



# THE PARLIAMENT AND LAND GOVERNANCE IN BURMA: EDUCATIONAL NEEDS GAP ANALYSIS

TENURE AND GLOBAL CLIMATE CHANGE (TGCC) PROGRAM



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# ACRONYMS AND ABBREVIATIONS

ADS	Agricultural Development Strategy
APU	Agricultural Policy Unit
CFI	Community Forestry Instructions
MoALI	Ministry of Agriculture, Livestock and Irrigation
MONREC	Ministry of Natural Resources, Environment and Conservation
MP	Member of Parliament
NLUP	National Land Use Policy
USAID	US Agency for International Development
VFV	Vacant, Fallow and Virgin

# EXECUTIVE SUMMARY

This analysis first describes the capacity-building context for Members of Parliament (MPs) in Burma serving in the land and agriculture sector, and the setting in which they find themselves as the second year of the National League for Democracy (NLD)-led government gets underway. The analysis explores the capacity development needs these MPs face, considering their extremely limited resources and the great deal of legislative work ahead, especially in the land sector. With these gaps in mind, the analysis suggests several purposes or goals in addressing those needs through a training program on the policy grounding for an improved legal framework for land governance. The report identifies the five areas of greatest need for MP capacity training, and suggests a basis for these trainings in research and policy grounding. Suggested trainings would address:

- The new Ministry of Agriculture, Livestock and Irrigation (MoALI) agriculture policy and strategy, based on the National Land Use Policy;
- The need to amend two key land laws, the Farmland Law and the Vacant, Fallow and Virgin (VfV) Land Management Law;
- Customary tenure dynamics, and recognition and protection measures for customary tenure;
- Responsible land-based investment; and,
- The establishment of a National Land Policy Council or Land Commission.

# I.0 BACKGROUND AND CONTEXT FOR MP TRAINING

The national-level and state/regional-level parliaments of Burma face a wide range of pressing legislative needs as the nation embarks on its transition to democratic governance. In a country where the majority of the population earn livings from rural livelihoods, yet at the same time have highly insecure land tenure, new or amended laws strengthening the rights of farmers should be high on the priority list for these parliaments. The lawmakers of Burma understand this priority; indeed, this need for greater land tenure security is why many of them hold seats in their assemblies. During joint planning sessions on land governance reforms held by state/regional parliaments and state/regional executive branch officials over the past year, it is often the state/regional MPs who press state/regional government officials for speedier action to protect and support farmers and agricultural laborers. In their appeals for the reforms they know communities need, however, the MPs lack an understanding of the specific legal grounding of their claims: Which existing laws support their push for executive action? Which laws are deficient and need amendment, and what current policies make the case for those amendments? And what research exists to support such changes?

At the national level, MPs face similar hurdles. Most of the lawmakers engaged in the agriculture and land sector are completely new to lawmaking, serving their first term in office, with little or no legal or political background. For many of these MPs, their only previous experience “serving a term” was a prison sentence, often up to 20 years. The post-traumatic stress they cope with – especially in a current environment of shared governance with the military that imprisoned them – creates a heightened need for smart, streamlined legislative support in the land sector.

National-level and state/regional-level MPs both suffer from one other common constraint: they are significantly understaffed and under-resourced. Whereas a US Senator will typically have 15 full-time legislative aides supporting their work in Congress, as well as the nonpartisan resources of the Congressional Research Service, Congressional Budget Office, and Legislative Counsel, Burma’s parliamentarians have no such resources. What they lack in resources, however, they make up for in dedication, intelligence, initiative, and interest in ideas and recommendations from trusted international colleagues. These qualities position Burma’s parliamentarians to benefit from a US Agency for International Development (USAID)-supported training program on the land governance reforms underway in their country, and accompanying technical assistance to draft and enact legislation to codify and deliver these reforms.

## 2.0 NEEDS AND PURPOSES OF LAND GOVERNANCE TRAINING PROGRAM

When assessing how to address current key training needs in this unusual context of political transition, it is crucial to meet the MPs where they are. They possess a great deal of political capital invested by their constituencies, but they face gaps in three areas:

- Understanding of basic land laws and policies, and of the particular provisions in these laws and policies that are of consequence or could be of consequence;
- Understanding of how to use the legislative process to the advantage of land governance reforms, for example through research-based drafting; and,
- Understanding of how to arrange for expert input into the lawmaking process, and how to discern which inputs can be taken under advisement without being received as commands – such as inputs from the U Shwe Mann Legal Affairs Commission.

To address these gaps in MP knowledge and capacity, the training program should be built around three purposes:

- To build general awareness and understanding of which and how key land laws interact with new land governance reform policies, so that MPs can make informed decisions and feel confident in policy grounding going forward;
- To identify specific laws that should be amended and suggest areas for amendment; and,
- To empower MPs with the knowledge of these laws and policies so they can better teach their constituencies what actions are permitted or prohibited under land laws and policies.

