

*Towards equitable and secure access to land and natural resources for family farmers in the Mekong region*



***Thematic Study***

***May 2018***

# **Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes**



# Thematic Study

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Suggested citation:

San Thein, Diepart J.-C., Hlwan Moe 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.



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## List of Acronyms

ABCs	Agro-Business Companies
CCVFLM	Central Committee for Vacant, Fallow and Virgin Land Management
CCLUM	Central Committee for Land Use Management
CSO	Civil Society Organization
DALMS	Department of Agricultural Land Management and Statistics (formerly SLRD)
DICA	Directorate of Investment and Company Administration
DICD	Department of Industrial Crops Development
FAB	Farmland Administration Bodies
FDI	Foreign Direct Investment
GAD	General Administration Department
LSLA	Large-Scale Land Acquisition
MEC	Myanmar Economic Corporation
MEHL	Myanmar Economic Holding Co. Ltd.
MIC	Myanmar Investment Commission
MoAF	Ministry of Agriculture and Forest (precursor of MoAI)
MoAI	Ministry of Agriculture and Irrigation
MoALI	Ministry of Agriculture, Livestock and Irrigation
MoECaF	Ministry of Environmental Conservation and Forestry
MoNREC	Ministry of Natural Resources and Environmental Conservation
Mol	Ministry of Industry
MT	Million Tonnes
NLD	National League for Democracy
PFE	Permanent Forest Estate
PPF	Protected Public Forest
SEE	State-owned Economic Enterprises
SLORC	State Law and Order Restoration Council
SLRD	Settlement and Land Records Department
SPDC	State Peace and Development Council
USDA	Union Solidarity and Development Association
VFV	Vacant, Fallow and Virgin
VTA	Village Tract Administrator

## Executive Summary

The objective of this study is to provide a synthesis of historical and contemporary processes of large-scale land acquisition for agricultural development in Myanmar. It relies essentially on secondary sources, complementary interviews and field work conducted by the first author.

We first established a genealogy of large-scale land acquisition processes relating to agricultural development. During the colonial period, the British introduced the problematic notion of waste land, arguing that it should be a prime target for agricultural investment. The post-independence nationalization of land and the establishment of State farms (and State-owned enterprises) were promoted until the military coup in 1988. At that time the military used the State lands to promote large-scale agricultural development in various ways, leading to the expropriation / displacement of existing users and smallholder farmers. The new Vacant, Fallow and Virgin Land Law, approved by the quasi-civilian government in 2012, offered the possibility of granting VFV land (waste land) to domestic and foreign investors. As such, this action should be seen in a longer historical trend of dispossession of smallholder farmers.

Through this historical sequence, laws and institutions relevant to large-scale agricultural development have been interspersed. We identified nine different mechanisms through which the government has granted large-scale tracts of land for agricultural development. We showed the misalignment between official land categories and i) the on-the-ground reality, ii) the laws that shape the management of these categories, and iii) the institutions and authorities in charge of their management.

From 1991 to October 2016, approximately 5.1 M acres of land were allocated to agro-business and individual entrepreneurs and to individual farmers if the area was less than 50 acres. The largest share of land – 2.2 M acres - was allocated by the previous Central Committee for Vacant, Fallow and Virgin Land Management (CCVFVLM) (43 percent) and the military commanders (27 percent). The areas covered by land use permits for large-scale agricultural development were granted by the Ministry of Natural Resources and Environmental Conservation (MoNREC), former chief ministers, authorized departments within the Ministry of Agriculture, Livestock and Irrigation (MoALI), and the newly established CCVFVLM. These represent 21, 4, 3 and 2 percent of the total, respectively.

One specific dataset including the majority of these cases (78.4 percent) allows a more detailed look into large-scale land acquisition on VFV land. Geographically, land use permits for agricultural development on VFV land are distributed across the country but are concentrated in Kachin State, Sagaing, Tanintharyi and Shan Regions. This dataset reveals that most of the large-scale schemes are a legacy of the military period as most of them were signed off between 2007 and 2011. Despite a temporary stop from 2012 to 2014, the granting of land use permits on VFV land resumed from 2015 onwards. Permits for VFV land were granted for agricultural development to companies (54 percent) and private individuals (32 percent). Considering only companies, the main crops cultivated were oil palm, rubber, rice, oil seeds crops and maize.

We found a robust inverse relationship between the areas of VFV land granted (including transactions smaller than 50 acres) and land use effectiveness (the percentage of land granted that is put under effective cultivation). Clearly, smallholder farmers are more efficient than large-scale entrepreneurs and companies in developing the VFV land granted.

In addition to the large-scale land acquisition processes, there are a variety of contract farming mechanisms that allow investors certain forms of control on land for agricultural development.

These arrangements do not represent cases of large-scale land acquisition but rather forms of control on land and markets that can, all the same, have the effect of large-sale dispossession.

A central concern is the number of evictions and conflicts pitting smallholder farmers against other actors such as companies, individual investors or ministries. This is because the land granted to these actors was often under active use by local farmers and villagers. Even if in most cases these farmers used the land merely to sustain their livelihoods, the legal apparatus of the land administration identified them as illegal occupants of State land.

The previous and new governments have opened up a space for people to lodge complaints and claim their land rights. Under the previous government, a Parliamentary Commission was tasked to identify cases in which land had been unjustly confiscated. The Commission identified 489,369 acres of confiscated land. It confirmed that the military was the main driver behind confiscations (51.5 percent), followed by industrialization projects (24.1 percent) and agricultural development (16.8 percent).

This Commission operates under the auspices of a new government that is politically committed to solving conflicts and returning confiscated land to its original owners. The tasks of this new Central Reinvestigation Committee for Confiscated Farmlands and Other Lands are immense. It is supposed to address a multiplicity of problems, most of which can be traced back to a distant past. It is particularly difficult to return the land to the original owner of the land without depriving the existing tenants who have been using the land for a long time. It is also particularly difficult to differentiate between those who have opportunistically used idle (State) land to meet their livelihood needs and cases of speculative land grabs.

### **Recommendations**

With the intent to inform a wider and multi-stakeholder dialogue on the issue of large-scale land acquisition for agricultural development, some key recommendations can be formulated in light of this study:

Establish a **moratorium on new large-scale land acquisition** in order to conduct a comprehensive evaluation of large-scale agricultural development schemes; cancel land use permits when companies or entrepreneurs do not meet their contractual obligations; establish a clear instruction to determine responsibilities and mechanisms to re-allocate cancelled land to farmers, State or third parties and discuss whether large-scale land acquisitions are to be considered to promote agricultural investment and development after the moratorium; and establish a sound procedure to identify and monitor agricultural large-scale land acquisition in ways that promote responsible agricultural investment, particularly inclusive of smallholder farmers

Establish a **unified land governance framework** that could address unresolved gaps and overlaps and harmonize existing pieces of legislation (national land law); harmonize the mechanisms for granting Large-Scale Land Acquisitions (LSLAs) and revise the definition of land categories and the procedure to convert land categories.

Improve the **management of data** relevant to large-scale agricultural land schemes: support a process to improve the collection, management and analysis of reliable data related to LSLA in order to inform day-to-day decision-making and policy-making and enable public access to data related to large-scale agricultural development schemes.



## Introduction

Myanmar is exceptional in terms of the diversity of its social-ecological system. Home to 51.4 million people (Department of Population, 2017), the country includes 135 ethnic groups speaking 118 languages (Lewis, 2009), which leads to a wide ethno-linguistic diversity in proportion to the population as a whole.

The agriculture sector plays a major role in Myanmar's economy. It forms 32 percent of the GDP and employs 52.4 percent of the labour force (Department of Population, 2017). The basic social unit of agricultural production is the agricultural household, engaged in multiple farming, livestock rearing, and the collection of natural resources that form an essential part of their livelihood. Despite their importance, smallholder farmers are often marginalized in decision-making processes that affect the development of agriculture in the country.

Throughout the history of Myanmar, from the colonial era to the present, land has been used and controlled by a variety of government bodies, military factions and private corporations for numerous purposes: agro-industrial development; hydropower dams; extractive mining industries; urbanization; military projects, and so on (Ferguson, 2014). These projects have usually failed to take into account the reality of local populations who were in fact already using this land for their daily livelihoods. This has sparked institutional, economic and social tensions that have jeopardized the rights to land and the livelihoods of smallholder farmers across the country (ALTSEAN, 2014).

None of the previous governments managed to establish a unified land governance framework in order to address these issues. As a result, the institutional pluralism and weak inter-sectorial coordination that currently prevails in approving, managing and monitoring land transactions, is a legacy from the past (Srinivas and Hlaing, 2015; Mark, 2016).

Large-scale land acquisitions driven by agro-industrial lobbies and companies – usually in the form of land use permits signed between the State and a company – have been central in the recent rush for land in Myanmar: as in other countries in the Mekong Region, this trend gained momentum during the food and financial crisis of 2007-2008 that saw a convergence of State and company interests in investing in land resources.

For a number of reasons linked to the particular history of Myanmar, but also due to misleading assumptions relating to the large-scale development model, the process of large-scale agricultural land development has been controversial. The acquisition and development of land has resulted in numerous negative impacts that have affected the development of smallholder farmers, who represent the large majority of the population, and who are an economic force in the country.

The literature that documents the issues mainly consists of case studies, which provide key insights into particular cases but often fail to identify the main patterns and trends at country level. To fill such gaps, this thematic study aims to present an updated synthesis of the genealogy, institutional complexity and the ins and outs of large-scale land acquisition processes for agricultural development in Myanmar. Specifically, this thematic study aims to: i) understand the historical evolution of large-scale land acquisition in Myanmar; ii) examine institutional pluralism that governs agro-industrial land transactions nowadays; iii) provide an update in respect of agro-industrial land transactions as of 2017; iv) examine the extent to which LSLA has ignited land conflicts across the country; and v) present recommendations for the current and future management of large-scale land acquisition processes in Myanmar.

The structure of the report follows the sequence of these objectives. After a brief methodology section, Chapter 1 presents the historical background for contemporary land transactions. It starts with a brief sketch of land history in Myanmar to present the successive political contexts in which agricultural land acquisition processes are situated, from the colonial period to the present. This Chapter argues that legacies from the distant and more recent past still linger. Chapter 2 presents the current institutional framework governing large-scale land acquisition processes in Myanmar. It reviews how the legal framework links with different land categories and statutory authorities and examines the pathways mobilizing these institutions to grant large-scale land tracts for agricultural development. Chapter 3 examines the current situation of large-scale agricultural land use permits in Myanmar. It provides first an aggregate picture of land use permits granted for different land categories. It then reviews in more detail the situation of land use permits for Vacant, Fallow and Virgin (VFV) land - the evolution over time of land granted, the recipients, intended use, spatial distribution, land use effectiveness and the profile of key investors. Chapter 4 looks at conflicts associated with large-scale land acquisition for agricultural development and discusses the circumstances in which land claims are made by smallholder farmers. Ultimately, the study presents different recommendations to improve the governance of LSLA transactions in Myanmar.

## Methods and Data Sources

In order to draw a countrywide picture of large-scale land acquisition, access to comprehensive data is crucial. This thematic study relies on information from a variety of sources.

The first author has conducted a significant number of field surveys over the last nine years across Myanmar. These surveys were not designed for the purpose of this study but have been subsequently consolidated to provide evidence and to inform its conclusions. The information emanating from these different surveys was also used in the current report to make case studies that illustrate specific aspects of the analysis.

The legal framework analysis is entirely based on a review of original legal documents compiled in Leckie, S., & Simperingham, E. (2009). *Housing, Land and Property Rights in Burma: the current legal framework*. Legal documents released after 2009 were accessed on the MyLaff portal (<http://mylaff.org/>) hosted by the Land Core Group.

Data on large-scale agricultural land transactions was primarily collected at the Department of Agricultural Land Management and Statistics (DALMS) of the Ministry of Agriculture, Livestock and Irrigation (MoALI) as well as from the Forest Department of the Ministry of Natural Resources and Environmental Conservation (MoNREC). This data, aggregated at national level, provided information about the evolution of land transactions signed with, and the crops that were planted by, agro-business companies. The dataset was processed and analysed to identify the magnitude of large-scale land acquisition in Myanmar (DALMS 2017b and Forest Department, 2013). Additionally, a particularly detailed dataset of land transactions on Vacant, Fallow and Virgin lands - probably the most up-to-date source of information currently available on LSLA in Myanmar - serves as the main data source for statistical and spatial analyses (DALMS, 2017a)). The dataset provides an inventory of all transactions on VFV land from 1991 to 2016 including recipients, granting authority, location down to Village Tracts, area sizes granted and planted, and intended land use, though this later information is not well recorded and does not support a proper analysis. The dataset was cleaned and values of key indicators were grouped into specific categories before analysis. The analysis of large-scale land acquisitions presented here is limited to VFV land transactions higher than 50 acres<sup>1</sup>. The choice of this threshold value is based on Article 10 of the VFV Land Law which allows rural farmers to acquire VFV land for an area not exceeding 50 acres. We have also excluded the area of VFV land that was converted into farmland under current VFV Land Law (13,363 acres).

In the absence of a monitoring system for large-scale land transactions, it is difficult to conduct a meaningful and comprehensive analysis of their impact on smallholder farmers' livelihoods, be it positive or negative. In addition to the case studies conducted by the first author, we consulted a number of research reports that were accessed through the MyLaff portal. The authors conducted additional expert interviews to shed light on particular legal issues that could not be addressed through legal documents alone. The publications of other international organizations (e.g. Namati) and reports from civil society organizations, such as the Myanmar Peace Alliance, have also been consulted.

To complete the datasets, we also accessed information that The Daily Eleven Newspaper has dedicated to bringing land dispute cases to the attention of the public. Government newspapers were consulted to obtain the official information released by investigation commissions.

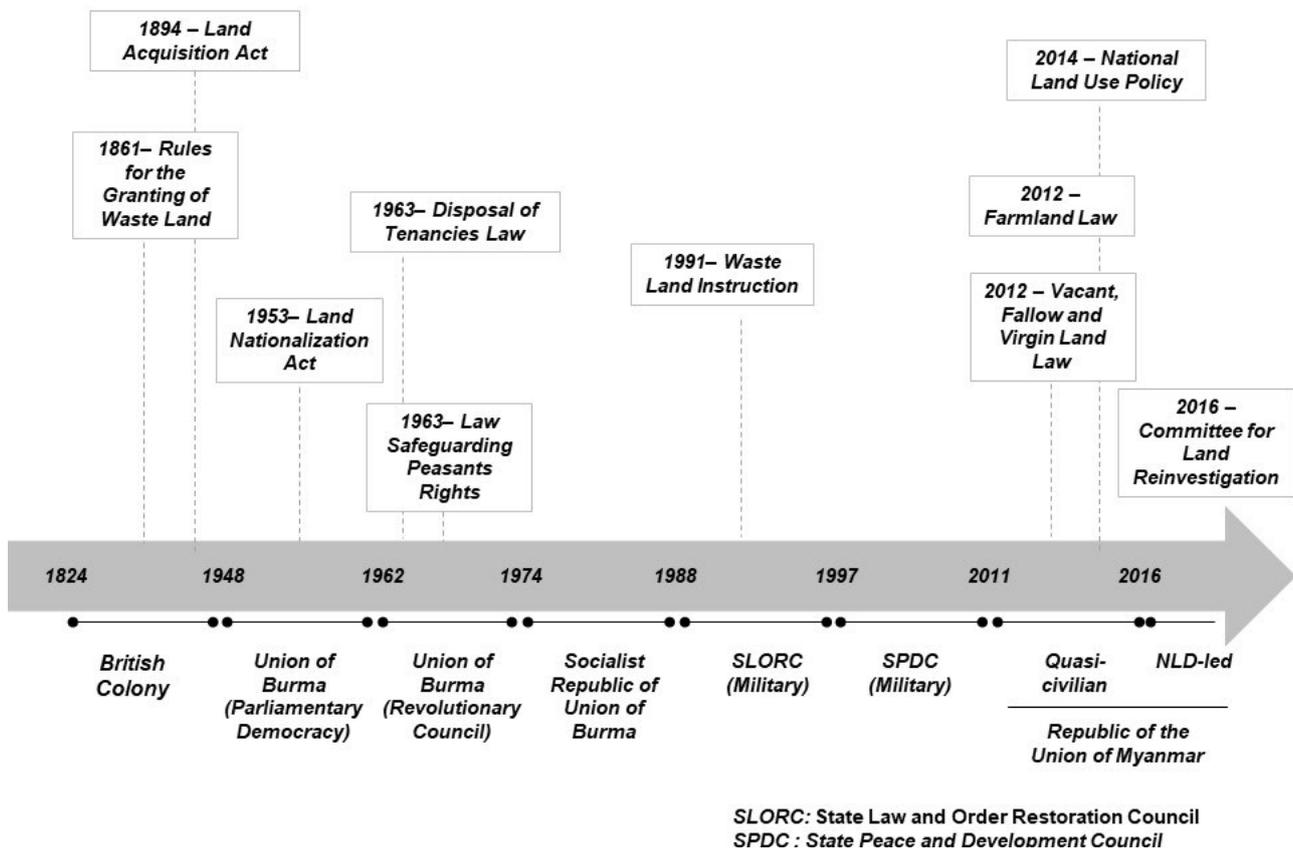
We further consulted reports from the Investigation Commission for the Prevention of Public Disenfranchisements Connected to the Confiscation of Farmland and Other Lands, also known as the Parliamentary Land Investigation Commission<sup>2</sup>. The Commission has been assigned to examine cases considered to be land grabs and to propose solutions in respect of releasing land to its original owners. In most cases these are smallholder farming families (Republic of the Union of Myanmar, 2013b). We examined these reports and entered the information they contained into a database. A preliminary statistical and spatial analysis of this database was documented in a report released in 2015 (San Thein, Pyae Sone and Diepart, 2017). We reviewed the report of the investigation commission in Maubin State - authored by U Sein Win (2013) - as it was particularly well documented.

To the extent that it was possible, we provided a geographical representation of the data and information analysed. The use of GIS was particularly informative in linking LSLA processes to land dispute cases.

It should be mentioned that the statistical data that is disclosed in this report may not provide a full picture of the ground realities in respect of large-scale land transactions. It contains a series of flaws due to the incompleteness of some of the data and discrepancies between the legal land use categories and the actual use on the ground. For a start, many large-scale land transactions on VFV land may not have been reported in the database. However, it is probably the most significant and up-to-date dataset in respect of large-scale land acquisitions in Myanmar and is one of the first attempts to compile and analyse such data from government sources. Furthermore, the database related to large-scale land transactions on forest land is dated 2012 and does not include transactions approved from 2013 onwards.

## 1. A Genealogy of Agricultural Land Acquisition Processes in Myanmar

In this first Chapter, we aim to show the historical background and evolution of large-scale agricultural land acquisition processes by situating them in their specific political-economic contexts (see Figure 1 and detail in Annex 1).



