procedures and guidelines) are consistent with the accepted norms of social and environmental practices and covenants, including FPIC principles.

S No.	Parameters	Score			
		1	2	3	4
1.	Standard Operating Procedures (SOPs) are in place to help identify emerging threats (risks) against existing tenurial claims		X		
2.	Existing norms, procedures, and guidelines are periodically reviewed (and updated) to reflect changing context and conditions to support safeguards.			X	
3.	A 'risk communication plan' is developed for each project or investment plan.			X	
4.	Responsibilities for communication and coordination (on safeguards) are in place.			X	
Overall Score:					

Justifications/Remarks:

Parameter 1: ECL and related Rules provide EIA/SIA procedures and standards. However, implementation is an issue. There is an awareness on the need for SOP but it is not in place for now. Some procedures and guidelines exist but these will have to be tested and a comprehensive version is needed for effective implementation.

Parameter 2: There has been no review of these procedures and guidelines so far (too early to review as they were adopted in 2012 and 2014 only). But now time to review them.

Parameter 3: Departments do not prepare a communication plan but as part of EIA/SIA identification and communication of risks to stakeholders is undertaken. This cannot be considered as systematic.

Parameter 4: At the Union level, several tasks for communication are assigned; however, lack of capacities and resources impact.

Suggestions:

During plenary discussions, it was highlighted that there is no provision for periodically reviewing the procedures and guidelines. Hence the scoring should be revisited.

Given that the procedures and guidelines should be reviewed now – the revised tools should be stronger and more community based. It should also use all of the existing experiences and lessons learnt.
Inter-departmental coordination should also be the focus of EIA/SIA work.
EIA/SIA work should also consider protection of customary tenure claims as one of the key aspects.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

Without a strong FPIC provision in its safeguards – free of any loopholes – the Government and community's ability to prevent investors from violating tenure rights will continue to be limited. In recent times, Government has agreed to apply FPIC principles through a structured process, in the context of REDD+ - but that is happening because FPIC is not mandatory when concessions are granted for large-scale land allocations for plantations or industrial forestry or extractive purposes. The safeguards in each case goes beyond mere information provision or an occasional meeting – and communities should be able to give their consent or withhold it. A strong FPIC process will help the government to safeguards against the efforts of vested interests to undermine tenurial rights of communities, and help reduce the risk of costly social conflicts. This will be increasingly important as the government engages more and more in the peace negotiations with EAOs and ethnic nationalities.

More concerning than the traditional large-scale land allocation may be the processes associated with Union Government's allocation (or by respective EAOs in ethnic nationality regions) into customary and/or forest areas. The forest edge areas are not typically forested, but communities are impacted and often not compensated for the value of their land. The FPIC process although not expressly mentioned in most pieces of legislation the Environment Conservation Law of is quite elaborate on this process. Section 29 and 30 involving the environmental and socio-economic assessment (EIA/SIA) requires the investor/developer to use the full FPIC process in interacting the affected communities. Based on field experiences, both Government and CSOs reasoned that FPIC is resource intensive and communities will not be able to undertake that exercise without external support.

Indicator 6.4

Institutional arrangements (formal and community-based) exist for monitoring compliance with the provisions of Safeguards.¹⁵

S No.	Parameters	Score			
		1	2	3	4
1.	Local institutions (formal and informal) are provided with adequate resources to engage in the process of safeguards.		X		
2.	Communities have access to capacity-building services and technical support to fully exercise their rights.		X		
3.	Public have sufficient opportunities to report on non-compliance to higher authorities.		X		
Overall Score:					

Justifications/Remarks:

Parameter 1: Resources are not adequately provided to local institutions and what is allocated is deemed as small. At present, local authorities depend on ad hoc support from civil society groups. Because of this, ability of institutions to provide advisory support to communities and monitor compliance is limited and at times serious issues are missed.
Parameter 2: Mostly CSOs provide support to communities on safeguards and risk mitigation but that support is minimal only.
Parameter 3: In recent times, there is a hot-line for communities to report on illegal timber harvesting or transport. But

these systems are not fully developed as reliable and independent mechanisms for the public to engage.