# 3.0 CRITICAL TRAINING AREAS

Across the land governance training areas that follow, it is essential to build the understanding that there is now precedent in place to ground the necessary enactments, or amendments, to advance land governance reforms, and that there is a body of research to support these legislative actions. The following capacity-building trainings could be offered individually, or in the following order as they are designed to build upon one another.

## 3.1 PROVISIONS WITHIN THE NEW AGRICULTURE POLICY AND AGRICULTURE DEVELOPMENT STRATEGY RELATED TO LAND GOVERNANCE

With the National Land Use Policy (NLUP) as a foundational guide, over the past year MoALI has further strengthened the framework for land law amendments through the formation of the new Agricultural Policy Unit (APU), development of a new Agricultural Policy, and the ongoing development of a new Agricultural Development Strategy (ADS) to carry out the NLUP. Parliament capacity development training should focus on explaining how these new policy developments form a unified front in the new government, as led by the key line ministry for land (MoALI), to build out new structures of land governance and to advance critical reforms. Elements of the new Agriculture Policy relating to land governance should be emphasized; for example, the section on Land Use Management Policy and the section on Land Use Management Strategic Thrust. In addition, elements of the ADS on institutional development through land governance should be emphasized, including the importance of the NLUP as a living policy with continuing guidance; the need to increase freedom of crop choice for farmers; and, the importance of customary land tenure protections to bolster national reconciliation.

In addition to the value of training MPs on these forms of policy precedent, it is also critical to convey the evidentiary base of these policies and strategies. In-depth research reports performed a vital role in guiding the development of the Agriculture Policy and ADS, such as *From Rice Bowl to Food Basket: Three Pillars for Modernizing Myanmar's Agricultural and Food Sector* (2016). Moreover, an inclusive, multi-stakeholder public consultation process played a critical role in the development and eventual endorsement of the NLUP – a public mandate that lives on through these new policy instruments that follow, and cite, the NLUP. By linking trainings to the origins of these policies and strategies, MPs can see that the training subjects are not just good ideas to support the land tenure security of families in rural Burma, but also part of a process grounded in Burma's public policy and research base.

## 3.2 SPECIFIC LAND LAW AMENDMENTS TO PROMOTE LAND GOVERNANCE REFORMS

After establishing the grounding of the NLUP, and the follow-on MoALI policy and strategy, the training program next should educate MPs about specific legislative provisions that either need to be clarified in further policy, or amended. The Farmland Law (2012) and the Vacant, Fallow and Virgin (VFV) Land Management Law (2012) would be the best places to start.

### 3.2.1 Farmland Law (2012)

Several necessary changes to the Farmland Law should be conveyed to MPs, including the need to: minimize farmland utilization restrictions and increase freedom of crop choice; simplify land classification; remove customary use restrictions such as prohibitions on fallowing; decriminalize land

tenure issues; clarify women’s land rights; and expand rights for parties in dispute settlement proceedings. These elements each find grounding in the NLUP, and by extension the ADS, and the trainings should convey these linkages to ensure continuity across the legal framework in this subject area.

Again, the body of research supporting amendments should be highlighted. The recommendations in *From Rice Bowl to Food Basket* clearly square with the need for these amendments. Pillar 1a emphasizes that the policy and legal framework should enable “farmers’ freedom to choose which agricultural products to produce.” Section 1a1 lays out specific drafting actions: “Affirm through appropriate ministerial orders and ministerial statements/objectives that farmers are free to choose how they use their land and labor, and embed this freedom over time in relevant new laws and regulations that are produced.” Pillar 2a2 emphasizes the need to “simplify the land use classification system.” Additional research further supports these crop choice recommendations, as indicated in *Aquaculture in Transition: Value Chain Transformation, Fish and Food Security in Myanmar*. In its Policy Implications and Recommendation section 5.2.1, the report states, “Holders of use rights to agricultural land should be allowed complete freedom of choice in crop cultivation.”

### **3.2.2 Vacant, Fallow and Virgin Lands Management Law (2012)**

While eventual amendments or replacement of the VFV Law is required to better protect the land tenure security of smallholders in the face of further large-scale land concessions, in the near term an essential part of the MP training program should be to identify and highlight the pro-poor elements of the VFV Law already in place, and encourage either minor amendments to protect these elements or ministerial orders to advance them. The VFV Law and rules as currently promulgated provide allowance for land allocation to peasants, and articulate the duty of MoALI to support these new smallholders with agricultural extension and rural credit. The training program should educate MPs about these provisions, and draw upon the body of policy that supports the pro-poor land allocation – the NLUP and the ADS – as well as the research support. *From Rice Bowl to Food Basket* recommends in Pillar 2a3 that the government should “Prioritize enforcement of the Vacant, Fallow, and Virgin Land Law to return undeveloped agricultural land to small holders and landless people.”