**Figure 1 - Milestones in the history of land in Myanmar.**

Source: authors

### 1.1 Myanmar land history at a glance

In the pre-colonial time, the people of the Kingdom of Myanmar acquired private land rights by clearing and cultivating (*Da'ma'-u-khja*) land that was non-bonded to the crown, consisting of communal or ancestral lands (*Bo'bapaing*). After payment of the relevant tax - tax per capita based on individual wealth (Furnivall, 1957; Boutry *et al.*, 2017) - these lands became the property of the cultivator (*u-paing*), which included the right to mortgage, sell or pass them to their descendants. Subsequently, possession rights (*u-paing*) have been registered in an I-A form (land use record) by the Settlements and Land Records Department (SLRD).

From 1824 to 1948, the British ruled the country in a liberal fashion with much focus on rice growing regions. Under colonial rule, 'land holders' rights' (see Figure 2) were granted to those who cleared land, cultivated it, and who had been paying land revenue continuously for 12 years. The occupant had the right to transfer or sell the land under this title. In the upland regions, however, land considered to be empty or vacant - so-called 'waste land' in the British terminology - could be appropriated by the State for rubber and other crops grown on colonial estates or for colonial forestry projects (Scurrah, Hirsch and Woods, 2015).

In an attempt to regain control over large plantations established by the British and to reduce landlordism and the over-indebtedness of peasants, in 1953 the post-government (1948-1962) enacted the Land Nationalization Act. This Act conferred to the State the ownership of land in the whole of the Union of Burma. Large colonial estates (rubber and others) were nationalized and run as State-owned enterprises. Land was also subject to a form of agrarian reform targeting peasants and poor farmers. The land redistribution under the Land Nationalization Act was poorly implemented and many lands ended up in the hands of better-off farmers (Taylor, 2009). It quickly turned into a spontaneous 'land to the tiller' (see Figure 2) approach, providing land rights to those who cultivated it but prohibiting the sale or mortgage of that land.

In 1962, the coup d'état against the government led to a totalitarian socialist regime. However, it did not fundamentally affect the rules relating to land rights. The Burmese Way to Socialism programme (and Party) was established and a State-led socialist economic system adopted, first under a revolutionary council (1962-1974) and then under the Socialist Republic of the Union of Burma. The State (1974 to 1988) took centre stage in all aspects of land management. A series of laws were passed with a view to protecting smallholder farmers. Large-scale waste lands were developed to establish State farms and agro-industries. But the failure of the State-led socialist economy over nearly three decades reduced Myanmar to 'least-developed country' status.

In 1988, economic disaster and political oppression ignited a pro-democracy uprising movement throughout the country. The nationwide upheaval and public protests were repressed by military force. The military took over the country and adopted the command economy under a regime known as the State Law and Order Restoration Council (SLORC) from 1988 to 1997, and then under the State Peace and Development Council (SPDC) from 1997 to 2011. Smallholder farmers continued to enjoy 'land to the tiller' rights that were non-transferable and formalized through land tax receipts and farmers' booklets. These rights did not provide farmers with the opportunity to choose the crops they wanted to cultivate (see Figure 2). Up to 2003, land rights - particularly for paddy lands - were also linked to a compulsory quota of production to be provided to the government at low prices. Failure to comply with such a quota would result in confiscation or more commonly in dispossession through concealed distress land sales.

Following the 1988 uprisings, the country's economy was gradually opened. This led to a series of measures such as the liberalization of the paddy market and the promotion of private investments including the opening of opportunities for foreign investors. In 1991, the military government formed and prescribed the duties of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land, also known as the 'Waste Land Instruction' and the 'Procedures conferring the right to cultivate land/ right to utilize land'<sup>3</sup>. The Committee was empowered to scrutinize and grant domestic companies - but also increasingly foreign ones - and private citizens the right to use cultural I land fallow and waste land for agricultural business (including livestock and aquaculture) for an initial period of 30 years renewable 10 years at a time up to a total of 50 years. A large number of land confiscations and widespread expropriation occurred during this period throughout the country due to the following causes: i) collusion between influential economic actors and the military which thus resulted in the abuse of power; ii) non-compliance by the respective authorities with the prevailing Land Acquisition Act and other laws; and iii) many smallholder production systems such as shifting cultivation, rotating agriculture,

and several forms of agro-forestry operated under customary tenure regimes, which were not recognized and consequently considered as VFV land and subject to legal acquisition. As a result, a large number of land confiscations and widespread expropriation occurred during this period throughout the country.

In 2011, a democratic transition began. But in the land sector, the logic remained much the same: the government's main aim was still to attract domestic and foreign actors to invest in land and agro-industrial development (but also to promote other forms of large-scale investment in, for example, mineral concessions, hydroelectricity projects, and so on). The legislation instituted in 2012 through the VFV Land Management Law aimed primarily to foster large-scale agricultural investment (Oberndorf, 2012). Furthermore, the 2012 Farmland Law provided smallholders with 'Rights to farm' that were transferable and formalized through a land use certificate, also known as 'form 7'. These rights to farm finally authorized farmers to sell, mortgage or rent their lands but still did not formally provide farmers with the full capacity to choose the crops they cultivate (see Figure 2). On VFV land the legislation allowed the government to grant 'Land use permits' for commercial agriculture and livestock breeding to domestic or foreign companies, individual entrepreneurs or family-sized cultivators who could acquire a maximum of 50 acres of VFV land. These land use permits were formalized through different forms (#11 to 15) depending on the actual use of the VFV land, but, in theory, they could not be sold, mortgaged, given or transferred. However, they did impose a requirement to pay tax to the State. As such, the new laws were a continuity of past provisions and failed to establish a unified land governance framework that could help to address contradictions and issues inherited from the past. However, the government became more responsive to the social and political impacts of expropriation and, in a speech in 2012, the President Thein Sein even pledged to return confiscated lands. This led to the establishment of a parliamentary commission on land investigation tasked to scrutinize cases of land confiscation and to recommend ways to return land to previous owners.

In March 2016, a new government was elected and 'land issues' were one its priorities (NLD 2015). The efforts of the previous parliamentary commission of land investigation (now dissolved), focusing on the return of land, are now being pursued by the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands (Myae Sit), which was established on 9 June 2016.

Category of land use rights through the different political systems	Operational rights		Management rights		Control rights		Document certifying land rights
	Cultivation	Usufruct	Conversion of land types	Freedom of crop choice	Inheritance, gift through own decision	Sale, lease, mortgage (alienation)	
Land Holder Rights (colonial period)	○	○	○	○	○	○	Tax receipts for possession of record "U-Paing", contingent on the payment of land revenue
Land Tiller Rights (Socialist period until February 2012)	○	○ <sup>(1)</sup>	●	● <sup>(4)</sup>	⊙ <sup>(3)</sup>	●	Only tenant register book on farm-land or land use permit on VFV land
Land Use Rights (on VFV land) from 2012 until now	○	○	●	⊙ <sup>(2)</sup>	●	●	Forms No. 11-12-13-14-15 under VFV Land Law
Rights to Farm (on Farmland) from 2012 until now	○	○	⊙	⊙	○	○	Land use certificate (Form No.7) under Farmland Law

○= Allowed ●= Not allowed ⊙= Restricted

(1) Usufruct is contingent on actual use after fulfilling the sale quota to the government at the prescribed price

(2) Must grow crops as specified in the application for use of the VFV land

(3) Right to inherit the land is contingent on the actual use of the land by the offspring of the deceased person (not on VFV land)

(4) Allowed only from 1948 to 1962.

**Figure 2 - Evolution of land rights to farmers through the different regimes in Myanmar**

Sources: authors

## 1.2 Colonial legacy in contemporary agricultural plantations

British attempts to manage and control land in Myanmar were concentrated in the lowland rice growing area where they were operationalized through tax collection. With over 7 MT of rice exports, the economic profits at stake were far from negligible (Turnell cited in Scurrah et al., 2015).

But in the uplands, land tenure management mainly aimed to secure properties and estates for the British colonialists and local elites. It also aimed to attract a class of European investors who could inject capital into crop plantations such as sugarcane, indigo, and so on.

Large-scale land acquisition was permitted through legislation enacted in the 19<sup>th</sup> century that is still valid in Myanmar today. The 1894 Land Acquisition Act introduced the possibility for the State to allocate so-called waste land and arable land if it was for 'public purposes'. The lack of definition for 'public purposes' and the fuzzy distinction between public and private interests persist to this day:

*..... whenever it appears to the President of the Union that the temporary occupation and use of any waste or arable land is needed for any public purpose, or for a company, the President of the Union may direct the Collector to procure the occupation and use of the same for such term as the President of the Union shall think fit, not exceeding three years from the commencement of such occupation (Article 35(1) in the Land Acquisition Act, 1894)*

'Waste land' actually refers to a category established by the British colonial administration in the 1861 Rules for the Grant of Waste Land; this is the first piece of legislation to establish agricultural plantations on land under lease arrangements. Since the release of this rule more than 150 years ago, the category of 'waste land' has been a central element of land management in Myanmar, particularly with respect to large-scale agricultural land transactions.

There were more than 114 land grants under the British occupation. Annexes 2 and 3 provide the chronology of sugarcane and rubber plantations initiated in the colonial period.

## 1.3 Development and transformation of State-owned economic enterprises (SEEs) from the socialist era to the military regime

In this section we aim to show how the land sector was reshaped after the country gained independence. We look at the different mechanisms through which the military has assumed increasing responsibilities in managing large-scale agricultural land transactions.

### 1.3.1 Rationales for the establishment of SEEs

Following independence in 1948, the new government released the Land Nationalization Act in 1953 in a move to take farmland from absentee landlords and redistribute it to peasants and poor farmers. The Land Nationalization Act also allowed the socialist government to nationalize the existing large natural rubber plantations run by private companies during the British colonial time. Those plantations were placed under the Ministry of Agriculture and Forest<sup>4</sup> (MoAF) as State farms (i.e. State-owned rubber estates).

State farms were established during the socialist era and continued throughout SLORC/SPDC rule until the present day. The rationale for their establishment was manifold.

First, they were a way for MoAF to expand export-oriented mechanized production to meet the target production figure for State-owned enterprises. But since early times, MoAF had also established large State farms in undeveloped localities to manage the resettlement of demobilized soldiers returning from the battle fields, as well as internally displaced persons (IDPs) in conflict areas, e.g. in Shan State. At some points, the government even received technical assistance to do so. For example, it was supported by USAID around 1982 for maize and oil seed projects undertaken by the Agriculture Corporation (a State enterprise) of MoAF (see Table 1, Serial Numbers 2 and 3). Around 1980, under a directive from the Deputy Minister of MoAF, the Agriculture Corporation developed deforested land covering about 5,000 acres (the Kyu Taw Reserved Forest Area in Kanbulu Township). This is known as the Myae Mon estate (see Table 1 Serial Number 7).

The policy objectives of MoAF under the military rule were to: (i) increase rice production to ensure food security and export earnings; (ii) ensure self-sufficiency in edible oil; and (iii) promote industrial crops such as cotton, rubber, sugarcane and jute. The policy push for the development of industrial crop production and enterprises contributed to the considerable expansion of agro-industrial farmland into so-called waste land, farmlands or forest lands.

However, the rationale behind the adoption of State farms and State-owned Economic Enterprises (SEE) differed clearly between the actors of the socialist era (1962-1988) and the military regime (1988-2011). The Burma Socialist Programme and Party (1962-1988) promoted the development of State farms and State enterprises to meet the targets of the socialist planned economy. Under the military regime (1988-2011), the land tenure system for smallholder farmers was not formally transformed and the compulsory rice quota system was maintained until 2003. However, the military actively used SEEs as a tool to enhance its own economic wealth. In its early rule, the State Law and Order Restoration Council (SLORC) expanded the ministries in both size and number to carry out State-led production and State-monopoly exports. It transformed the Ministry of Agriculture and Forestry into the Ministry of Agriculture and Irrigation (MoAI) by establishing and expanding five large enterprises focusing on industrial crops, and promoted the role of large farms to increase exportable crops (see Table 1, serial number 1 and 5). All agro-industrial factories were transferred from the Ministry of Industry to MoAI, which also oversaw new factories for sugar, rubber, textiles, jute and fibre, and canning products.

### ***1.3.2 The strengthening of the military's economic power through the expansion of the military's commercial entities (MEHL and MEC).***

In March 1989, the military government enacted the State-owned Economic Enterprises Law allowing any government organization to establish commercial enterprises. This law also enabled any private organization to undertake commercial activity, except in respect of 12 sectors (teak, petroleum, jade and minerals, banking and insurance, broadcasting, the production of arms, air and rail transport, post and telecommunications) for which government participation was mandatory, at least in the form of a joint venture with the private companies. The law was amended in 1997 to allow government employees to run commercial enterprises with their own paid-up capital and without government funding. These laws were passed as the foundation for the military regime to establish two military-based commercial enterprises: Myanmar Economic Corporation (MEC) and Myanmar Economic Holding Co. Ltd. (MEHL).

Both of these military commercial entities grew in size over a short period by establishing their own commercial entities and industries. To do so, they took over factories and State farms that used to be operated by the line ministries. The transition was abrupt as the owner-ministry (the MoAI in most cases) was generally ordered with only a half-day's advance notice to transfer selected successful factories to the Ministry of Defence which in turn delivered these to MEC and MEHL. When MEC established its own factories, it took land from the nearby areas of cultivated or fallow land that was operated either by the State enterprise or by local farmers.

## **A case of agricultural land confiscation by the military and MEC**

At the end of the socialist era, the shortfall in sugar production by SEE factories caused a rapid rise in the domestic sugar price. Many small-scale private sugar processors started operating in Mandalay. Driven by the demand from these processors, farmers in Kanbulu Township and upper areas of Sagaing Region cleared the forest and VFV land during the 1980s and grew sugarcane, processed syrup and sent it to the Mandalay processors via Ayeyawaddy river channels. The lucrative sugar business encouraged local farmers to turn deforested land into sugarcane plantations.

In this context, around 2000, the State commercial farm (Myae Mon estate) in Kanbalu Township was taken over by the military and the Kanbalu sugar factory was established by MEC. The MEC sugar factory came to this area which was already cultivated and took over the land, including: (i) more than 3000 acres of the Myae Mon (Agricorp) SEE estate; (ii) farmers' cultivated lands on VFV land; and (iii) the farms of local people (mainly planted with sugarcane) that had been relocated by SEEs on the western side of Myae Mon estate. The nearby farms operated by local farmers were also taken during a later expansion of the factory sugarcane area. In the cases of land on which rubber, cotton and coffee were being cultivated, a similar confiscation of large State farms or local peoples' lands used for cultivation was carried out by the military commercial groups of MEC or MEHL.

### **1.3.3 Rapid expansion of military battalions throughout the country (SLORC, after 1988)**

The military regiments and battalions were extended throughout the country, and, in most areas where military camps were extended, land grabs (driven by individual and corporate interests on the part of the military) became a common practice.<sup>5</sup> It appeared that the military took over the lands suited to crop production in order to support soldiers' livelihoods but also to support the army, as exemplified in the textbox shown here.

By the end of March 2004, the Chief of the State in a cabinet meeting ordered all the battalions and army camps to stop conducting commercial business for the purposes of battalion welfare. However, they were allowed to continue with commercial activities that were agriculture-based.

#### **A case of military implications in agricultural land grabbing**

During the socialist government, the Township Survey and Land Records Department (SLRD) surveyed an area in Daw Ka Lo Khu Village, Ngwe Taung Village Tract, De Maw Soe Township, Kayah State. The SLRD made *kwin* and cadastral maps indicating lands used by villagers. In 1982, despite this official registration, an infantry battalion confiscated 76 acres of paddy land belonging to 13 households. No compensation was given even if these lands held by farmers were registered (*U Paing*).

During the initial three to four years after land confiscation, the military grew paddy on lands using villagers as forced labour to carry out ploughing, transplanting and paddy cultivation. Later the military leased lands to villagers with a rent fixed at six baskets of paddy per acre or the equivalent in cash. The land leases were allocated to farmers from other villages rather than to the original owners from Daw Ka Lo Khu.

## 1.4 The 1991 Waste Land Instructions

In 1991, SLORC released two instructions named 'Prescribing Duties and Rights of the Central Committee for the Management of Culturable [sic] Land, Fallow Land and Waste Land' also known as the 'Waste Land Instruction' and 'Procedures conferring the right to cultivate land/ right to utilize land'. The first defined the duties and rights of the Central Committee for the Management of Culturable Land, Fallow Land and Waste Land (previously known as the Central Committee for VFV Land Management - CCVFVLM). This committee was to be responsible for scrutinizing applications from State-owned economic enterprises and cooperative societies, joint-ventures, other organizations and private individuals to obtain the rights to lease and commercially cultivate cultural land, fallow land and waste land (VFV land) for the purposes of carrying out agriculture, livestock breeding, aquaculture enterprises or other affiliated economic development enterprises. These instructions related to land lease agreements that covered a maximum of 5,000 acres and a period not exceeding 30 years.

The 1991 Waste Land instructions became a key instrument in promoting large-scale agricultural development in Myanmar. According to statistics from the Survey and Land Records Department (SLRD, now called the Department of Agricultural Land Management and Statistics - DALMS), between 1991 and 1995, 946 applications covering 148,927 acres were granted by the Central Committee. By 2010, according to the same authorities, the area of VFV land granted to agro-business companies for agro-industrial production had increased more than twelvefold to reach 1,894,555 acres (DALMS, 2017b).

## 1.5 The military government's quick steps for agricultural development

Four years after the military government seized power, the top leaders considered that large tracts of land resources remained unexploited and, if left in the hands of local farmers, these would never be exploited and agricultural development would not occur. Due to the Western sanctions imposed upon them, the military government relied on the country's internal strength, i.e. the local private companies (mostly construction companies) involved in supporting the government's nation-building projects.

The first project was the granting of a delta floodplain (in the delta region) to agro-business companies (ABCs) for land reclamation in Ayeyarwady and Yangon Regions. The project, also known as '**Tapping the Under-Water Treasures**', aimed to boost paddy cultivation. As of February 1999, a total of 231,949 acres in the Ayeyarwady and Yangon Regions had been granted to 24 business groups (The Mirror, 1999, see Annex 4) but the area of land granted continued to expand after this period.

In addition to paddy cultivation, the military government launched a campaign to promote national self-sufficiency in edible oil. Myanmar people consume considerable quantities of edible oil and the production of cooking oil from sesame and groundnut could not meet the domestic need. Thus, Myanmar needed to import about 250,000 to 300,000 MT of palm oil at a cost of about USD 350 million a year. In order to substitute these imports and promote regional development in the south of the country, SLORC extended palm oil plantations in Tanintharyi Region. Under the motto '**Tanintharyi Region shall become an edible oil bowl**', more than 40 domestic companies were granted a total land area of 1,648,731 acres for palm oil plantations (Annex 5), with a land area per concession varying from 200 acres to 514,169 acres.

Around 2004-2005, a **jatropha initiative** was launched by the Senior General Than Shwe throughout the country. The details of the top-down order were disseminated to every corner of the country to force each Region and State to plant jatropha (*Jatropha carcus*) on 500,000 acres per Region, regardless of the actual size of the State/Region.