Suggestions:

It is important to active legal advisory services to communities so that monitoring is not always based on institutional capacities and resources – it is developed as community based. More CSOs should be encouraged to engage in compliance monitoring in a sustainable manner.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

There is a general criticism that current formal safeguards mechanisms (EIA/SIA included) are not able to provide accessible, affordable, real and achievable safeguards for the communities to protect their tenurial rights. This is partly due to lack of capacities and resources made available to local institutions. In turn, communities do not have access to sufficient resources and technical support to safeguard their claims. State-connected land acquisition has always confronted challenges – partly due to past confiscation issues and partly due to non-enforcement of a consultative process and mainly due to its failure to maintain promises, sometimes even reducing real access to fair compensation to those holding tenurial claims.

Indicator 6.5

Existing guidelines provide adequate compensation (in case of expropriation) that take into account social costs of loss of access to forestland and resources.

S No.	Parameters	Score			
		1	2	3	4
1.	Guidelines for inclusion of social costs of land loss (access or use) exist and the public are made aware of these provisions.			X	
2.	Guidelines for inclusion of social costs in estimating compensation sufficiently reflect ground realities.			X	
3.	Communication materials on inclusion of social costs are tailored to the needs of the local communities.		X		
4.	Communities have access to capacity-building services and technical support to fully exercise their rights.		X		

Overall Score:

Justifications/Remarks:

Parameter 1: It has 2 parts. One relate to availability of guidelines – and another relate to raising awareness. These should be separated. Hence Score 3 does not reflect reality. It should 3 and 2 respectively and hence 2.5 overall. Still it does not show the challenges with regard to quality of the guidelines.

Parameters 2: The language of this parameter is not correct. Adequacy of the provisions can be understood only after piloting – so far no piloting of the new Act undertaken. This can be deleted for now.

At present, government institutions have limited capacities and resources to engage in estimating social costs.

Parameters 3 and 4: Much rely on support from CSOs in the respective areas. Refer to Bago workshop proceedings and comments on FPIC.

Suggestions:

Pilot the new Act and include lessons learnt to improve the guidelines.

Improve dissemination of information to avoid limitations within the communities.

It is important to note that benefits (or profit yielded) under community forest management in Myanmar are retained at the local level, and distributed locally. Chapter VI of Forest Law 2018 states that: “Revenues and other benefits accruing from the forest resource shall be equitably utilized by the community in accordance with the benefit sharing arrangements set out in the community constitution, regulations and relevant agreements, if any”.

Despite this provision, there is no specific guideline or procedure for benefit sharing under the community forest management in Myanmar. So far, most benefit sharing arrangements are negotiated and agreed at community level. Yet these benefits are allowed at the discretion of the respective FD offices in the area and are said to rarely if ever materialize.

In addition, benefit sharing is prescribed under the Mines and Minerals Law of 2016 and is commonly deemed inadequate by VTC heads, local communities and CSOs, who have argued that they have lost their land and other livelihood opportunities, while the monetary benefits do not necessarily create new livelihoods or adequately compensate.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

When the Land Acquisition Act was revised in 2015-17 period, at least three reasons were highlighted as to why compensation procedures tend to disproportionately burden poor and marginalized groups, such as women and Indigenous Peoples and local communities who hold land under customary tenure. First, poor and marginalized groups may be disadvantaged by legal systems that base compensation on the “fair market value” of their land and improvements made to land holdings. Second, compensation eligibility requirements tended to preclude communities with customary tenure rights, who form the majority in Myanmar, from submitting claims for fair and market value compensation. Third, women landholders are generally disadvantaged by gender-neutral compensation procedures, which fail to provide special protections ensuring that women are able to obtain compensation. Lastly, conflict zones prevented proper negotiation between ethnic nationalities and Government authorities or investors – and hence often times the dialogue/process was undermined or shortened to overcome perceived “political sensitivities” that left landholders with little option to advocate their claims properly.