## **3.3 CUSTOMARY TENURE DYNAMICS, AND RECOGNITION AND PROTECTION MEASURES**

The MP trainings should include information on customary tenure dynamics in Burma and interim measures for the recognition and protection of legitimate customary land tenure claims of all ethnic nationalities. The trainings should also emphasize the importance of this recognition and these protections to the ongoing peace process in Burma, as much of the experience of ethnic nationalities is one of insecure, or outright abrogation of, customary land rights. This component of the trainings should identify areas of the current legal framework that require amendments, such as the Farmland Law prohibitions on fallowing. The trainings should highlight the provisions in the NLUP and the APS that call out the need to revise these prohibitions, and strongly support customary tenure protections for practices such as shifting cultivation. A specific area of law and policy that should be addressed is the new Community Forestry Instructions (CFIs) issued by the Ministry of Natural Resources, Environment and Conservation (MONREC) in 2016. The new CFIs have made changes in some of the restrictions under the previous iteration from 1995, now providing greater protections such as lifting the prohibitions on shifting cultivation and gardening. The training could include how to register community forestry enterprises and forest user groups in order to receive forestland allocations, and include the need to ease some of the burdensome bureaucratic barriers facing these ethnic communities under the albeit improved CFIs.

A training component on measures to recognize and protect legitimate customary land tenure claims should again draw on the research available to lawmakers. In this case, the report *Community Land and Resource Tenure Recognition: Review of Country Experiences* contains a useful body of research. The analysis and considerations for administration and government, in Section 5.4.2, recommends capacity-building: “The processes involved in community tenure protection will require capacity building for actors operating at various levels. This should include both education and outreach provision, as well as technical training in the process.” While the recommendations refer to community tenure, the same capacity needs face Burma lawmakers, and lessons can be applied to customary users as well. Lessons learned from the USAID Land Tenure Project’s pilot sites in Burma would be of benefit to lawmakers, as the report further notes: “donor-supported initiatives or pilots in testing community land and resource tenure registration are most effective when they are part of a process for creating new legislation or building guidance on the process for obtaining titles.”

### **3.4 RESPONSIBLE LAND-BASED INVESTMENT**

Further pressures on land tenure security in Burma – in addition to limitations on smallholder crop choice, falling rights, insecure customary users, and the problem of landlessness – come from the shortcomings of many companies in the area of responsible investment in land. Lawmakers need to know about the legal framework in place governing responsible investment in land, and the shortcomings. The NLUP lays out “responsible investment in land resources” as one of the key objectives of the policy (Sec. 6e), and several policy instruments and laws come together in this area, from MONREC guidance on Environmental Impact Assessment Procedures (2015), and policies of the Myanmar Investment Commission, to the Land Acquisition Act (1894) and new Investment Law (2017). The research base to support trainings can include Myanmar Center for Responsible Business reports such as the *Business and Human Rights Guide for Companies in Myanmar* (2015) and *Indigenous People’s Rights and Business in Myanmar* (2016), and assessments of companies such as the US Campaign for Burma’s *Report Card: US Companies Investing in Burma* (2014).

The trainings can be informational, helping legislators understand the legal issues at play in Burma domestic laws and policies (such as free, prior, and informed consent), and could also examine the international norms involved in responsible investment, such as the Voluntary Guidelines on the Responsible Governance of Tenure, the United Nations Guiding Principles on Business and Human Rights, the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, and the International Finance Corporation’s Performance Standards.

### **3.5 ESTABLISHMENT OF A NATIONAL LAND POLICY COUNCIL OR LAND COMMISSION**

The final component of the training program would be building the capacity of key legislators to understand the necessity of establishing a National Land Policy Council or Land Commission to carry out the provisions of the NLUP. The Council or Commission would be established in the President’s office in order to improve holistic land governance coordination within the government, and improve coordination with various donor-funded initiatives relating to land governance. Ultimately, the national Parliament would need to enact a simple, brief law that delegates necessary authority to such a body, and allows this entity to secure a budget through annual government budgetary procedures. The NLUP calls for the union government to establish a National Land Use Council (Sec. 9) and outlines the structure, authority, and functions of the Council, including coordination of land documentation among ministries, providing land information to stakeholders to better inform development projects, and maintaining a system of boundary maps, land types, and classifications to better protect land tenure and reduce disputes (Sec. 12).

The training to help MPs understand the necessity of the National Land Policy Council or Land Commission should be followed by technical assistance to the relevant committee in Parliament responsible for drafting the enabling legislation. Once the legislation is passed, capacity-building could be extended the President's office to assist the formation of the Council, and then to the Council itself to support the transition as it begins to carry out its new functions.

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