The target was that 8.5 million acres of the whole country would be under jatropha cultivation within three years. Authorities in each Region and State of the country had to identify 500,000 acres to meet the quota imposed by the General Administration Department (GAD) of the Ministry of Home Affairs, a civilian administration under military control. The quota in respect of the area to be assigned to jatropha cultivation was sanctioned by the local authority so that jatropha was actually planted anywhere possible - on VFV land, at the road side, farm borders and all other available lands. After two years, a report indicated that 1.86 million acres of jatropha had been planted. Myanmar's dramatic achievement took all surrounding countries by surprise, but nobody knew that local farmers' fields had been grabbed to reach this milestone. During the quasi-civilian government headed by U Thein Sein, the jatropha scheme was not officially terminated. As the necessary infrastructure for collection, market and oil extraction was never built and due to its low profitability and the many land conflicts it had generated, jatropha plantations (at least those that were planted) silently disappeared without any official authority involvement or specific instructions.

Under the '**One month – one dam**' initiative, one of the senior generals mandated his cabinet to expand the irrigated lands throughout the country by building one dam every month. This has been another significant cause of deforestation across the main watershed area. Several villages located within the dam reservoir area were displaced. Even if these dams were small in size, their accumulated impact was considerable, involving the loss of farmlands<sup>6</sup> and livelihood opportunities, as well as the disturbance of children's education, the loss of habitats for wildlife, environmental degradation, and so on, as exemplified in the text box below. The problems were not made public during military rule but have since come to light (based on the first author's experience in the area).

## Impact of the relocation scheme on smallholder farmers displaced by the dams

A case in Sagaing Region shows how military officers handled the relocation of farmers who were displaced by the construction of dams, and the domino effects resulting in land conflicts involving different categories of farmers.

The construction of two large dams (Tha Phan Seik dam and Kin Dat dam) led to the relocation of 71 villages (see the Table below).

Table: Displacement of villages and households from the construction sites of the Kin Dat and Thaphan Seik dams, Sagaing Region, 1996

Township	No. of village tracts	No. of villages removed	No. of households relocated	No. of people relocated
Kyun Hla for Kin Dat dam	2	8	808	4,843
Tant Se	1	2	438	2,531
Kanbalu	2	3	231	1,081
Kyun Hla for Thaphan Seik dam	15	58	6,228	33,232
Total	20	71	7,707	41,687

Source: Village relocation scheme and land development project report, MoAI, 1996

There was a total farmland area of 41,687 acres in the two projected reservoir sites. As compensation, the relocated villagers were given 13,349 acres of vacant lands in nearby places. Clearly, the relocation area was not sufficient for all 7,707 displaced households. The relocation was conducted hastily without a proper feasibility study and led to three types of competing claims among the villagers for the use of the land.

1. Farmers from displaced villages were relocated inside the Thit Yar Pin reserve forest. But the area was already occupied by other original farmers who refused to surrender the land. The authorities removed them forcibly arguing that they had illegally occupied the forest land.
2. These secondary displaced farmers searched for new forestland (Taw Kyan) to clear for cultivation and pursued their traditional "*Da'ma'-u-khja*" livelihoods. However, their land rights in these new locations were not recognized as forest officials denied de-gazetting the area.
3. In one of the two areas relating to the dams, before the construction work was completed the would-be displaced villagers stayed to cultivate their farms located in the future reservoir area. Two years later, when the construction was completed, the villagers went to the areas assigned to them as compensation. When they arrived, they found that their plots were already occupied by local people who claimed that they were "*leshi-le-ngoke*" (farmers holding land in their possession and performing cultivation). Conflict arose and finally the "dam-displaced" villagers lost the land. With their cattle and household items, the villagers became landless and wandered from one place to another looking for other land to settle on and cultivate. When asked what they needed, they said that they were expecting the government to do something to help them. But this problem remains unresolved.

To highlight the significant legacy of the military period in terms of contemporary land conflicts, the following Table (1) presents a few examples of agro-industrial State enterprises that were established during this socialist-military period and that have initiated land encroachment and conflicts that remain visible and unresolved to this day.

**Table 1 - Brief outline of State farms and factories in the agriculture sector**

Serial. Number	Name of the State farm	Location	Year of establishment	Remarks
1	Nyaung Bin Thar farm (sugarcane and rice).	Near Nyaung Bin Thar Village, Phyu Township, Bago Region	In 1976, it emerged as a settlement farm for old soldiers and then it was transferred to MoAF. The farm was placed under the management of the People's Workforce Settlement Farm Department under MoAF. Later, under the MoAI, the Department was transferred into Myanmar Farm Enterprises.	About 2,500 acres were developed from forest and virgin land for the People's Workforce Settlement Farm Department which was restructured into Myanmar Farm Enterprise (MFE), MoAI. MFE adopted contract farming with local farmers. The farm area of 1800 acres was leased by the Minister of the MoAI in 2013-14 to a private company. The evicted farmers and contractual farmers started protesting in 2013.
2	Kyaung Su Seed Farm, developed under the Maize and Oilseeds Production Project activities of USAID (now paddy seed production)	Pe New Kone, Kyauktaga Township, Bago Region	1982	1,400 acres were confiscated, but 1,000 acres were returned to the farmers.
3	Thit Cho Seed Farm: same as above under MoAF. Later the farm was placed under the management of the Agriculture Corporation of MoAF.	Da Ma Nge VT, Nat Ta Lin Township, Bago Region	1982	3,000 acres developed from de-gazetted forest lands.
4	Sa Mone Farm, developed as a component of the integrated Kinda Dam project	Wun Twin Township, Mandalay Region	1989 State farm placed under the Department of Industrial Crops Development (DICD), MoAI	1,800 acres developed from VFV land but some farms of local farmers were absorbed into the land development process

Serial. Number	Name of the State farm	Location	Year of establishment	Remarks
5	Plantation field of Yedarshe Sugar Factory	Near Yedarshe factory, Yedarshe Township, Bago Region	Established in 1986 after fuel wood forest land was released from the Forest Department to the Ministry of Industry (1) for State-owned factory cane production. It was then transferred to the MoAI, and then leased to a private company in 2011-12.	About 2,396 acres were obtained from the Forest Department. Previously, local farmers occupied the area. Under the factory management, local farmers worked as contract farmers. The situation changed when it was leased to a private company at a very cheap price.
6	Coffee plantation project launched under the Command Chief of the (SLORC/SPDC) govt. The MoAI assigned the DICD to implement the project	2001-2002. Pyin Oo Lwin Township, MDY Region. Coffee 100,000 acre scheme was launched by the Military Chief.	Out of the coffee target area of 59,242 acres, 18,295 acres were developed by the MoAI in the VFV land area but the customary cropland areas of local farmers were grabbed.	Some parts of the developed land areas were allocated to the State farm while most were allocated to ministerial officials and companies.
7	Myae Mon Farm, under the Extension Division, Department of Agriculture of the MoAI. During the socialist period, maize was produced for export. After 1997 State-led export was discontinued paving the way for a private sector role. The farm was transferred to the Seeds Division of the Department of Agriculture. When the MEC sugar factory was built, it took over most of the farm area.	Kanbalu Township, 15 miles from Zi Kone. Developed from open forest area and giant grasslands covering more than 4,000 acres.	Established in 1980 in the late period of the socialist era as a State commercial farm. Maize was produced for export.	During the land development, only six households settled in the areas. The farm manager allocated 60 acres to them at the periphery of the farm. The MEC sugarcane crew grabbed surrounding croplands as well as part of Myae Mon estate and other farmers' cultivated fields. Land disputes broke out.

Source: authors

## 1.6 Transformations since 2011

The nationwide election held on 7 November 2010 in accordance with the new Constitution, which was approved in a referendum held in 2008, brought to power the military-supported Union Solidarity and Development Party (USDP). In 2011, some former generals became new high-level civil servants (Chief Minister of State, Union Minister, and President) and retained a considerable amount of power. State power was divided into executive and legislative bodies, but the chief of the army was placed out of the control of the President, government, courts and jurisdiction. The ministers and senior figures of the Ministry of Home Affairs are appointed by the army (and not by the President) but have authority over the General Administration Department (GAD), a civilian administration of this ministry comprised mainly of civilian staff.

After decades of strict rule, the hope of democracy that emerged from this transition incentivized farmers to claim their rights to land, in particular those whose land had been expropriated. Without any consultation with each other, farmers across the whole country protested, rallied and submitted their complaints to the then President, the Parliament - Lower House (Pyithu Hluttaw) and Upper House (Amyotha Hluttaw) - and the opposition party National League for Democracy (NLD). Many activists and civil society networks encouraged and supported farmers' protests (Boutry et al. 2017). In fact, protests were notably triggered by the expectations created by U Thein Sein's speech on the return of confiscated lands, in the midst of the land registration process.

In 2012, the release of the Farmland Law officially liberalized land transactions and the development of a land market in the country. The *land tiller rights* of the previous Land Law became a *right to farm*, which provided an entitled land user with the right to sell, pawn, lease, exchange or give, in whole or in part, the land in accordance with prescribed regulations. Through the 2012 law, farmland became a commodity and, in the context of the 2008 food crisis, also a target for investment. The commodification of land in the market, even if it pre-dates the release of the Farmland Law, drove land speculators of various types - companies, city dwellers and businessmen - to buy farmland particularly along the road sides.

The 2012 VFV Land Law, which now serves as the main legal avenue for the allocation of State land for agricultural development, is a continuation of the 1861 Rules for the Grant of Waste Land and the 1991 Waste Land Instructions. The VFV Land Law renews the formation of a Central Committee for the Management of Vacant, Fallow and Virgin Land, with the minister of MoAI appointed as chairman, and the general director of SLRD as secretary. The VFV Committee is tasked with receiving and scrutinizing applications from public citizens, private sector investors, farmers, government entities and NGOs for the long-term land lease of VFV lands for commercial agriculture, livestock breeding, mining and other purposes. But unlike farmland, VFV land cannot theoretically be mortgaged, sold, sub-leased, divided or otherwise transferred without the approval of the government. In reality, however, much VFV land has been sold by grantees.

## 2. Institutional Framework Governing Large-Scale Land Acquisition for Agricultural Development

A historical review of land acquisition processes has revealed that large tracts of land for agricultural development were granted in the distant past by various authorities and through several mechanisms that continue to this day.

### 2.1 Legal framework for large-scale agricultural land transactions

The current legal framework that governs large-scale agricultural land transactions is a complex triad of laws, statutory authorities and land [use] categories dating back to the colonial era. These form the basis of what Oberndorf (2012) refers to as a statutory system of rural land classification.

Unfortunately, there is no clear alignment between the land categories, the laws that shape the management of these categories, and the statutory authorities in charge of their management. The land literature on Myanmar consistently highlights areas of tension and mismatch between the elements of the triad, which create or exacerbate insecurity of tenure and land conflicts. The issues are made even more complex as the patron-client relationships articulated around those who hold State power have opened opportunities for the arbitrary application of land-related laws (Scurrah, Hirsch and Woods, 2015).

#### 2.1.1 Laws and regulations

We now turn to the legal framework related to agricultural land transactions. The intention here is to provide a chronological overview of the relevant pieces of legislation and describe to what extent they are still relevant in respect of large-scale agricultural land transactions today (Table 2).

**Table 2 – List of laws (and related rules) relevant to large-scale agricultural land transactions today**

1879	The (Lower Burma) Land and Revenue Act
1889	The Upper Burma Land and Revenue Regulation
1894	The Land Acquisition Act
1899	The Lower Burma Towns and Villages Land Act
1920-1951	Yangon Development Trust Act and Department of Human Settlement and Housing Development.
1962	The Village Headman Manual
1987	The Transfer of Immoveable Property Restriction Act,
1991	The Duties and Rights of The Central Committee for the Management of Culturable Land, Fallow Land and Waste Land
1992	The Forest Law
2006	The Conservation of Water Resources and Rivers Law

2008	Constitution of the Republic of the Union of Myanmar
2012	Farmland Law and Rules
2012	The Vacant, Fallow and Virgin Land Management Law
2012	Protecting Rights and Enhancing Farmers' Welfare Law
2016	Myanmar Investment Law

Source: authors

### *The Land and Revenue Act, 1879*

- ⇒ This document, which covered Lower Burma, defines landholder rights and prescribes their status, and the way he/she could acquire, abandon (relinquish) or recover his/her possession rights with respect to land. The document defines the President's authority to allocate or cancel grazing land and regulates temporary occupation of the land.

### *The Upper Burma Land and Revenue Regulation, 1889*

- ⇒ This is an important piece of legislation that laid the foundation for the land-based taxation system and the collection of related forms of revenue. The notion of State land is defined as: i) land formerly termed royal land; ii) land held on condition of its holder rendering public service or emolument related to a public office; iii) islands and alluvial formations in rivers; iv) waste land and land included within reserved forests; and v) land that has been under cultivation but has been abandoned and to the ownership of which no claim is preferred within two years from the 13 July 1889. The text details the mechanisms for granting temporary occupation on waste land and allocation of such land for grazing activities.

### *The Land Acquisition Act, 1894*

- ⇒ This law sets a basis – that remains in force – for how a land can be taken by the State for business or other public purposes. It sets rules for preliminary investigation and publication for the intended acquisition of land, the hearing of objections, the declaration of intended acquisition, notices to persons interested, and inquiries into the measurement, values, claims and awards by collectors. Other rules cover the amount of compensation and its payment, the power entrusted to collectors, the acquisition of land for companies, and the publication of the agreement for a public notice. The delineation between business and other public purposes is blurry which is highly problematic nowadays when large-scale land allocations are significant.

### *The Lower Burma Towns and Villages Land Act, 1899*

- ⇒ This Act defines land at the disposal of the government and the modes of acquisition of landholders' rights. The text specifies that the land at the disposal of the government may be disposed of by grant or lease. The general provisions with respect to landholders' rights are detailed in this law, as well as those related to eviction from unauthorized possession and the use of State land

*Yangon Development Trust Act, 1920 and 1951, Department of Human Settlement and Housing Development.*

- ⇒ This Act authorizes, with the approval of the President, the confiscation of farmlands and waste lands for urbanization.

*The Village Headman Manual, 1962*

- ⇒ This manual specifies the roles of the Village Headman who, among other responsibilities, has to prevent encroachment onto VFV land and take care of all land categories within the boundary of the village over which he has authority. The current Village Tract Chief Law prescribes the functions that are stated in the 1962 Village Headman Manual.

*The Transfer of Immoveable Property Restriction Act, 1987 (amended 2005)*

- ⇒ This Act provides the legal basis for foreigners to acquire land under the Farmland Law and VFV Land Law.

*The Duties and Rights of The Central Committee for the Management of Culturable Land, Fallow Land and Waste Land, 1991*

- ⇒ This instruction was the major legal basis for the military government's action in terms of LSLA. It empowered the VFVL Central Committee to allocate VFV land to companies for commercial cultivation. The current VFV land committees continue to work under the guidance of this instruction.

*Procedures conferring the right to cultivate land/ right to utilize land, 1991*

- ⇒ This instruction determines that the Central Committee for the Management of Culturable Land, Fallow Land and Waste Land may grant to citizens for agricultural and livestock breeding purposes the right to cultivate / right to utilize culturable land, fallow land and waste land for agriculture, plantation crops, orchards, seasonal crops, livestock, poultry farming, aquaculture, and so on.

*The Forest Law, 1992*

- ⇒ This law frames the demarcation of areas for different types of forest that fall into the category of permanent forest estate (reserved forest, public protected forest and productive forest). The main implementing agency is the Forest Department. The Law allows for the re-classification of forest land into VFV land or, in the case of forest reserves, for de-gazetting this into an agricultural landholding or a public protected forest (Woods 2015). In both cases, it allows for large-scale agro-business operations.

*The Conservation of Water Resources and Rivers Law, 2006*

- ⇒ The authority for waterfront boundaries, river creek boundaries, riverbank boundaries and alluvial islands is prescribed by the law to be the domain of the Ministry of Transport. But agriculture on alluvial islands is subject to the jurisdiction of the Ministry of Agriculture. In the delta areas, some large-scale land schemes are subject to flooding, in which case the draining processes need to adhere to this law. Furthermore, some oxbow lakes have been reclaimed by agro-business companies for agricultural development, and they, too, have to comply with some of the provisions of this law.

## *Constitution of the Republic of the Union of Myanmar, 2008*

- ⇒ This specifies that the State is the ultimate owner of the land and recognizes the market economy as the key mechanism for land transfer.

## *Farmland Law and Rules, 2012*

- ⇒ The Farmland Law (Republic of the Union of Myanmar, 2012a) puts in place a system designed to secure the tenure of farmland through a land use certificate and registration system. In creating this system, the legislative branch of government created a private land use property right. Included in this land property right are the right to sell, the right to exchange, the right to access credit (i.e. to encumber the land with debt), the right to inherit, and the right to lease. The instruction of this law also prescribes the mechanisms for converting VFV land into farmland through the application for a permit by local farmers to secure a 'Permission Order' for the use of VFV land.

## *The Vacant, Fallow and Virgin Land Management Law, 2012<sup>7</sup>*

- ⇒ The VFV Land Management Law (Republic of the Union of Myanmar, 2012b), was a repackaging of the old Rules for the Grant of Waste Land (1861), and the 1991 Waste Land Instruction. It created a mechanism through which public citizens, private sector investors, farmers, government entities and NGOs could submit an application to the newly created CCVFVLM to lease VFV land for agricultural development, mining and other purposes allowed by law. The VFV Land Management Law allows the CCVFVLM to grant what can be considered as long-term leases on State land. VFV land that is leased may not be mortgaged, sold, sub-leased, divided or otherwise transferred without the approval of the government. It should be noted that this VFV law is in the process of revision

## *Protecting Rights and Enhancing Farmers' Welfare Law, 2012*

- ⇒ This law was enacted in response to land grabbing and large-scale land acquisition by commercial companies. But it has little legal power compared with the Law Safeguarding Peasant Rights (1963), which was repealed by both 2012 Land Laws.

## *Myanmar Investment Law, 2016*

- ⇒ With a strong interest in promoting domestic - and attracting foreign - direct investment in land and natural resources, the newly released Law on Investment is an important element in the legal framework governing land and natural resources. The implementation of the law is conducted under the Myanmar Investment Commission (MIC) and in particular the Directorate of Investment and Company Administration (DICA) that processes the permit and approval procedures. A full permit is required for certain businesses, i.e. those that are 'strategic', involving large amounts of capital, with a potential impact on the environment and local inhabitants that is significant, particularly if that impact involves ethnic minorities, or when the MIC decides that a permit is needed. A simpler 'approval order' is delivered by the MIC for any other investments.

An investor who obtains a permit under the Investment Law has the right to obtain a long-term lease for the land or building from the owner if it is private land or building, or from the relevant government departments or government organization if that land is managed by the government (Republic of the Union of Myanmar, 2016).

The Notification No. 39/2011, issued by the cabinet of the previous government (published in the Myanmar gazette on 21 October 2011), states that the MIC will allow investors a lease on VFV land in accordance with permission granted by the VFV Central Committee. In the previous regulation, the initial lease period was to be 30 years. However, the 2016 Myanmar Investment Law allows 50 years with an additional two consecutive periods of 10 years.