Given political complexities in Myanmar, it may not always be possible to determine compensation based on market value and include social costs in estimating it. Alternative approaches vary depending on the political economy of a country.

The Land Acquisition Act of 2018 provides for compensation based on the ‘fair market value’ of land but no guidelines described. There is no clear provision to account for non-market values such as social, cultural, religious, spiritual, and environmental values. Additionally, international standards like the World Bank Environmental and Social Standards (ESS5) and IFC Performance Standard 5 (requiring compensation be based on the cost of replacing the expropriated property i.e., replacement cost approach) are generally ignored. In the absence of a robust and functioning land markets, it is impossible to calculate the replacement cost – and the fair market value is always seen as less than the replacement cost.

The Land Acquisition Act of 2018 provides for compensation based on the ‘fair market value’ of land but no guidelines described. There is no clear provision to account for non-market values such as social, cultural, religious, spiritual, and environmental values. Additionally, international standards like the World Bank Environmental and Social Standards (ESS5) and IFC Performance Standard 5 (requiring compensation be based on the cost of replacing the expropriated property i.e., replacement cost approach) are generally ignored. In the absence of a robust and functioning land markets, it is impossible to calculate the replacement cost – and the fair market value is always seen as less than the replacement cost.

Indicator 6.6

Establishment and application of benefit sharing of common resources

S No.	Parameters	Score			
		1	2	3	4
1.	Guidelines for equitable sharing of the costs and benefits (of forest management) are available.		X		
2.	The public are aware of procedures / guidelines for benefit sharing.		X		
3.	Mechanisms are in place to resolve disputes that may arise in benefit-sharing arrangements.		X		
Overall Score:					
Justifications/Remarks:					
There is no guideline to promote or encourage benefit sharing in managing natural resources. There is no mechanism					

in place too. In the past some small-scale benefit sharing arrangements were in place (e.g., community based natural resource management) but these were small-scale pilots and were not scaled up. There are no mechanisms or guidelines to resolve issues that may arise out of benefit sharing. Most disputes/issues are currently resolved at the community level through negotiations only.

Suggestions:

There is a need to pilot some of the BSM approaches to learn and scale up in due course. Government should consider providing technical and advisory support to promote BSM approaches.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

At present, benefit sharing mechanisms are not that popular in Myanmar largely due to lack of awareness and partly due to lack of advisory support on such novel ideas.

However, there is a realization that Benefit sharing mechanisms (BSMs) could potentially provide viable solutions to resource sharing arrangements and it will be advantageous to all in the access, use and management of resources. Past approaches like Community Based-Natural Resources Management (CB-NRM) have been found to be simple, fast, culturally relevant, and appropriate to the local context. While they elicited participation, they were also criticized for lack of accountability and poor flow of timely benefits to local communities. Further, poorer and vulnerable groups with little influence over decision-making are under-represented and remain the most disadvantaged and potentially discriminated in benefit-sharing arrangements. The discretion enjoyed by local leaders also raises questions about broader community engagement in earlier BSMs.

If formal tenure systems are not aligned with actual interests in land or forest areas, benefit-sharing could be mismanaged. Rights to benefits that are linked to tenure could preclude those holding customary rights. Clearly identifying beneficiaries at the very beginning has proved effective in successfully implementing BSMs. Timely benefit flow is critical so that forest dwellers reliant on meager cash flows are not discouraged by BSMs. A progressive, time-based flow of benefits built into community-based activities also seems to lead to more equitable and sustainable resource use. For example, community mapping aligned with local planning provide opportunities for not only decentralized decision-making but also inclusion of livelihood opportunities.

Indicator 6.7

Enforcement of penalties for non-compliance

S No.	Parameters	Score			
		1	2	3	4
1.	Government has capacity (and resources) to respond to non-compliance in a timely manner.		X		
2.	Communities are formally included as a recognized monitoring body in government monitoring mechanisms.			X	
3.	Responsibilities for surveillance and reporting are clear.			X	
4.	Public have opportunities to report on non-compliance or corrupt practices to appropriate authorities.			X	

Overall Score:

Justifications/Remarks:

Parameter 1: In general, government has less capacity to respond to non-compliance on time. There are many reasons including lack of mechanisms/methods to identify deviations in a timely manner.