From an investor's perspective, the new Law on Investment is definitely an improvement compared with its 2012 predecessor because: i) foreign and Myanmar investors are now covered by the same law; ii) the text is much clearer and the procedures to obtain permits have been simplified; and iii) the investment legislation is now aligned with international standards that favour investors (VDB, 2016).

## 2.1.2 Land categories and statutory authority

There are several different categories of land defined by the land administration system in the country. The statutory authority of respective departments varies in relation to different land categories. These categories are schematically classified into four main groups:

- Agricultural lands including paddy / lowland (*le*), 'dry' upland (*ya*), alluvial island land (*kaing kyun*), garden land (*u yin*), uphill land under permanent or shifting cultivation (*taungya*), nipa palm land ( nipa), horticultural land and perennial crops land – all falling under the administration of DALMS. There is also specific water management infrastructure land (dams, reservoirs, embankments, and so on) under the jurisdiction of the Department of Irrigation, also under MoALI.
- Forest land (Permanent Forest Estate) including reserved forest, protected public forest and forest in protected areas under the administration of the Forest Department (MoNREC).
- Vacant, Fallow and Virgin land, sometimes referred to as Non-Permanent Forest Estate is under the administration of the Central Committee of Vacant, Fallow and Virgin Land Management.
- Other lands comprising aquaculture land that falls under the Department of Fisheries (MoALI), mining land under the Department of Mining (MoNREC) as well as residential lands, village communal, grazing land and lands fall under the administration of the GAD.

In fact the land categorization is quite problematic in Myanmar for at least four reasons:

- The various classifications of land in the country are often poorly defined in the existing legal framework (Oberndorf, 2012);
- Some land categories are not relevant. For example, there are unnecessary overlaps between farmland categories (for example, horticultural land, garden land, and *ya* land).
- There are many old and conflicting laws relating to land classification and management in the country, which make the administration of land resources difficult and confusing for all stakeholders (Oberndorf, 2012);
- There is a mismatch between how government maps categorize the land, how different Township offices administer the land, and the actual on-the-ground use of the land by local communities (Woods, 2015a). This stems from the lack of land resource inventories at District level and digitized GIS-based mapping.

Among the highly diverse and partly overlapping land categories and corresponding authorities, six main categories are potential targets for large-scale agricultural investment (see Table 3). For each land category, the Table indicates the main governing authority and the main source of law guiding its governance.

**Table 3 - Statutory authority assigned to different government departments and ministries in accordance with different land categories**

Legal land categories		Statutory authority and main governing law
<b>Farmland</b> Paddy / lowland ( <i>le</i> ), 'dry' upland ( <i>ya</i> ), alluvial is-land land ( <i>kaing kyun</i> ), garden land ( <i>u yin</i> ), uphill land under permanent or shifting cultivation ( <i>taungya</i> ), nipa palm land ( <i>nipa</i> ), horticultural land and perennial crops land		<b>Farmland Administrative Body</b> , MoALI  <i>Farmland Law (2012)</i>
<b>Forest land</b>	<b>Permanent Forest Estate</b> Reserve forest, public protected forest, protected areas, private commercial plantations	<b>Forest Department</b> , Ministry of Natural Resources and Environmental Conservation  <i>Forest Law (1992)</i>
<b>Vacant, Fallow and Virgin - VFV Land</b>	Virgin land	<b>Central Committee for the Management of VFV Land</b> , chaired by MoALI  <i>Vacant, Fallow and Virgin Land Law (2012)</i>
	Fallow and vacant land	
<b>Grazing land</b>		<b>General Administration Department</b> , Ministry of Home Affairs  <i>by Land and Revenue Act, 1879</i>
<b>Leasable fisheries and aquaculture land</b>		<b>Department of Fisheries</b> , MoALI  <i>Freshwater Fishery Law, Aquaculture Law</i>
Mining land, gemstone land		<b>MoNREC</b> (Ministry of Natural Resources and Environmental Conservation)  <i>Myanmar Mines Act</i> (At the VFV land stage, MoALI scrutinizes the case for the approval process. After being approved, the mining business is controlled by the Ministry of Resources and Environmental Conservation.)
Urban/ Town land		City Development Committees (Naypyitaw, Yangon, Mandalay), Ministry of Home Affairs  <i>Town and Village Act / City Development Committee Law</i>
Village land		Ministry of Home Affairs  <i>Town and Village Act</i>
Local public parkland		
Riverbank land		
Pond land		
Cantonment		
Village communal land		
Dams, reservoirs and embankments		MoALI through the Channel Act
Roads		Ministry of Transport and Communication by the Roads Act
Religious land/cemeteries, religious building lands		Ministry of Religious and Cultural Affairs
Riverbanks and waterfront boundaries and land underneath the rivers and creeks		Ministry of Transport by the Conservation of Water Resources and Rivers Law
Railways		Ministry of Transport and Communication
Airport fields		Ditto by the Myanmar National Airways Law

Source: authors

## **Farmland**

The categories of farmland include land designated according to a large variety of land uses: paddy / lowland (*le*), 'dry' upland (*ya*), alluvial island land (*kaing kyun*), garden land (*u yin*), uphill land under permanent or shifting cultivation (*taungya*), nipa palm land (*nipa*), horticultural land and perennial crops land. In fact, various land use categories under the 'farmland' banner were devised by the colonial government for the purpose of collecting revenues. Since earlier times, perennial crops land was designated for rubber land when the revenue from rubber plantations was high. But nowadays, the distinctions between land categories can be problematic in terms of recognizing land rights. In the case of alluvial island land (*kaing kyun*), for example, there are two types of alluvial land: unstable alluvial island emerging after floods recede; and stable alluvial land. Land use certificates (Form 7) can be issued in respect of the latter category but not for the former as unstable alluvial lands are considered State public land and thus cannot be owned by private entities. In reality, however, the boundary between the stable and unstable alluvial land is difficult to define. Another example relates to *taungya* land, defined by the Farmland Law, 2102, as shifting cultivation land with a rotational fallow system. DALMS classifies the *taungya* land into two categories: 1) stable settlement or permanent *taungya*; and 2) unstable and rotational *taungya* land. If the land is improved with terracing and permanent cultivation is established, it comes into the first category and is eligible for a land use certificate. However, the customary tenure right on so-called 'unstable shifting cultivation' is not formally recognized under the 2012 Farmland Law.

The Farmland Law (2012) attempts to put in place a system to secure rural land tenure through a land use certificate and registration system which encompass the full bundle of rights, i.e. access, usufruct, possession (holding) and alienation (right to sell, exchange and mortgage). Land Use Certificates recognizing rights granted are issued to farmers by the Farmland Administration Bodies (FABs), the newly established competent authority, and registered by the DALMS (known as SLRD before 2015), after payment of the required fees.

Oberndorf (2012) notes that, in practice, however, even when farmers have legal land tenure documents, their land is still often appropriated by State or corporate interests, even if they have been cultivating and paying taxes on these lands for some time.

The Farmland Administration Bodies (FAB) were created under the 2012 Farmland law. These committees - also called 'land management committees' (*le see or mye see*) - are composed of various representatives from MoALI (and DALMS) and GAD and exist from central level down to Village Tract level. At central level, they have the minister of the MoAI as chairperson, the deputy minister of MoAI as deputy chairperson and the director general of DALMS as secretary. This structure of FAB is replicated vertically to State / Region level and at both the District and Township level where the head of the General Administrative Department is the chairperson, and the head of DALMS is the secretary.

## **Forestland: Permanent Forest Estate**

According to the Forest Law (SLORC, 1992), the Permanent Forest Estate (PFE) includes three main categories of forest: reserved forest; protected public forest; and forest in protected areas.

Reserved forest is 'reserved' primarily for commercial logging in addition to wood supply for village use, watershed or catchment protection, environmental and bio-diversity conservation and other purposes.

Protected public forests (PPFs) are designated for the protection of water and soil, conservation of dry zone, mangrove forests, environment and bio-diversity as well as sustainable production. Woods (2015) suggests that commercial logging is also theoretically possible in PPFs. Protected areas constitute a category in which forest conservation is strictly enforced. It includes national parks and wildlife sanctuaries.

The Forest Department under MoNREC (MoECaF before 2016) is the authority in charge of forestry. It retains full power to reclassify the category of the whole or a portion of a reserved forest. It can convert a reserved forest into a protected public forest, or decide that the whole, or a portion of the protected public forest that does not require conservation, will cease to be a protected public forest (Article 7, Forest Law 1992). The authors could not identify any regulations relating to the associated application process.

Importantly, Article 13 of the Forest Law states that the Forest Department, with approval from MoNREC, can establish plantations on forest land that is part of a 'permanent forest estate'. The law specifies that a plantation can be established for commercial, industrial, environmental conservation purposes or for the local supply of wood and firewood, and some other types of plantations are permitted. Additionally, Article 14 states that any person or any organization has the right to carry out in accordance with the stipulation, cultivation and maintenance of forest plantations with the exception of village owned firewood plantations cultivated by the villagers for their use. These Articles, in conjunction with Article 7, allows MoNREC to reclassify forest into different categories and grant agricultural plantation permits. However, no clear mechanism and procedure regulating how this is supposed to take place has been specified (Woods 2015a). For more details on the legal review of forest conversion and conversion timber, please refer to the work of K. Woods (2015a).

## **VFV Land**

Virgin land falls into the category of 'Vacant, Fallow and Virgin land'. If 'virgin land' refers to land that has never been cultivated (Article 2f of the 2012 VFV Land Law), 'vacant and fallow land' refers to land that used to be cultivated, but has since been abandoned (Article 2e of the 2012 VFV Land Law).

Virgin land includes any forest land where a classification of 'reserved forest' has not been conferred, or where protected areas or public protected forests have not been declared. It is a category by default. As such, it is a category by default. The jurisdictional management of virgin land areas (also known as public forest, uncategorized forest, 'woodland area') is highly problematic because they fall under the provisions of the VFV Land Law (2012) but trees and forest are also subject to the forest law.

The permanent tension in Myanmar in respect of this land category is linked to the fact that many areas of land that are under active cultivation by farmers, or that are used by community groups as part of a rotational swidden system, are considered as VFV land by the administration. In addition, many areas which are not serviced by DALMS may be considered as *de facto* VFV lands, despite the fact that farmers have lived and cultivated there for many decades. For the time being there are no provisions for issuing land use certificates in heterogeneous areas mixing shifting cultivation plots and fallow forest. Therefore, ethnic minorities who still practise this form of agriculture are at high risk of having their land confiscated as their customary tenure practices are not recognized in statutory law. But in fact the VFV Land Law does not differentiate between formal and informal land use, so swidden agriculture is actually invisible to the state administrators and maps.

VFV lands are managed under the auspices of the Central Committee for the Management of VFV land (which is an inter-ministerial committee chaired by MoALI). CCVFVLM is a national level, multi-ministerial committee formed by the President in accordance with Article 3 of the VFV Land Law. The Chairperson of the CCVFVLM is the minister of MoALI and the director general of the DALMS (ex SLRD) acts as the secretary. The CCVFVLM oversees the granting and monitoring of user rights over VFV lands in the country for agriculture, mining and 'allowable other purposes' under the law, in coordination with relevant ministries and Regional or State governments. The main responsibilities of the CCVFVLM are to manage applications for the use of VFV land, to receive recommendations from various ministries and Regional or State governments and to receive applications for the use of VFV land from public citizens, private sector investors, government entities and NGOs.<sup>8</sup>

The coordination role of the CCFVFLM is particularly important, involving MoNREC and other ministries, in order to prevent damage to forest lands and to conserve natural regions, watershed areas and natural fisheries. Of particular importance is the fact that degraded forest from the 'permanent forest estate' can be reclassified as VFV land based on an agreement between MoALI and MoNREC.

The role of the CCVFVLM is critical in this study as VFV land is the primary category of land granted to companies for agricultural development.

## **Grazing Land**

The classification and management of grazing lands in Myanmar is set out in the Upper Burma Land Revenue Regulations (1889). In fact most legal grazing land has long been converted to other uses and is no longer used for grazing. Grazing land is not mentioned in the Farmland Law, but is specified in the VFV Land Law as one category of land that can be cancelled and converted into virgin land. Despite this unclear definition, grazing land is important for rearing livestock and is not just a degraded shrub area to be considered as idle.

### **2.1.3 Land surveys, identification, monitoring and reclassification of land use categories**

Paper-based cadastral maps are used to generate land records and land use title information. In fact, cadastral mapping and surveying started when the British ruled India and Burma (Myanmar). With the exception of new settlement areas, almost all maps used to establish the national cadastre were developed by Indian surveyors at the end of the nineteenth century. Since then, updates and revisions to the maps have been minimal.

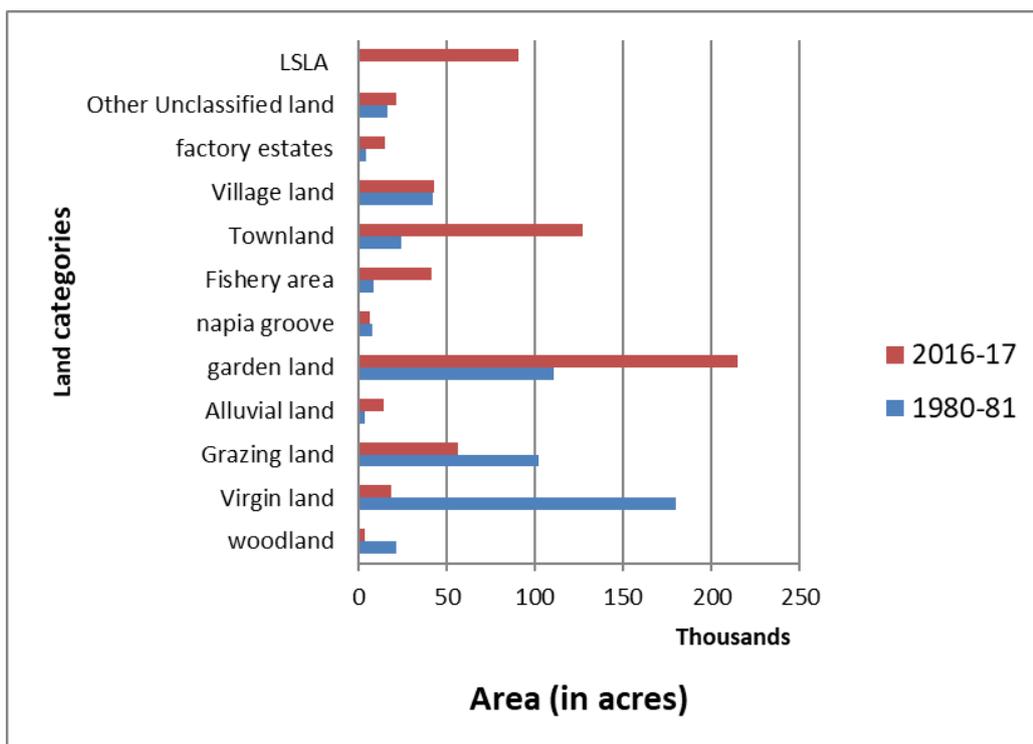
Currently, however, DALMS – the Department of Agricultural Land Management and Statistics formerly known as SLRD - has been working with more advanced equipment (Total Station Theodolite, GIS software, and so on) despite important budget constraints (personal communication with the land officers). And perhaps unsurprisingly, the transition from paper-based mapping to digital mapping has taken place slowly. From 2013 to 2015, UN-Habitat under the Land Administration and Management Programme (LAMP), supported DALMS, to use satellite imagery and GIS for updating cadastral maps in two Townships. UN-Habitat also developed a digital database system linking scanned register files to maps. However, this project was not taken over by DALMS and has not been extended to other Townships. Therefore, with century-old cadastral maps still in use today, the measurement of the natural boundaries, the size of the farm holdings (*U Paing*) and parcel boundaries are of dubious accuracy.

The determination of the VFV land area is based on the so-called 'one-inch' map with a scale of approximately 1/36,000. The Township and Village Tract surveyors have to work on such maps to identify VFV land areas precisely. The estimate of VFV land areas at the Village Tract level is then compiled and the corresponding figures for the Township level are calculated, then for the District, Region and State levels. It is, thus, not surprising that, as a result, different land use areas supposed to be adjacent on the map, actually overlap in reality. The demarcation of Land Use Certificates (form 7) faces similar problems, even though they are important in ensuring tenure security for millions of farmers.

**An example of the demarcation of VFV land concessions without prior verification on the ground**

In 1997, 19 agro-business companies (ABCs) received large-scale concessions for palm oil plantation in Tanantharyi Region. According to a testimony, all the company representatives gathered at the Maung Ma Kan beach resort in Dawei Township and the Senior General of SLORC assigned about 500,000 acres of land to each company, drawing them on a 1/36,000 map of Kawthaung and Boke Pyin Townships. This work was completed within one hour without any prior verification of the real situation on the ground.

Another important role of sub-national authorities is to maintain up-to-date information about changes in land categories. One regional example (Yangon Region) is given in Figure 3 to illustrate evolutions in the different land categories between 1980-1981 and 2016-2017. This Figure indicates how areas of land categorized as town land, inland fisheries (including aquaculture ponds) and garden land have been increased at the expense of virgin and grazing land.



**Figure 3 - Land conversion from VFV land to other land categories in Yangon Region between 1980-81 and 2016-17.**  
Source: DALMS

Often, land assessments are not systematically conducted with the result that the land use categories in the registry do not really correspond to the on-the-ground reality. A particular concern is the mismatch between the VFV land classification itself and the actual situation. Table 4 shows, for instance, the distribution of VFV land in Regions and States and the area of VFV land left after the granting of land use permits to agro-business companies, according to DALMS data. It shows that, for the administration, there are still enormous areas considered by the government to be VFV land, whereas in reality, there appears to be little available VFV land. Indeed, 27 percent of the total land area of Myanmar is considered to be VFV land. This is highly problematic as VFV land is a prime target for large-scale land acquisition. It also shows that such government data needs to be manipulated carefully. Furthermore, Table 4 shows that in some Regions/States, land use permits were granted on large areas, sometime greater than the areas that were marked as VFV land (Yangon and Ayeyarwady).