The scoring of parameters 2 to 4 will have to be read in conjunction with the recent introduction of community surveillance and reporting mechanisms in 2018. Apart from that mechanism, there is no other piece/mechanism in place for community participation in the process.

In case of non-compliance of customary tenure arrangements (access to NTFP for example), there are issues that were

not discussed here (but covered in Indicator 1.2).
At times penal actions are

Suggestions:

Information dissemination to communities – and to local leaders - is key to ‘pushing’ government to act on time at the ground level.

It is important to publish “action taken” on a case by case basis so that public are fully informed of the efforts taken by the government to prevent non-compliance – and it will build up public trust on the system.

Periodically train key leaders and community members on behavior and attitudes to their work and business.

Remarks/Comments by the Participants at the Workshops (and additional remarks by the Working Group):

It is generally acknowledged that despite the recent recognition of different tenure regimes, current challenges in forest tenure cannot be addressed by emphasizing ownership rights alone. Local and ethnic communities require management and use rights with unlimited duration for their long-term development. Heterogeneous tenure regimes are needed to strengthen their tenure security. Such rights will place specific use and access restrictions within the respective community with an emphasis on community management and broad socio-economic welfare. They would rely on socio-cultural aspects familiar to the community and their leaders.

In order for safeguards to be effective and purposeful, an early analysis of rights to benefits and their links to tenure is essential. A range of different tools will have to be piloted to delineate and record complex and overlapping rights. These could be useful in introducing benefit-sharing arrangements through programs like disaster recovery, biodiversity conservation, climate change, REDD+, including some initiatives to lower costs for cadastral mapping, adjudication, and participatory mapping processes. Such programs can be successful only if they begin with a careful review of existing rights and interests in the land involved and a clear mechanism to protect these rights.

ANNEX 3. FTA PROCESS IN MYANMAR: FEEDBACK AND COMMENTS FROM THE PARTICIPANTS

F E E D B A C K S U M M A R Y								
Sr. No.	Description		Submitted Sheets	Fully Agreed	Agreed	Not Agreed	Not Agreed at all	No Answer
1	Do you have free discussion?		57	18	26	0	0	13
			Submitted Sheets	V good	Good	Fare	Poor	No Answer
2	Facilitation		57	15	37	4	0	1
3	Power Point Presentation		57	6	41	8	0	2
4	Translation		57	5	30	14	1	7
5	Distribution of Documents		57	10	43	3	0	1
6	Accommodation		57	8	33	3	0	13
7	Transportation		57	5	33	5	2	12
8	Meal (Food)		57	9	39	2	0	7
Description								Count
9	Response to the question how benefit Workshop to your Work.							
	1.	Knowledgeable						9
	2.	Referable (For Training, For Implementation, etc.)						6
	3.	Good practices						5
	4.	Good preparation						1
	5.	Useful for future plans						2
	6.	Getting more friends						3
	7.	Getting innovative ideas, outlook, wider thinking						2
	8.	Just telling useful to work						18
	9.	More understanding among all the stake-holders						10
	10.	Possible to extend about departmental situation						2
	11.	Knowledge sharing to local people/colleagues						1
	12.	More opportunities						1
	13.	Give better efficiency (facilitation skill, advocacy skill, etc.)						4
	14.	Good coordination and cooperation						1
	15.	Good experience						1
	16.	No response						2
10	Suggestions to improve the process of Workshop							
	1.	To invite indigenous people more to Workshop to let them participated						1
	2.	Explanation standard operation procedures, difficulties, challenges, should be more.						1
	3.	To deliver the Workshop agendas and documentation concerned in advance						9
	4.	To invite more varieties of stake-holders						4
	5.	Discussion methodology should be updated based on the situation						1
	6.	To give enough/more time						8
	7.	To introduce international experience/practices more						2
	8.	To let more subordinate (field) staff and forest dependants participated						2
	9.	To introduce forest governance						1
	10.	To select good facilitators for group discussion in advance						2

	11.	Equality of discussion is preferable	1
	12.	to control not to discuss others which is not related to current discussion	2
	13.	Translation should be better	2
	14.	Grouping participants should be balance in size of nature (Govt., CSOs, Com:)	1
	15.	Suggestions, conclusions, comments, etc. which come out of discussion should be launched and demonstrated at once	1
	16.	To lead or create all-inclusive discussion	1
	17.	Summary report should be completed in detail.	1
	18.	Invitation should be in advance.	1
	19.	Working committee members should facilitate group discussions and explain about the indicators, parameters, etc. during the event.	1
	20.	Group results should be presented using power point system.	1
	21.	No response	19
11	Suggestions how should continue the process.		
	1.	To share the results of workshop to all the participants	9
	2.	To share the results of workshop to Government bodies	5
	3.	To support Forest Department concerning with Reservation	2
	4.	To collect suggestions on Forest Tenure Assessment	2
	5.	To investigate the area of Community Forest	1
	6.	To give supporting to awareness programs	3
	7.	To conduct regional/state level workshops	5
	8.	To conduct all stakeholder-inclusive programs	4
	9.	Advocate to the Government agencies for the amendment of policies and laws based on findings of workshop.	6
	10.	Additional workshop discussing on final report	2
	11.	Grouping 6 groups, drawing work plans and discussing with EAOs	1
	12.	To conduct discussion till to get the agreement	1
	13.	Public information sharing	1
	14.	To update FTA tools by means of editing parameters & indicators based on group discussion	3
	15.	To support community forestry establishment	2
	16.	To draw action plan based on the result of FTA	1
	17.	No response	22
12	Other suggestions		
	1.	To conduct lower level workshops	5
	2.	To support for formulating of land law by the combination of World Bank & Forest Department	1
	3.	Communities' traditional rights/practices should be legalized	3
	4.	Translation should be better.	2
	5.	Results of workshop should be used in formulation of land law	1
	6.	Land law should be based on all multi-stakeholder inclusive consultation	1
	7.	To think about the persons who feel sensitive.	3
	8.	Awareness raising programs should be supported	1
	9.	Forest conservation should be priority to be supported.	1
	10.	To pay attention to grass-root level	1
	11.	Forest tenure should be defined in Forest Rules.	1
	12.	Better or more cooperation with local CSOs	1
	13.	More advocacy to Government	1
	14.	Information system should be maintained by regular updating	1
	15.	All the recommendation should be included in final report.	2

16.	Laws should be amended based on the assessment's recommendations.	3
17.	To collect the suggestion of local people more	2
18.	Government operations should not harm to indigenous people.	1
19.	To support CSOs who conserve the nature by World Bank	1
20.	FPIC should be adopted for future plans.	1
21.	Indicators should be overviewed.	1
22.	Results of workshop should be attended when amending Forest Rules.	1
23.	To invite related departmental officials more when conducting such kind of Workshop	1
24.	Forest tenure assessment should be public.	1
25.	Related policy makers (People's Representatives) should be invited whenever conducting any workshop	1
26.	To conduct such kind of workshop additionally	1
27.	Hope to make the vehicle drivers better in manner/behaviour	1
28.	The venue of accommodation and workshop event should be the same.	5
29.	To invite more variety of stake-holders whenever conducting workshop	1
30.	All the participants should get the agenda and all the documentation related to workshop especially what to be discussed.	1
31.	Amendment of Forest Policy	1
32.	Regular assessment should be done.	1
33.	No response	21