**Table 4 - Extent of VFV land left available after large-scale land allocation by the State authorities of Myanmar by Region/State as of October 2016**

	Napyitaw/ Region/State	Total land area in acres	Total VFVL in acres	Total land granted as of October, 2016*	Extent of VFV land left available as of October 2016
1	Naypyitaw	1,743,844	264,922	33,750	23,1173
2	Kachin	22,002,702	9,427,649	1,386,281	8,041,368
3	Kayah	2,898,920	453,827	0	453,827
4	Kayin	7,507,743	3,101,374	35,034	3,066,340
5	Chin	8,900,458	4,235,832	1,744	4,234,088
6	Sagaing	23,154,382	4,361,067	602,753	3,758,314
7	Tanintharyi	10,710,756	3,576,777	474,829	3,101,948
8	Bago	9,737,554	370,772	203,298	167,474
9	Magway	11,075,404	2,527,868	212,172	2,315,696
10	Mandalay	7,632,611	665,600	58,170	607,430
11	Mon	3,038,565	226,811	33,296	193,515
12	Rakhaine	9,088,053	3,814,687	140,774	3,673,913
13	Yangon	2,513,372	41,524	90,512	-48,988
14	Shan	38,499,345	15,975,819	437,608	15,538,211
15	Ayeyarwady	8,682,619	346,945	358,933	-11,988
	Union	167,186,334	49,391,474	4,069,154	45,322,320

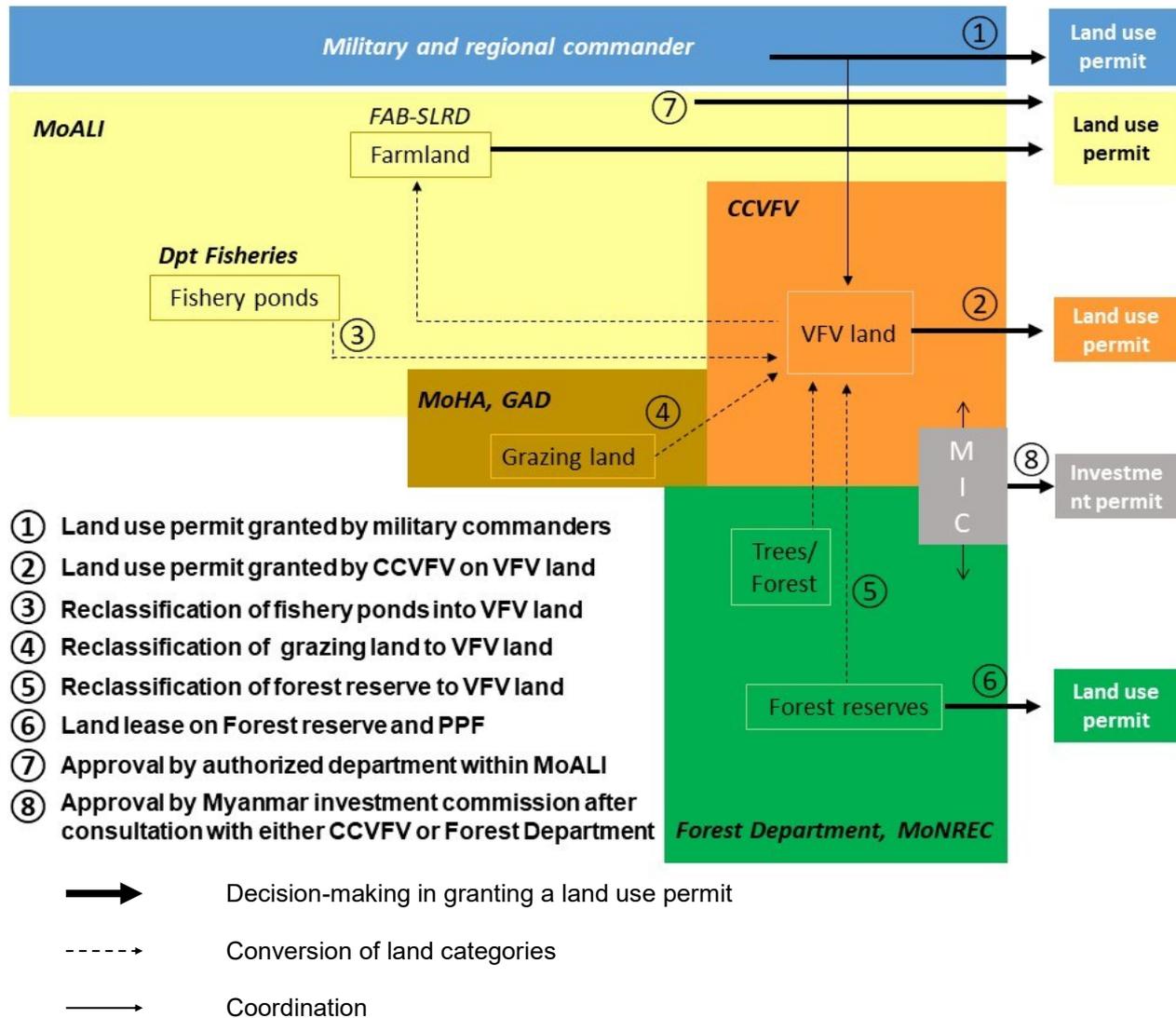
Source: DALMS, 2017b

Note: Total VFV land area is the sum of virgin land and woodland.

\* Including land granted to farmers (< 50 acres/HH)

## 2.2 Pathways of Large-Scale Land Acquisition for Agricultural Development

We identified eight channels through which land is granted for large-scale agricultural development. They are schematically described in Figure 4.



**Figure 4 - Pathways of large-scale land acquisition processes for agricultural development in Myanmar.**

Source: authors

### 2.2.1 Military Commander, Chairman of the Region/State Peace and Development Council or Chief Minister of the Region/State

In 1997, after the military power shuffle from SLORC to SPDC, the authority of the military commanders exceeded that of the ministers of the line ministries. The regional military commanders were also chairmen of the Region/State Peace and Development Councils. In that capacity, they had full authority to grant land and land use permits in their territories (see Figure 4, pathway 1). The control the military had over land management was extensive:

In allocating land and land use permits, the military commanders gave preferential treatment to their family members. Among the military commanders, a common practice was also the reciprocal offering of land use permits. For example, the Kachin State commander allocated a large block of land in his State to the commander of Sagaing Region who, in return, did the same to his Kachin colleague. In the long list of land use permit recipients, care was also taken not to forget higher officials such as generals at headquarters, the heads of the regional civilian department or of the Union Solidarity and Development Association (USDA).

In most Regions/States, the list of the location and size of the large-scale blocks of land available for allocation was known to only two authorities: the regional commander and the regional head of the SLRD. Any private companies or domestic entrepreneurs wishing to acquire VFV land needed to contribute large sums of money in order to buy the land use permits. For example, one large company from Upper Myanmar went down to Ayeyarwady Region and donated a large sum of money to the Women's Affairs Committee, which was headed by the wife of the military commander of that Region. The military commander granted a land use permit to access 5,000 acres of land. This example illustrates a common practice: anyone willing to invest in agricultural development had to buy a land use permit from the military figure who had the authority to manage and control a particular area. The price of the land use permit to be paid by the company was then proportional to the rank of the military officer in charge. Also, the price went up if the purchaser wished to buy a large continuous block of VFV land.

The military commanders could also exercise their power to grant grazing lands to their particular interest groups. For example, the Yangon Region commander allocated a large tract of buffalo grazing land within the Ma Shwe Oo Village of Htantabin Township to army officers and senior civilian officers in the name of paddy area expansion. The General Administration Department (GAD) consequently cancelled the existing status of the area - as grazing land - and the staff of the SLRD converted it into the category of 'paddy land'. The regional commander and the land use permit holders conducted summer paddy cultivation on the land, with the support of government subsidies, for one to two years. A few years later, the commander's wife applied to convert the land to commercial aquaculture through a La Na 39 form<sup>9</sup> (a permit to convert paddy land to another use).

Another modality of collusion between private interest and the military rule – also known as crony capitalism<sup>10</sup> - was when military personnel were directly recruited by a company. One food company in Mandalay, for instance, appointed a recently-retired deputy commander as a 'special officer' in a high-pay role to look for available VFV land. Through his connections to the military commander, a VFV land concession permit was granted.

In short, the common practice was for the military regional commander to grant land to companies in which he or his relatives had direct interests. Access to land was shaped by these networks between military and crony companies with little respect for the rule of law.

When the military rule was handed over to the quasi-civilian democratic government in March 2011, some military regional commanders became the chief ministers of the same Regions/States and, in that capacity, they retained control over land allocation. Some chief ministers were so strict that no land concessions within their Region/State could be allocated even at central/Union level without their prior approval.

### **2.2.2 Central Committee for the Management of Vacant, Fallow and Virgin Land**

The 1991 'Waste Land Instruction' specified the powers of the Central Committee for VFV Land Management (CCVFVLM), to be chaired by the minister of Ministry of Agriculture and Irrigation (MoAI, now MoALI). However, until 2010, most of decisions taken by CCVFVLM were heavily influenced by the military, particularly at sub-national level by the regional commanders. The election

of 2010 brought a quasi-civilian government and in 2012, the Waste Land Instruction was replaced by the VFV Land Law. Even if the function and authority of Committee remains largely unchanged, the new CCVFVLM could progressively make decision independent of military orders.

The rules and processes put in place under the 1991 Waste Land Instruction were deviant because they were used for the benefit of companies and people linked to land administration officers. For instance, a sugar factory company in Northern Shan State appointed a government land officer whose duty was to look for available lands for sugarcane expansion and to negotiate with farmers and land owners over the sale price. The director of a jade and gold mining company - who was also the wife of a former deputy minister - appointed a recently retired SLRD senior officer to look for available VFV land or permit holders to buy land before the price went up. The accumulated lands were not in a block but scattered. Lands along road sides were targeted as they could easily be resold. One large gold mining company, taking advantage of the favour of the agricultural minister, leased the ministry's extensive estate farms at a cheap rate. The existing tenants were driven out (see Table 1, serial numbers 1 and 3).

The 2012 VFV Land Law allows leases on State land categorized as Vacant Fallow and Virgin for up to 30 years. The CCVFVLM can allocate 5,000 acres at one time, up to a maximum of 50,000 acres. However, several cases diverge from these legal principles (see Figure 4, pathway 2). The VFV Land Law indicates that the CCVFVLM should work with relevant government departments and organizations in order to protect the interests of farmers who are already using lands, whether formally recognized or not, in areas where the right to use VFV land has been granted. The land being used by the farmers is to be reclassified as farmland, and land use certificates issued to farmers who have been using the land (see Figure 4). However, these legal principles are not put into practice

The VFV category also includes land that has been legally removed from the categories 'reserved forest', 'grazing land', and 'fish pond'. This implies that the CCVFVLM has jurisdiction over a huge area of land (see Figure 4, pathways 3, 4 and 5).

The VFV Land Law allows the leasing of VFV land to foreign investors and foreign organizations, although it gives priority to Myanmar citizens (Oberndorf, 2012).

### **2.2.3 Forest Department (MoNREC)**

While forest reserves can be converted into the VFV land category (see above), the 1992 Law on Forestry offers another pathway to grant land use permits for agricultural development on forest reserves. With approval from the Union government, MoNREC can change the category of an entire reserved forest or a portion of it (Article 7) and lease it as commercial or industrial plantation (Article 13) (see Figure 4, pathway 6). As indicated above however, no clear mechanism and procedure regulating how this is supposed to take place has been specified (Woods 2015a).

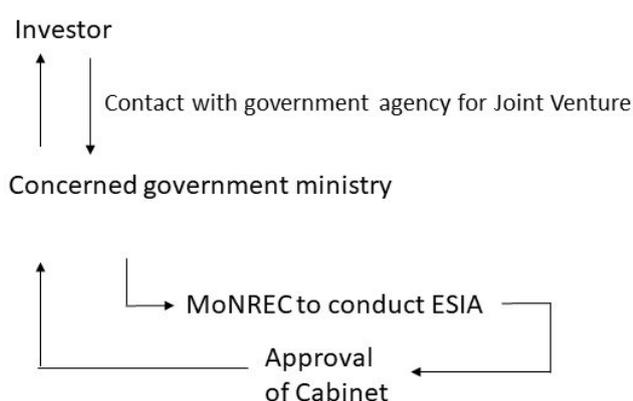
If virgin land is still forested, CCVFVLM needs to make a request to Forest Department of MoNREC, which has authority over standing trees for a permit before a land use permit is issued by the CCVFVLM to initiate agro-industrial development (see Figure 4).

### **2.2.4 The Myanmar Investment Commission (MIC)**

Large-scale agro-businesses need a permit from the Myanmar Investment Commission (MIC), ensuring that land leased either from the government or from a private citizen has a clear land use rights title.

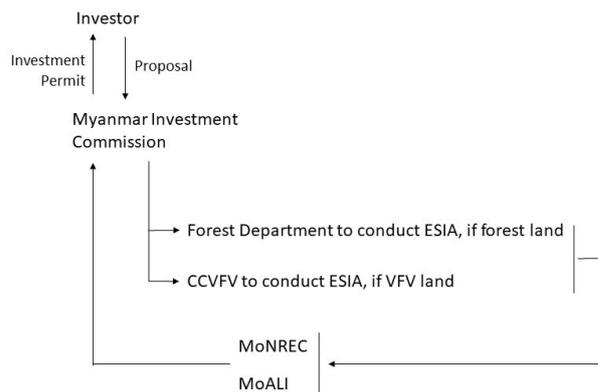
However, the Investment Law does not specify the land category that the investor is entitled to lease, which means that the investment can relate to either VFV land or to forest land, as prescribed in laws relating to those sectors. Furthermore, in concrete terms, the investors involved in agricultural development – domestic or foreign - need to obtain a full permit from the MIC but will continue to be accountable to MoALI and/or MoNREC in their business ventures (see Figure 4, pathway 8).

The MIC delivers investment permits, or approval orders, based on the nature of the investment project. According to the Investment Law of 2106, foreign investors can lease land directly from the government through the proper channels (foreign or domestic direct investment) (see Figure 5) or by forming a joint venture with the permit holder (indirect investment) (see Figure 6).



**Figure 5 - Process of application and delivery of investment permits in the case of direct foreign or domestic investment**

Source: authors



**Figure 6 - Process of application and delivery of investment permit in the case of joint venture investment**

Source: authors

In the case of foreign or domestic direct land-based investment, the investor needs to request an investment permit from the MIC through the Directorate of Investment and Company Administration (DICA). But the MIC alone does not have the authority to approve a project and must refer it to MoALI or MoNREC (or the relevant Region/State authorities) to conduct a proper Environmental and Social Impact Assessment (ESIA). This assessment – financed by the investor – must be conducted before the investor can receive the MIC permit. In the case of a joint venture, the Myanmar Investment Law states that the investor is not required to obtain land use authorization from the MIC if the Myanmar investor has complied with all of the laws and regulations.

The MIC permit is issued after the investor has deposited a performance guarantee at the Myanmar Foreign Trade Bank at the prescribed rate. Until 2016, only 19 foreign direct investment (FDIs) permits had been authorized, comprising 17 for joint ventures with local partners and two with full investment coming from the government (MoALI). As of December 2015, FDI in the agriculture sector amounting to only USD 249.87 million had been authorized, accounting for only 0.50 percent of total FDI in all sectors. The mechanism is rather new in Myanmar and, by 2017, no more than five foreign companies had registered for land-based agricultural investment.

### 2.2.5 Authorized departments of the MoAI

It is the prerogative of the Union minister of the MoAI to allocate land to his interest groups. In the ministry, some general managers of the administration are also heads of industrial crop enterprises or State farm development departments. In Pywin Oo Lwin and Naung Cho Townships, a general administration manager looked to acquire VFV land and forest areas for coffee or mulberry crop expansion.

He formed a coffee growers' association with several officials and their close business companies. Following a request by the minister through Regional and Township level officers, land was allocated for a coffee plantation (see Figure 4, pathway 7). However, the land allocated was inside a forest area and, after negotiation with the Forest Department in 2016, the forest was de-gazetted and re-categorized as VFV land. A similar association focusing on growing mangoes was formed consisting of senior officers and directors in the ministry. Some medium-scale land was acquired in a VFV land area and renamed unofficially as a mango orchard area. The land was located in the Dekhina Thiri and Ottaya Thiri Townships of Napyitaw Council Region. This took place soon after the transition to the quasi-civilian government.

## **2.2.6 Other forms of large-scale land acquisition**

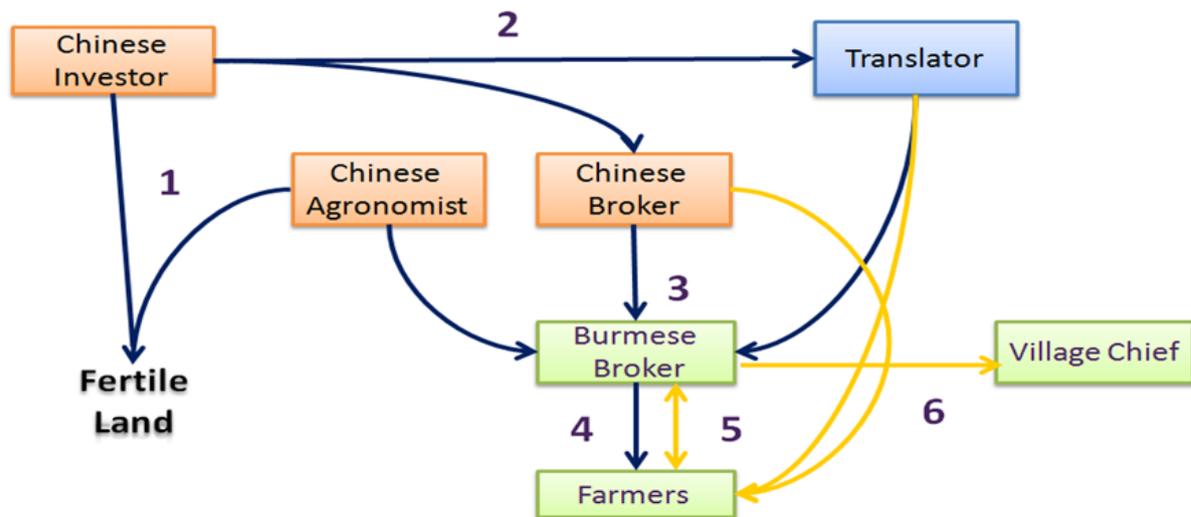
In addition to the large-scale land acquisition processes described above, there are a variety of contract farming mechanisms that allow investors certain forms of control on land for agricultural development (Antonio, 2015; Woods, 2015b).

It is difficult to gather a comprehensive picture of how these processes work across the country. By way of example, we describe here the land-based investment by Chinese entrepreneurs in watermelon production. The increased interest of Chinese entrepreneurs in farmland and agricultural production for commercial agro-business in Myanmar is leading to the activation of new forms of land acquisition that do not really fit into the categories of land use permits or land lease agreements with the State.

The case we present here revolves around watermelon production in Mandalay, but a similar process is involved in banana production in Kachin State and sugarcane production in Koe Kant Special Administration Zone, near to the Chinese border.

The land acquisition by Chinese entrepreneurs did not progress through regularized, formal channels, but through local brokers (see Figure 7). The Chinese investors hired translators and agronomists to look for appropriate land and to establish contact with farmers and Village Tract Administrators (VTAs) through their broker. Agreement was reached only between the farmers and the broker without the participation of the investors or the VTA chief. Once the deal was signed, the broker informed the relevant parties - including the VTA chief - about the number of acres that would be leased to wage labourers who were essentially Chinese workers. All through the process, the Chinese investors remained invisible to all the other parties involved.

The farmers rented out their lands for a period of four to six months charging fees of USD 280 or USD 300 per acre in advance. The pre-payment was welcomed by the farmers. However, the land transaction was not based on an official contract between the farmers and the workers. Therefore, it was not considered to be contract farming and might instead be described as 'collective terms of agreement' (Antonio, 2015). However, the agreement imposed restrictions on the farmers as they could not grow melons on other lands so that the exclusivity of the Chinese production could be guaranteed. In cases where the Chinese investors had built a well in a rented field, the farmer had to pay for its use once their field was returned: a fee of USD 200-250 was required, almost equivalent to the land rental payment. Furthermore, farmers were not able to visit their fields, and other farmers or villagers could not trespass on the fields during the rental period. The Chinese investors used heavy doses of chemical fertilizers and pesticides during the rental period, which caused significant environmental pollution.



1. Look for suitable land in the village
2. Hire translator from Shan state
3. Request for selected fields to rent

4. Inform and Negotiation lease agreement
5. Sing contract with group of farmers
6. Inform about which fields are rented

**Figure 7 – The land lease process in Chuang Kwa Village Tract, Tada Oo Township, Mandalay Region (2014).**

Source: Antonio, 2015

Despite the heavy control over land and production exercised by Chinese investors, Antonio (2015) shows that the reasons why local farmers opted for this less-than-satisfactory land deal was their lack of, or limited, access to the Chinese market at the border, and their low investment capacity.

In Tada Oo Township (Mandalay Region), Antonio (2015) estimates that the area under watermelon production through this land lease system amounted to 2,155 acres in 2012-2013 and 3,285 acres in 2013-2014, producing 32,325 MT and 49,275 MT of watermelons in the corresponding years, and generating USD 17.3 million for the border trade from this Township.

### 3. Current Situation of Large-Scale Land Acquisition for Agricultural Development

In the following section, we provide a synthesis of the current situation of large-scale agricultural development: the evolution and magnitude of the issues, the recipients and purpose of the investments, the spatial patterns of their distribution across the Union, the level of implementation of the land developments, and the profile of the main investors.

#### 3.1 An aggregate picture

Based on the dataset monitoring land transactions on VFV land at MoALI (DALMS 2017a) and an aggregate figure of large-scale land acquisition on forest land (Department of Forestry 2013), from 1991 to October 2016, a total of 5,156,819 acres (=2,091,543 ha) of land was allocated by the government to agro-business companies (ABCs) and individual entrepreneurs (see Figure 8).

The largest share of land – 2.2 M. acres - was allocated by the previous CCVFVLM (before the release of the new VFV Land Law in 2012) and the military commander (before the U Thein Sein government, 2011-2016) accounting for, respectively, 43 and 27 percent of the total land area. It should be noted that the percentage of VFV land granted that is actually planted is only 14.89 percent (see more details below).

As of November 2012, the Forest Department was directly overseeing large-scale agricultural development projects on permanent forest estates covering about 1.11 M acres. The total is probably higher now. This figure is much smaller than the total area of non-forest land use in reserved forest and Protected Public Forest (3.16 M. acres), which also includes land allocated for dam and water reservoirs, minerals and mining (Annex 6)

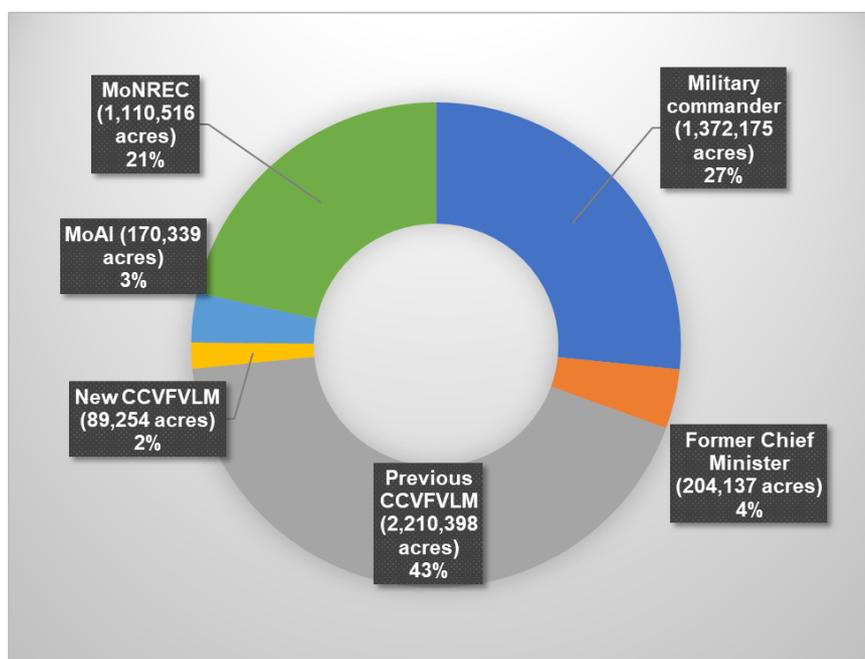


Figure 8 - Total area of land granted for agricultural development in Myanmar by the relevant authorities

Data Source: DALMS, 2017a and Forest Department, 2013. Computation by the authors

concessions<sup>11</sup>. Out of the 1.11 M acres de-gazetted for agricultural development, 0.46 m acres have been dedicated to palm oil production (41 percent), 0.37 M acres to rubber, sugarcane and other crops (33 percent) and 0.28 M acres to teak/hard wood plantations (25 percent) (Forest Department 2013) (see details in Annex 6).

A quick look at the situation in other countries in the region shows that Myanmar is not, relatively, the country in which large-scale agricultural development is the most important. The total area covered by these transactions is 2.08 M. ha, which is slightly less than in Cambodia (2.1 M ha) but more than in Lao PDR (0.4 M. ha) and Vietnam (0.25 M. ha). The agro-business land transactions represent 3.08 percent of the national territory and nearly 16 percent of the total land cultivated by smallholder farmers, significantly less than in Cambodia and Lao PDR (see Table 5).

**Table 5 – Agro-business concessions and agrarian structure in the CMLV (Cambodia, Myanmar, Lao PDR and Vietnam) countries.**

	Cambodia	Lao PDR	Myanmar	Vietnam
Agricultural concessions (ha)	2,160,349	446,410	2,086,894	253,841
Total area of the country (ha)	18,103,500	23,796,000	67,657,800	33,121,000
Percentage of concessions in the total area of the country	11.93 %	1.88 %	3.08 %	0.77%
Total area of smallholder farmers (ha)	3,200,000	1,100,000	13,100,000	10,000,000
Ratio concessions area / smallholder farmers area	67.51%	40.58%	15.93%	2.54%

Sources: MRLG, 2017

## 3.2 Agricultural large-scale land transactions on VFV land

The database of land use permits granted on VFV land allows for a detailed analysis of this particular land category, which represents 78.4 percent of the area of all large-scale land use permits. As noted above, a detailed database consisting of all land transactions on VFV land from 1991 to December 2016 was used to analyze the recipients, the granting authority, the geography, area sizes granted and planted.

### 3.2.1 Overview

Some basic computation shows a large number of transactions established since 1991. The mean is 1,075 acres (435 ha) but the distribution is quite dispersed (high standard deviation). The range between minimum and maximum value is important, with a maximum value of 157,353 acres, well beyond the limit of 50,000 acres established by the VFV Land Law (see Table 6).

The number of large-scale land transactions is high compared with other countries in the Mekong region: Cambodia can count 252 transactions since 1996, and Lao PDR 727 since 2000. On average, each land deal involves an area of 1,075 ha, significantly less than in Cambodia (8,385 ha/deal) and somewhat more than in Lao PDR (614 ha).

### 3.2.2 Evolution in the granting of land use permits

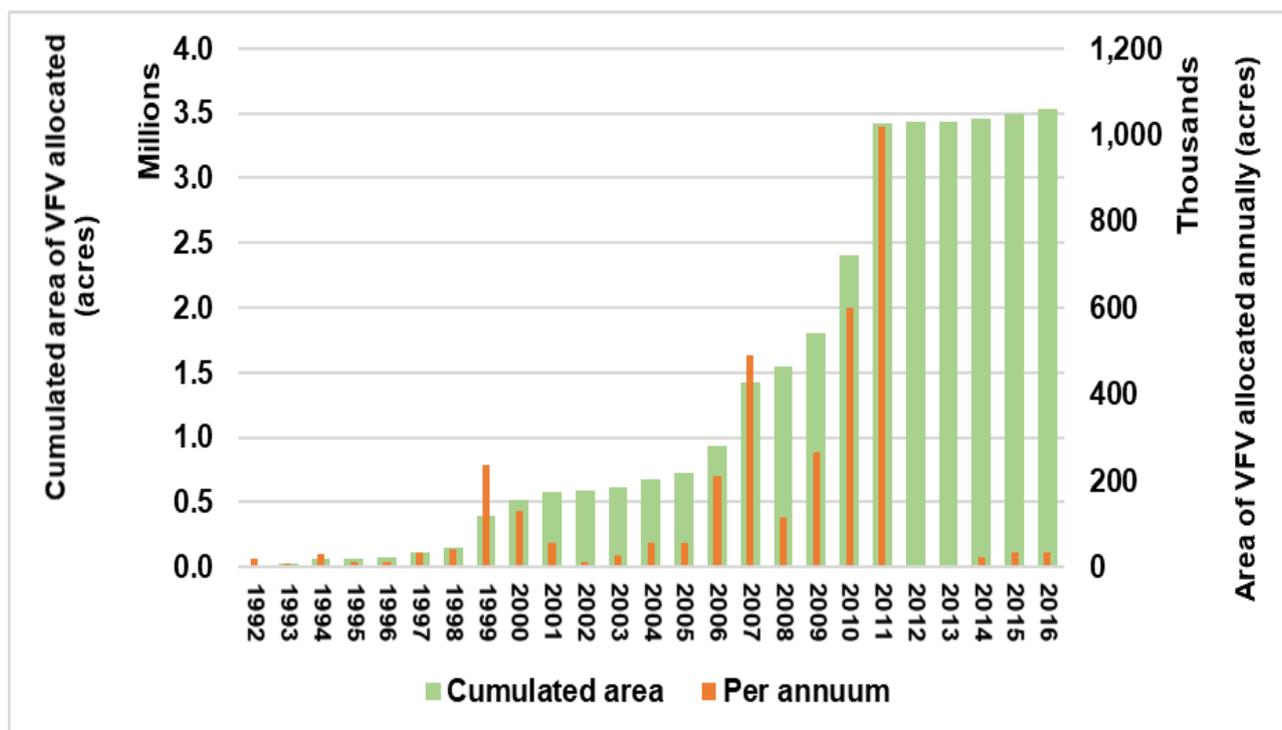
Land use permits have been granted on VFV land in an uneven way from 1991 up to the present (see Figure 9). Despite a peak in 1999, the granting of VFV land took place predominantly between 2006 and 2011 during the last years of the military government (SPDC) but also at the peak of the food crisis. In other aspects, most of the large-scale agricultural schemes visible today are a legacy of this particular period. In the early period, the SLORC government did not grant permits for timber extraction to companies. But after 2004-2005, the recipients of VFV land were granted permits for this purpose. Later they could sell the results of their logging to traders who acquired the timber export licence. In 2008, companies were allowed to log all timber on the ground of VFV and forest lands. Such opportunities attracted all crony companies to conduct such extractive activities in the VFV land areas and there was a rush to acquire land use permits. This is one of the main reasons why the related area increased dramatically between 2007 and 2011.

Up to 2006, the land use permits for VFV land were granted predominantly by regional commanders and to a lesser extent by the previous CCFVFLM. Between 2006 and 2011, the importance of both shifted with the CCFVFLM committee becoming the main body granting permits for VFV land. The arrival of the quasi-civilian government in 2011 was concomitant with a sharp decrease in the number of VFV land use permits granted, and in fact there was a temporary halt until 2014, though it resumed in 2016.

**Table 6 - Description of VFV land allocated since 1991 for agricultural purposes in Myanmar**

Number of transactions	3,603
Total area of land transactions	3,875,964 acres
Mean (area)	1,075 acres
Median (area)	203 acres
Std. Deviation	3,607
Minimum	50.02
Maximum	157,353 acres

Data Source: DALMS, 2017a. Computation by the authors



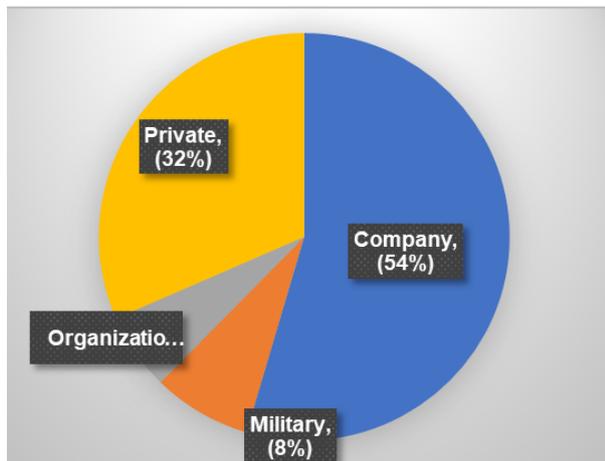
**Figure 9 - Evolution in the granting of land use permits on VFV land from 1991 to 2016**

Data Source: DALMS, 2017a. Computation by the authors

### 3.2.3 Recipients and intended use of land

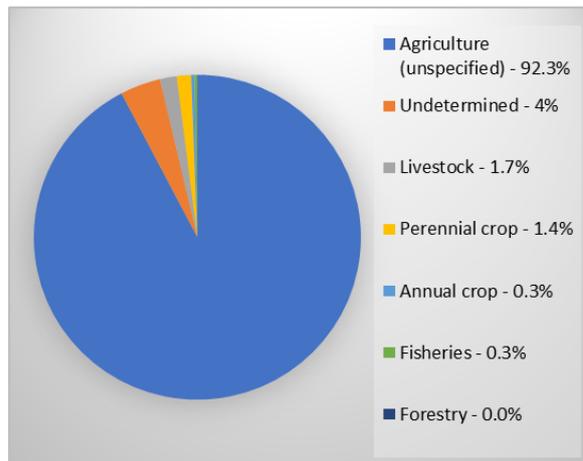
Agro-business companies of various sizes received the largest share of VFV land for agricultural development (54 percent) (see Figure 10). Recipients identified in the database as private individuals (farm entrepreneurs, private investors or speculators) represent the second group in importance (32 percent of VFV land granted). The 'military' category (8 percent) represents land granted to individual soldiers or to army camps. Organizations (6 percent) relates to Township or District level organizations such as the Union Solidarity and Development Association (USDA), fire brigades, women's associations and retired military associations (DALMS, 2017a).

A limitation of the dataset is that it does not offer a very clear picture of the finality of the land-based investment. More than 92 percent of the area is intended for agricultural purposes, but the type of crop is unspecified (see Figure 11). In addition, it provides information only about the intended use as it appears in the application process: limited information is available to compare the intended use with the actual use.



**Figure 10 - Recipients of VFV land for agricultural development**

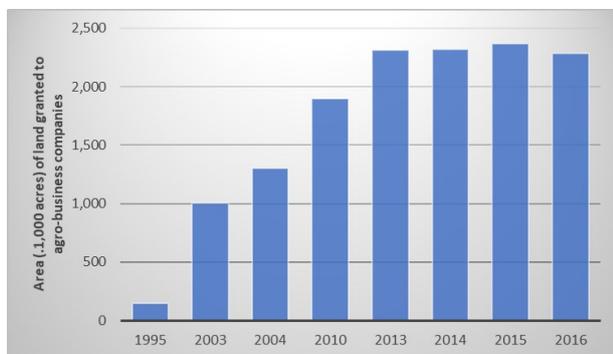
Data Source: DALMS, 2017a. Computation by the authors



**Figure 11 - Intended use of VFV land for agricultural development**

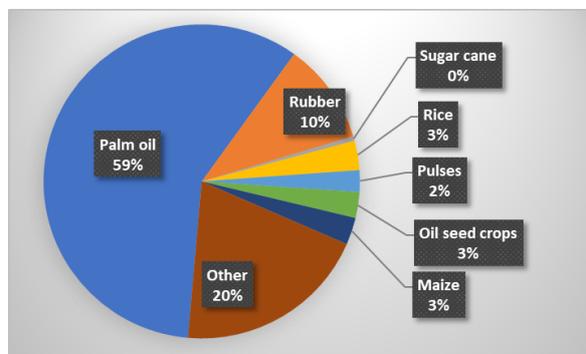
Data Source: DALMS, 2017a. Computation by the authors

However, another report from MoALI (DALMS 2017b) provides aggregate values only for agro-business companies (ABCs) having acquired VFV land for agricultural development<sup>12</sup>. This shows a similar evolution (see Figure 12), i.e. a sharp increase between 2003 and 2013. The report also presents a more detailed view of the main crops planted by these companies (see Figure 13). Palm oil clearly stands out with 59 percent of the area engaged by ABCs involved in the production of this crop (see details in Annex 7).



**Figure 12 - Evolution of the land area granted for large-scale agro-business companies by the MoAI.**

Data Source: DALMS, 2017b. Computation by the authors



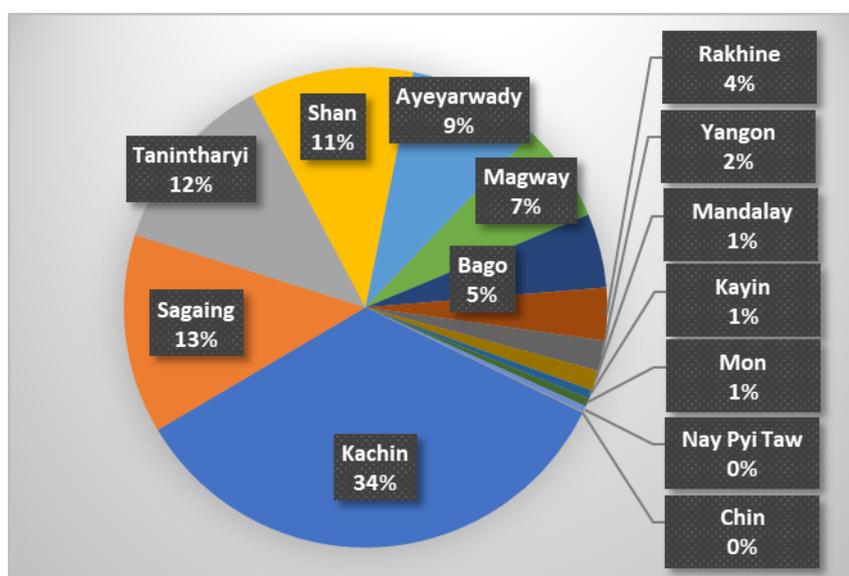
**Figure 13 - Distribution of crop production in areas granted to agro-industrial companies**

Data Source: DALMS, 2017b. Computation by the authors

## 3.2.4 Spatial distribution of large-scale agricultural schemes on VFV land

Geographically, land use permits for agricultural development on VFV land are distributed all across the country (see Figure 14). Large-scale land acquisitions have taken place in both central regions and ethnic peripheral States but are particularly concentrated in seven States/Regions. Kachin State – the third largest State in the country - is the State with the largest number of VFV land allocations, principally to military commanders (1,387,481 acres, 34 percent of the total). Sagaing Region is second, followed by Tanintharyi and Shan Regions in third and fourth position.