34	1				1					1				1			1			
35	1				1					1				1				1		
36						1		1						1				1		
37		1				1				1				1				1		
38		1				1				1				1				1		
39	1					1					1			1			1			
40		1				1					1				1			1		
41		1				1					1				1			1		
42					1					1				1			1			
43	1					1				1				1				1		
44						1				1								1		
45		1				1				1				1				1		
46		1				1				1				1				1		
47	1					1				1				1				1		
48	1					1				1				1				1		
49	1						1			1						1		1		
50		1				1				1					1			1		
51		1			1					1					1			1		
52		1				1				1								1		
53		1				1					1			1				1		
54		1				1				1					1			1		
55		1				1				1				1				1		
56						1				1			1					1		
57	1					1				1				1				1		
Total	18	26	0	0	15	37	4	0	6	41	8	0	5	30	14	1	10	43	3	0
No Answer	13				1				2				7				1			

Participant ID No.	How WS benefit to your work	Your suggestion to improve the process of WS.	Your suggestion of following to WS	Description												Other Suggestion
				Your Accommodation during WS				Transportation Facilities				Your food during WS				
				Very Good	Good	Fare	Poor	Very Good	Good	Fare	Poor	Very Good	Good	Fare	Poor	
1	1, 2			1				1				1				1, 2, 3
2	1	1, 3, 4	1		1				1				1			4
3	3	5														
4	1, 4	3			1				1				1			5, 6
5	5	3, 6	1		1				1				1			7
6	1, 6		1		1				1				1			1
7	7	7											1			7
8	1	7			1				1				1			7
9	2	8	2		1				1				1			9, 10
10	2	9			1				1				1			1, 11, 12
11	8	6		1				1				1				16,17
12	8		3, 15	1				1				1				23
13	9	3	2, 4		1				1				1			24
14	8, 9	10	1		1				1				1			
15	2	8	5, 6													25
16	9		3, 6, 15		1				1				1			
17	8	11			1				1			1				16
18	3				1				1				1			16, 17
19	2, 6, 9	10, 13	7, 8		1				1				1			4, 32
20	12	14	9, 10		1				1				1			8
21	8			1				1					1			19
22	8	15	7		1				1				1			26
23																
24	7	3			1				1				1			
25	9	3										1				18
26	3		2, 7		1				1				1			
27	9	3											1			
28	8	6	11		1						1	1				27
29	9		6, 8		1				1				1			28
30	8	4	8		1				1				1			28
31	3, 15	17	1, 4	1						1			1			28
32	8, 13	13	9		1				1				1			
33	13									1			1			

34	8				1				1				1			
35	9	6	12		1				1				1			
36	8		2		1				1				1			28
37	2		13			1				1				1		
38	13, 14				1				1				1			1, 3
39	13		8									1				
40	8	'3, 18			1				1				1			20, 21
41		3				1				1				1		22
42	8				1				1				1			'3
43	8		2	1				1				1				1
44	11	19	1		1				1				1			15
45	8	6, 20	1		1				1				1			
46	8				1				1				1			
47	10		1, 9													
48	2	2														
49	6, 10		9			1			1				1			13, 14, 28
50	5	6	1, 14	1					1			1				29
51	1		9, 10										1			15
52	1, 9	4														
53	8	12, 16	14		1					1			1			
54	9	4	7		1				1				1			30
55	1	6														
56	1	6	7, 9		1						1		1			31
57	8	12	14, 16	1					1				1			
Total				8	33	3	0	5	33	5	2	9	39	2	0	
No Answer				13				12				7				

Summary: Anonymous responses on workshop evaluation forms indicated that participants found the activities very interesting and useful. All 57 respondents felt the discussions were free and open. The most common comments indicated that participants gained useful information for their work and a better understanding of various stakeholder positions. The logistics of the workshop also received mostly favorable or very favorable marks in terms of quality of facilitation, presentations, documents, accommodation, transportation and meal. The quality of translation was also perceived favorably, but with most respondents rating the service as good to fair. The most common suggestion for improving future workshops of this type was the distribute activity agendas and documents in advance and allow more time for each session and discussions/dialogue. Many suggested that the results of workshop should be shared to all participants and follow-up maintained. To continue the process, many participants suggested sharing results of workshop to Government bodies and advocating for amendment of policies and laws based on workshop findings and recommendations. A number of participants also suggested conducting stakeholder-inclusive awareness programs, and regional/state level workshops on forest tenure issues.

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