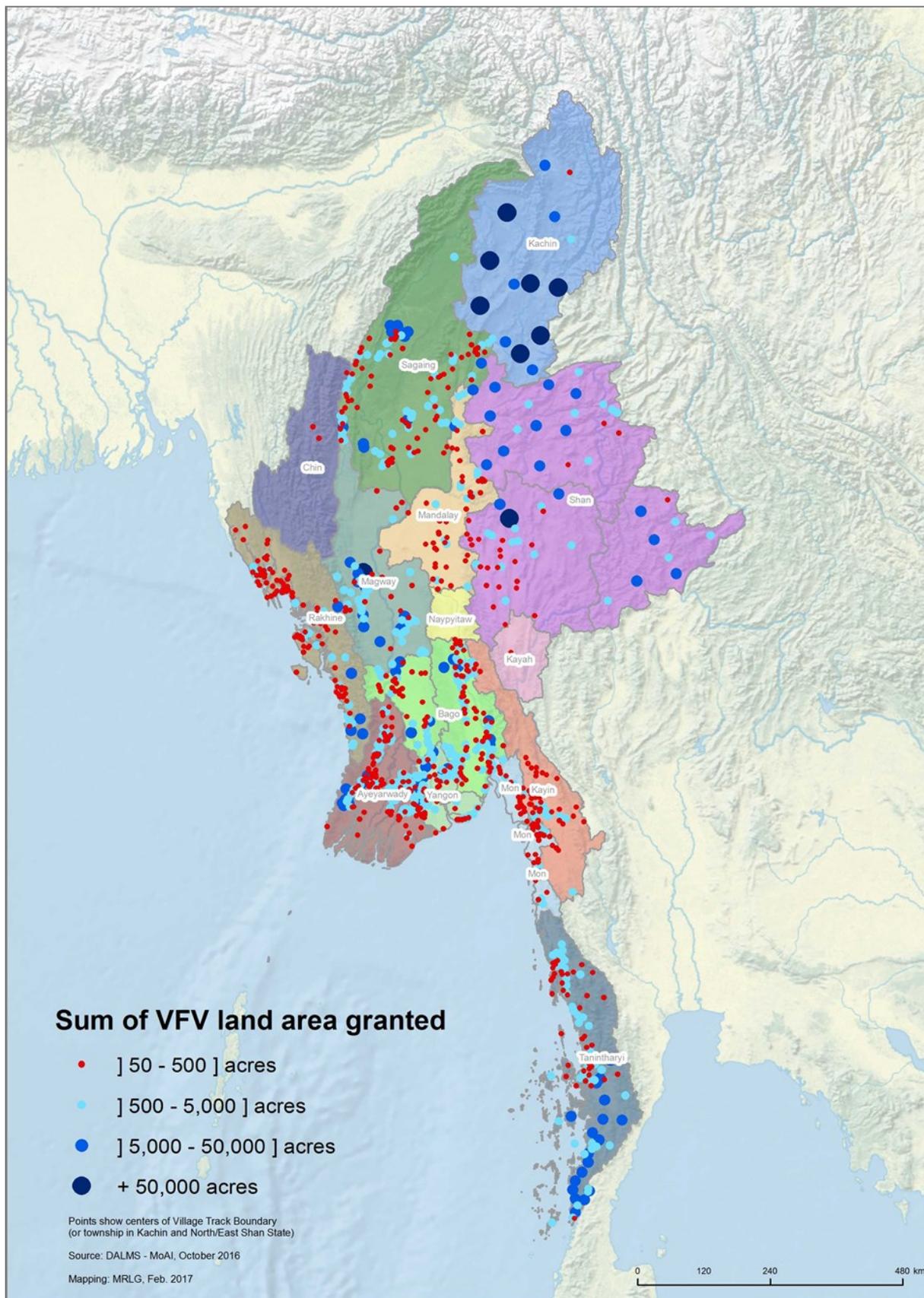
Chin State possesses steep hills with only small areas of plain and no large valleys that could serve as natural barriers for LSLA. In Mon State there has been little scope for LSLA since many lands are already in the hands of small entrepreneurs and smallholder farmers for perennial crops (rubber and fruit trees). Indeed, as Mon ethnic people usually invest remittance money in purchasing land for rubber, the State is saturated with rubber plantations and orchards. In a coastal region like Rakhine State, LSLA applies mainly to aquaculture business and plantation crops. Moreover, a large-scale land area was allocated for Chinese gas pipelines across the State to Yunnan.



**Figure 14 - Distribution of VFV land area per State/Region**

Data Source: DALMS, 2017a. Computation by the authors

The map below (Figure 15) shows the distribution of VFV land allocations per Village Tract or Township<sup>13</sup>. It reveals that the largest VFV land grants are located in peripheral regions and the smaller ones are more central (in the dry zone and delta). Kachin State is characterized by very large VFV land grants of more than 50,000 acres and the South of Thanintharyi by VFV land of 5000 to 50,000 acres. In contrast, regions such as Sagaing and Magwe have land grants that are mainly under 5,000 acres in size.



**Figure 15 - Location map of VFV land granted in Myanmar between 1991 and 2016**  
 Data Source: DALMS, 2017a. Mapping by the authors

### 3.2.5 Land use effectiveness

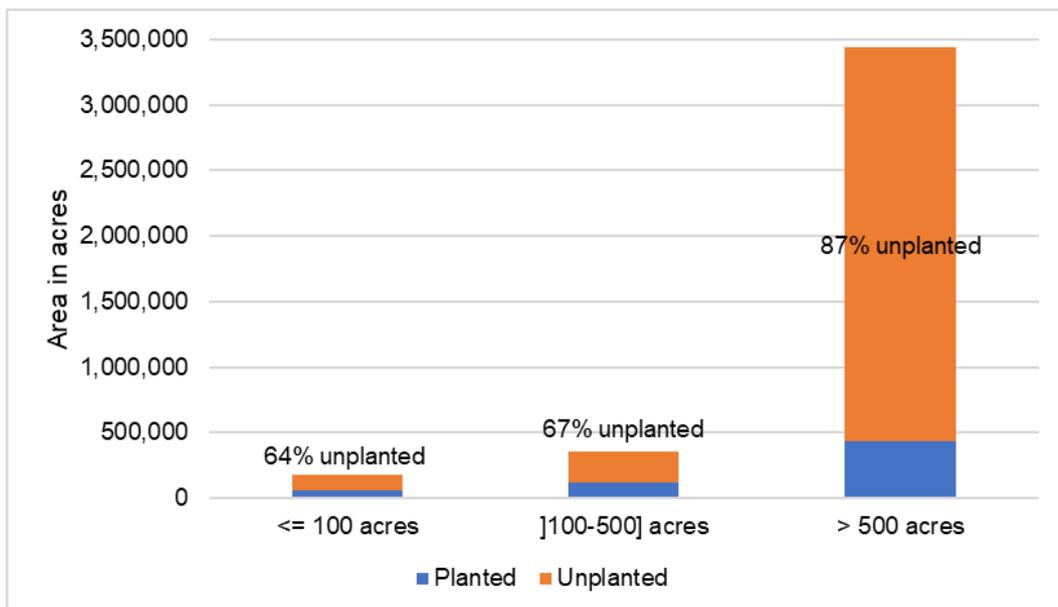
Out of the 3,875,964 acres of VFV land granted for agriculture purposes, only 14.89 percent have actually been cultivated (see Table 7). The majority is left idle. The figure may be even more pronounced as it is not unusual for a VFV land grant holder to rent out land to local smallholder farmers and declare such lands as being used and under 'joint venture' or 'contract farming' arrangements. This poses serious questions regarding the efficiency of large-scale agricultural models being promoted in Myanmar. It also provides strong evidence - originating from government statistics - that coherently demonstrates across all States and Regions that such large-scale agricultural models do not promote higher land use efficiency. This is contrary to the pro-agro-business narratives undermining smallholder farming.

**Table 7 - Level of implementation of agricultural developments on VFV permit areas**

		Total area of VFV land allocated	Total area planted	Total area idle
Only cases > 50 acres	Area (in acres)	3,875,964	562,829	3,313,134
	Percentage of land cultivated in total	14.5 %		
Including cases < 50 acres	Area (in acres)	3,968,315	611,673	3,356,642
	Percentage of land cultivated in total	18.2 %		

Data Source: DALMS, 2017a. Computation by the authors

When considering all land transactions in VFV land (including those involving land areas less than 50 acres), the percentage of land cultivated goes up to 18.2 percent. Interestingly, we found an inverse relationship between the area of VFV land granted and the percentage of land effectively planted (correlation = - 0.1, significant at the 0.01 level). Specifically, this means that farmers with smaller VFV land grants tend to cultivate land more effectively than farmers with larger VFV landholdings (see Figure 16). The graph clearly shows that land remaining unplanted is more important, in absolute and relative terms, for land use permit holders who cultivate more than 500 acres.



**Figure 16 - Relation between VFV land area and land use efficiency**

Data Source: DALMS, 2017a. Computation by the authors

Table 8 presents a summary of the distribution of VFV land (number of transactions, area in acres and percentage of land actually developed) per State and per granting authority.

Table 8 - Summary of VFV land allocated by State and by granting authority.

	Former Central VFV Land			Regional Commander			Former Chief Minister			Current Central VFV Land			Total		
	# deals	Acres	% De-veloped	# deals	Acres	% De-veloped	# deals	Acres	% De-veloped	# deals	Acres	% De-veloped	# deals	Acres	% De-veloped
Ayeyarwady	272	109,107	0.0%	127	154,309	0.0%	104	82,667	0.0%	0	0		503	346,082	0.0%
Bago	422	159,518	44.7%	7	2,848	100.0%	2	5,344	26.3%	34	25,329	28.3%	465	193,039	42.9%
Chin	8	1,570	4.5%	0			0			0	0		8	1,570	4.5%
Kachin	282	589,948	14.3%	379	737,508	8.9%	0			0	0		661	1,327,456	11.3%
Kayin	136	22,130	74.7%	0			0			5	488	69.9%	141	22,617	74.6%
Magway	48	34,477	9.5%	21	131,140	13.3%	11	89,541	11.1%	1	300	3.3%	81	255,458	12.0%
Mandalay	108	45,522	28.4%	6	5,399	12.2%	0			5	1,700	10.0%	119	52,621	26.2%
Mon	79	21,202	82.3%	0			0			1	112	100.0%	80	21,314	82.4%
Nay Pyi Taw	32	13,781	0.0%	0			12	868	0.0%	7	1,515	0.0%	51	16,164	0.0%
Rakhine	158	136,128	6.4%	0			0			11	1,776	0.0%	169	137,904	6.3%
Sagaing	257	494,992	5.4%	60	14,873	2.8%	0			10	9,750	2.5%	327	519,615	5.3%
Shan	423	304,033	0.0%	67	117,493	0.0%	0			7	1,401	0.0%	497	422,927	0.0%
Tanintharyi	182	240,432	70.9%	87	196,601	24.2%	1	5,000	100.0%	40	37,827	17.0%	310	479,860	47.8%
Yangon	136	37,561	0.0%	21	12,004	0.0%	6	20,717	0.0%	28	9,055	0.0%	191	79,337	0.0%
<b>Total</b>	<b>2543</b>	<b>2,210,398</b>	<b>18.6%</b>	<b>775</b>	<b>1,372,175</b>	<b>9.8%</b>	<b>136</b>	<b>204,137</b>	<b>8.0%</b>	<b>149</b>	<b>89,254</b>	<b>0.2%</b>	<b>3603</b>	<b>3,875,964</b>	<b>14.5%</b>

Data Source: DALMS, 2017a. Computation by the authors

### 3.2.6 Key investors

The database establishes the profile of some key investors in Myanmar (Table 9 and Figure 17).

**Table 9 - Land acreage of the eight most important investors in VFV land, by total acres granted**

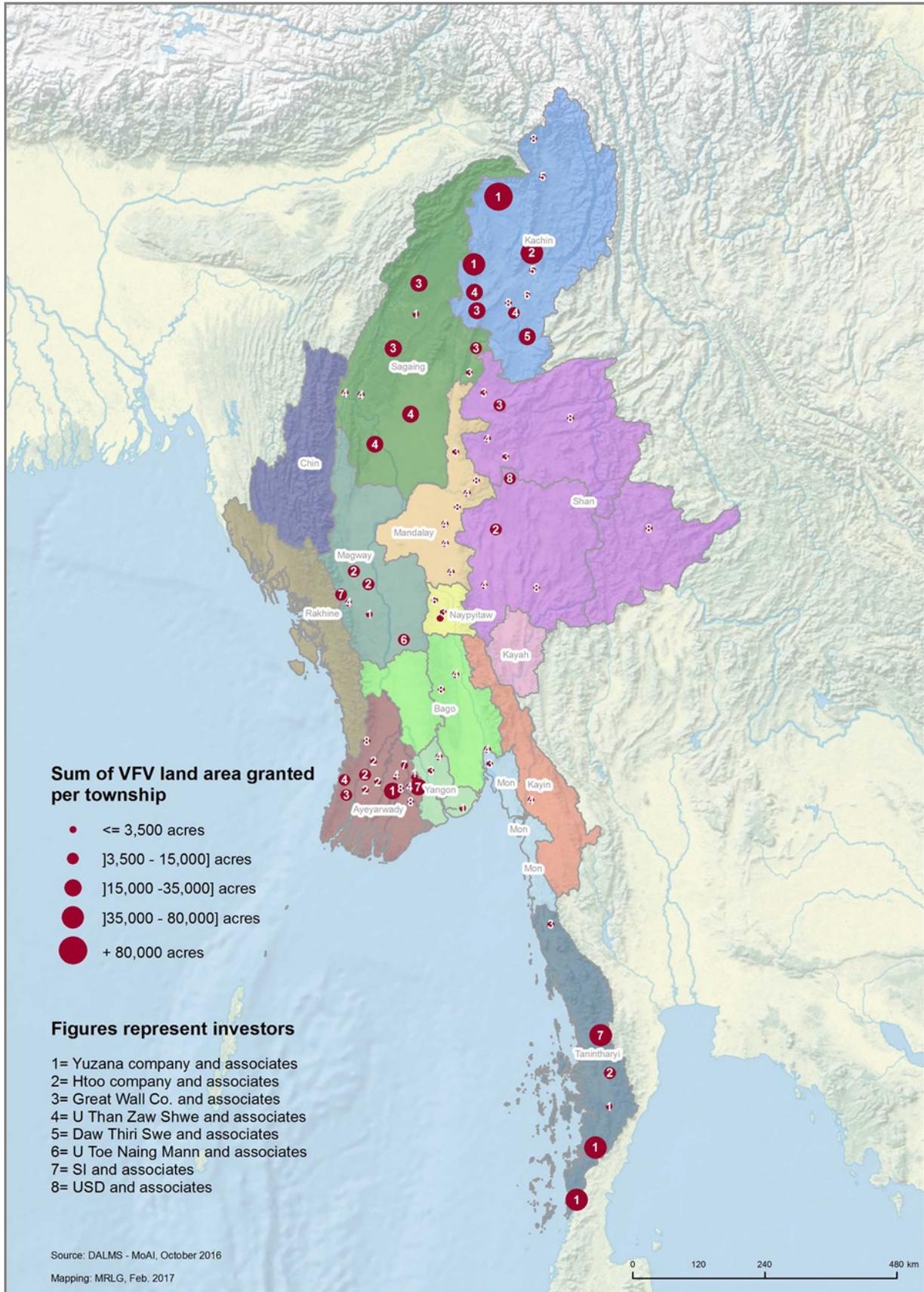
#	Investor name	Total area in acres
1	Yuzana company	514,169
2	Htoo Company	124,031
3	Great Wall Co.	108,175
4	U Than Zaw Shwe	91,288
5	SI	63,597
6	Daw Thiri Swe	32,862
7	USDA	14,886
8	U Toe Naing Mann	7,537

Data Source: DALMS, 2017a. Computation by the authors

Yuzana Co. and Htoo Trading Company, the two most important - by total acres granted -agro-business companies in operation in Myanmar, have received the largest amount of land with a cumulative area of 514,169 and 124,031 acres, respectively (see Table 9 and Annex 8). These areas are far beyond the upper limit of 50,000 acres prescribed in the duties and power of the CCVFLM.

If we refer to Tanintharyi Region as a whole (and not only Yuzana and Htoo Trading Companies) the land granted by the regional authority is not in reality virgin and fallow land but is largely reserved forest area - part of the well-known Pachan reserve forest (Annex 9). This has allowed some companies such as Htoo Trading Co. to use the pretext of a palm oil plantation to actually engage in significant timber extraction. In some areas of the State, forest trees have been logged before the arrival of the palm oil company (interview with the South Dagon Palm-Oil Co.).

The Yuzana Company holds land under different company names such as Annawa Tun and Shwe Myae Yadana. The Yuzana Company alone took 350,550 acres from the forest area for a palm oil plantation, and, as of today, fieldwork conducted for this survey has revealed that the company has continued to apply for more land from MoNREC. Moreover, there are several other subsidiary companies that have acquired land for Yuzana Company, which means that it might have acquired more than 514,169 acres.



**Figure 17 - Location map of the VFV land of the eight most important investors.**  
Data Source: DALMS, 2017a. Mapping by the authors

## **4. Large-Scale Agriculture and Smallholder Farmers' Land Rights: a Source of Conflict**

The granting of large tracts of land for agricultural development has resulted in different forms of land conflict across Myanmar. These conflicts have increased as smallholder farmers (and their supporters) have claimed rights over the land.

An examination of land conflicts across the country and the ways in which State and non-State actors have dealt with the issues, is beyond the scope of this report. Instead we endeavour here to discuss the extent to which large-scale agricultural development drives conflicts and how they have been addressed by the previous and current governments.

### **4.1 Land dispossession of smallholder farmers**

The core issue underlying conflicts associated with large-scale land acquisition revolves around land dispossession, as land acquired by agro-business companies or individual entrepreneurs has quite often already been appropriated for agricultural production or use as a common pool resource by smallholder farmers. The encroachment on these resources by large-scale plantations has excluded the smallholder farmers from resources that are essential to them in conducting their livelihoods, and their quest for additional land and access to natural resources is a main element underlying their land claims.

In most cases, the overlap of land claims results from a poor identification of land allocated and/or inadequate recognition of existing rights to use the land for a variety of purposes (cultivation, grazing, swidden fallow, and so on). In fact, smallholder farmers are hampered by a rather weak statutory recognition of their land tenure (see above) and by the poor implementation of legally defined procedures to identify and allocate such lands. Quite often, they are considered to be illegal occupants or 'squatters' on the land and are evicted to clear the way for agricultural investors.

It is actually quite difficult to quantify these overlapping claims. A notable exception is the detailed investigation by Parliamentary Commission member U Sein Win (2013, separate report) in his constituency of Maubin. U Sein Win's report highlights the complexity of the situation on the ground. It presents the case of large land areas assigned for companies acting on VFV land permits, or delta flood plain (in the delta region) areas actually overlapping with areas previously occupied and cultivated by farmers (see Table 10). The report also shows another important aspect of this problem. Because companies have not fully developed these large tracts of land, local farmers have opportunistically occupied them and started to exploit the land left idle. These situations typically involve companies who only develop the best portions of their lands - those that are situated along main roads and irrigation/drainage channels - chasing away primary occupants of the land who have monitored the development of the concession and have decided to return to the land that has not been developed.

**Table 10 – Status of land development by agro-business companies in Maubin Township, in relation to farmers' land occupation**

Company name	Acres of land granted to the company	Acres cultivated by the company for aquaculture business	Area of Crop Cultivation						Number of farmers' complaints
			Area available for crop cultivation (acres)	Acres developed by the company	Contract farming with farmers (acres)	Farmers occupying idle land (acres)	Farmers' land overlapping with company land (acres)		
Myanmar Billion Group	2,118	1,693	425	0	0	50	389	49	
War War Win	6,859	6,598	261	0			3,945	270	
Auh Chad Co.	2,750	1,852	898	412		451	546	97	
Diamond Crown	351	235	116	18	20	62			
Shwe Naga Min	1,251	300	951	300	629				
De Han (Myanmar Naing Group)	1,946	772	1,174	0		421			
Great One (Myanmar Naing Group)	650	218	432	0		195			
Asia Mike	3,187	3,187	0	0			500	9	
Myanmar Golden Star	2,986	1,684	1,302	105	477	663			
Shwe War Yadanar	4,263	300	3,963	60		3,835	286	20	
Green House	2,103	50	2,053	0		1,870			
Total	28,264	36,789		895	1,126	7,546	5,666	445	

Source: Field investigation report by the Member of Parliament for the Maubin constituency, U Sein Win, October 10, 2013; CF = Contract farming

A variant of the land conflict has occurred when villages have been relocated due to the construction of large dam projects (see, for instance, the text box below). The government allocated farmland or VFV land as compensation for smallholder farmers who had lost settlement and agricultural land to the hydropower companies. And, very often, these areas of land were already occupied by farmers who were deemed illegal and driven away to make space for the newcomers.

### ***Smallholder farmers' land dispossession by the Lashio military battalion, Shan State***

Kaung Home Village, Min Tin VT

In Lashio Township in northern Shan State, four Kachin Villages, established around 1969, were removed by Lashio army Kha La Ya 41 from their original location and relocated to the surrounding area of the Shan Villages near the main road. The move was an attempt to curb the villagers' ability to shelter insurgents. Without any government support, the Kachin villagers built their houses but had to go back to their former taungya hillside fields – a more than three hour walk. Because of the distance, they could not take sufficient care of their fields. The crop yields declined, which adversely affected their food security. They endured hardship for more than 30 years.

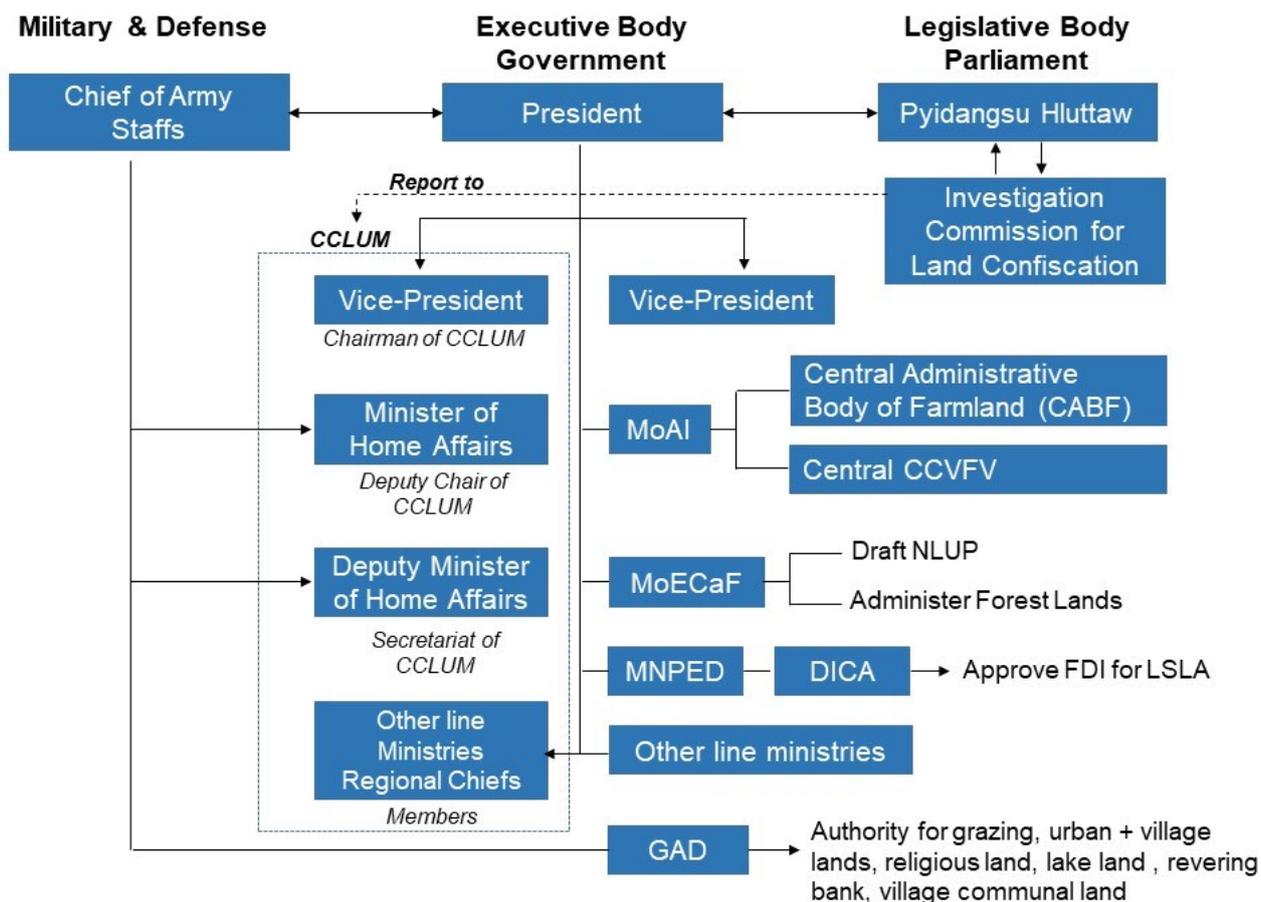
Shan villagers were growing groundnuts on the uplands with a rotational fallow land system while they grew paddy in the lowlands. The nearby military division in Shan North assumed that the fallow lands on the hilly areas were free and grabbed up to 4,000 acres on which eight Shan villages were cultivating upland crops. The military force granted land use permits to a private business company thought to be owned by a rich man (a Lawpan) from Chin Shwe Haw, and they then formed the Sein Wut Mhon rubber plantation as a joint venture business. The Shan villagers lost the uplands areas they had been cultivating and moved to other upland areas where the Kachin people were working. Lands were shared between both communities with unsecured livelihoods. But the Shan people were in the majority and the Kachin could not resist their demand for upland areas. Since then, the livelihoods of the Kachin people have deteriorated: some people depend on daily wage jobs in the new rubber plantation, and some migrate to China for seasonal work. In Kachin villages, the proportion of widows has increased up to a third of the households. According to them their husbands fell ill during migration, came back home and died.

The case study conducted by the first author in September, 2013

## **4.2 Land claims by smallholder farmers: a view from the Parliamentary Investigation Commission on Land Confiscation (2012-2016)**

In 2012, the government responded to the prevalence of land conflicts by establishing an Investigation Commission for the Prevention of Public Disenfranchisements Connected to the Confiscation of Farmland and Other Lands, also known as the Parliamentary Land Investigation Commission. The Commission was assigned to identify and scrutinize cases considered by farmers to be illegal grabs and to propose solutions to release the land to its original owner, in most cases a smallholder farming family (Republic of the Union of Myanmar, 2013a).

Identifying and scrutinizing land conflicts was one very important step towards more justice in the land sector. However, the Commission had no authority to address land disputes and the decision to resolve the conflicts was deferred to another executive body, namely the Central Committee for Land Use Management (CCLUM), formed under the quasi-civilian government led by President U Thein Sein. Vice-President U Nyan Win was appointed chairman of this Committee, and its members were drawn from all ministries. The Union minister and deputy minister of the Ministry of Home Affairs acted, respectively, as deputy chair and secretary of the CCLUM (see Figure 18).



**Figure 18 - Architecture of land institutions in the previous government (2011-2015)**

Source: authors

Institutionally, the reporting of cases/recommendations has passed from the director general of the Parliament Office to the director general of the Union government office. From 13 September 2013 to 21 January 2016, the Commission sent a series of 18 reports to the Union government office.

The last report indicated that 14,756 individual complaints had been received and filed. The reports 5 to 16 were not released to the public, but the first author of this study team was able to review them. It appeared that none of them contained quantitative figures on land areas that had been confiscated or the number of farmers who had lost land; they mentioned only the number of complaints and the number of cases scrutinized. Some cases could involve dozens of farmers, while others might consider only one. In order to work with one consistent dataset, we decided to

focus our analysis on reports 1 to 4<sup>14</sup>. Each of these relates to transactions with a specific type of confiscation: i.e. the first report related to transactions with complaints about land confiscated by the military (Republic of the Union of Myanmar, 2013a), the second report involved transactions with complaints about confiscation by urbanization/industrialization projects (Republic of the Union of Myanmar, 2013b), the third, transport infrastructure as well as agriculture-related land confiscation (Republic of the Union of Myanmar, 2013c), and the fourth, other cases that were not been mentioned in previous reports but that pertained to similar categories (Republic of the Union of Myanmar, 2013d).

In an earlier study examining these reports, we argued that the dataset presents serious shortcomings in that it fails to provide detailed information about land grabs by the military. The work of the Commission seems to have targeted urban areas and urbanization projects, which is a view supported by the preponderance of cases in the Yangon, Mandalay and Ayeyarwaddy urban agglomerations as well as by the central role played by the Ministry of Construction as the main body involved in land confiscation. By contrasting the locations of land confiscation cases with those of agro-industrial concessions as of 2011, we also show how the Commission has evaded, rather than tackled, some very critical land confiscation issues driven by these concessions (San Thein et al., 2017). Some very critical land confiscation issues driven by these concessions, particularly in Kachin State and Tanintharyi Region (San Thein, Pyae Sone and Diepart, 2017). These two areas encompass a high number of concessions and have not been studied by the Commission for security reasons

As can be seen in Table 11 below, the total area of land investigated - that was subject to confiscation - is 489,369 acres (51.5 percent were military-driven land confiscations). These are aggregate figures, stated as such in the reports, and are not the result of our own computation.

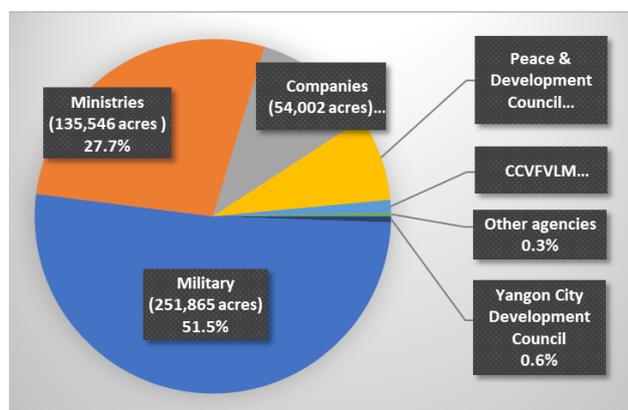
The other development projects that have sparked land disputes and complaints have more to do with infrastructure and urbanization projects. According to the report of the Parliament (2013, parts 2 and 3), 110 cases of land disputes concerned land confiscated from farmers for agricultural development, including by agro-business companies, involving an area estimated to be around 82,437 acres (Table 11), in various parts of the countries.

**Table 11 - Total land area confiscated by development projects in respect of which farmers sent complaints to the Parliamentary Commission and that were accepted by the Commission**

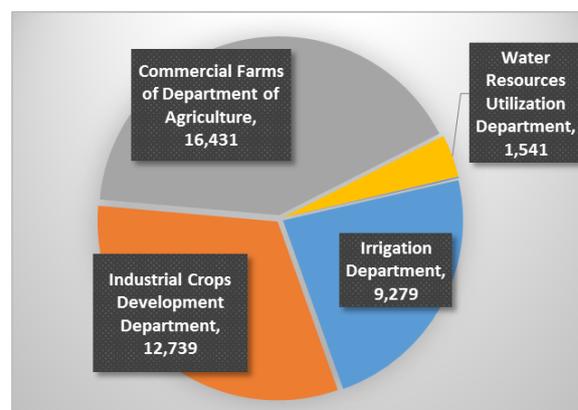
Development project purpose	Land area (acres)	Percent of total
Military (unspecified)	251,865	51.5%
Industrial zones in Yangon + a few in another two towns	117,834	24.1%
Agro-industrial development (by agro-business companies, ministries, or for military staff welfare)	82,437	16.8%
Infrastructure projects (by government)	32,644	6.7%
Industrial zones (excluding Yangon area)	3,545	0.7%
Unknown	1,044	0.2%
<b>Total</b>	<b>489,369</b>	<b>100.0%</b>

Source: The Parliamentary Investigation Commission for the Prevention of Public Disenfranchisements Connected to the Confiscation of Farmlands and Other Lands. (The inventory of reported data was processed to categorize the land confiscations conducted through various activities.)

Looking at the dataset with a focus on the agencies primarily involved in land confiscation we found that, in addition to the military, the main agencies involved were ministries (135,546 acres = 27.7 percent) and companies (54,002 acres = 11.1 percent) (see Figure 19).



**Figure 19 - Main agencies involved in land confiscation**



**Figure 20 - Main departments of MoALI involved in land confiscation**

Source: The Parliamentary Investigation Commission for the Prevention of Public Disenfranchisements Connected to the Confiscation of Farmlands and Other Lands. Data computation by the authors

We estimate that complaints from farmers about land confiscation involving the MoAI related to 40,019 acres, divided among four key departments (see Figure 20). If we deduct this amount from the total area of 82,437 acres of land confiscated for agro-industrial development (Table 11), the remaining area (42,418 acres) represents the total area of land confiscated by agro-business companies and for activities undertaken in respect of civil servant welfare schemes.

One part of this area has been encroached by opportunistic claimants and is under effective use by smallholder farmers. In all likelihood however, this area of 42,418 acres is a serious under-estimation of the actual degree of land confiscations by companies. It is likely that this figure is disproportionately low when compared with the number of issues reported by researchers, activists and the media (Buchanan, Kramer and Woods, 2013; Chao, 2013; LIOH, 2015; Woods, 2015a). This is because many disputes have not been reported to the Commission.

### 4.3 The current 'land return' conundrum

In March 2016, a new government took over and 'land issues' were one of its priorities. On 9 June 2016, this new government established a Central Reinvestigation Committee for Confiscated Farmlands and Other Lands (commonly called *Myae Sit* in Burmese) to continue the work of the previous Parliamentary Commission on land investigation (now dissolved) towards the return of land.

But the committee goes further. It is not only tasked with investigating land confiscation issues but also with ensuring that unused lands (including LSLA involving companies, the government and military organizations) are effectively returned to the farmers who are entitled to it.

In fact, the process of reviewing the complaints and returning the land is complex for *Myae Sit*, and some members admit that only a small percentage of farmers who have complained to their office will effectively be able to reclaim their land (personal communication) due to ongoing conflicts

and overlapping claims to lands from various stakeholders (original owners, tenants who occupied the lands after the confiscation, recent occupants including opportunistic ones and landless people who would like to access the lands).

A particularly difficult aspect of the process is to define eligibility criteria to identify who is the rightful land owner and to verify such information. Another challenge is to identify the people who need the land most to sustain their livelihoods. This requires that the history of land occupation in the area, as well as the complexity of the processes that have excluded smallholder farmers from access to the land, are understood and documented. In addition, decision-making on land allocation would need a clear mechanism for conflict resolution. Formal institutions as such as Farmland Administration Bodies (FAB) and DALMS are not in a position to resolve conflicts and it is not in their mandate (Boutry et al, 2017). In such a context, many conflicts remain unresolved.

However, it goes beyond the scope of this study on large-scale agricultural land acquisition to examine these processes in detail.

### Conclusion and Recommendations

The objective of this study was to provide a synthesis of historical and contemporary processes of large-scale land acquisition for agricultural development in Myanmar. It relies essentially on secondary sources, complementary interviews and field work conducted by the first author.

A summary of the key findings is proposed in the executive summary. By way of conclusion, we aim to formulate a set of general recommendations that could inform a wider and multi-stakeholder dialogue on the issue of large-scale land acquisition for agricultural development.

Given the current legal framework, the lack of institutional capacity to implement the regulations as stipulated in the laws and the outdated status of the information on VFV land, it is necessary to establish a moratorium on new large-scale land acquisition, unless the following issues are properly addressed:

- ⇒ **Information:** a process should be identified to improve the collection, the management and the analysis of reliable data related to land use and tenure, and to LSLAs, in order to inform day-to-day decision making and policy making.
- **Conduct an audit of VFV land grants:** a systematic basic survey of past VFV land grants could be conducted to also evaluate if VFV concessions are still in the hands of the initial grantees or if they have been illegally sold or transferred to other stakeholders. In addition, the survey could assess whether the lands are used as intended (in the application). It could also identify current users of the lands so that this information could be taken into account in case VFV land grants are revoked. As proposed in Myanmar's agricultural development strategy, this could be done through a combination of remote sensing and field checking. The results of such a survey could then be used to inform decision-making in respect of the cancellation of these VFV land grants and what the next steps should be. The survey would need to be conducted within a short, yet realistic, timeframe with the involvement of government, civil society and other third parties.
- **Conduct an in-depth and comprehensive evaluation of large-scale agricultural development schemes up to now in Myanmar:** this would enable an evaluation to be undertaken to assess their efficiency and sustainability using various criteria including the prevalence of conflicts, contribution to local employment, and agricultural production and environmental protection. The narratives on the higher efficiency and economies of scale of large-scale agriculture need to be evaluated given the fact that they have been used repeatedly to influence the orientation of policy, at the expense of smallholder farming. This work could also be an opportunity to evaluate the need for land among the current and future generations of smallholder farmers. This review process could be conducted jointly with stakeholders from government, academia and civil society.
- **Improve data management on VFV land grants and other large-scale agro-investments:** due to a lack of transparency in respect of most large-scale land transactions, information related to land boundaries is often non-existent, inaccurate or incomplete. This leads to a vicious cycle: since the information is inaccurate, authorities do not disseminate it, neither do they process it to analyse the trends in terms of investments, and so on. LSLA policies are thus implemented in a blind way with no knowledge of their actual impact.

There is an opportunity for authorities to accept their data, and become more familiar with it to see its flaws and progressively improve it with a mid-term vision supported by capacity building.

- **Land information:** as mentioned in the report, a large proportion of the country's land area is still considered legally to be VFV land. This is in spite of existing local rights over land and natural resources which may be crucial for livelihoods but also for environmental and cultural protection. Detailed recommendations for improved land administration go beyond the scope of this study. The agricultural development strategy suggests a strengthening of the capacity of land administration services and their support institutions to update and generate cadastral information, register land holding titles, document customary land rights, maintain land management systems, and produce new 'kwin' maps. The biggest challenge to address this relates more to institutional constraints rather than to technological ones.
  - **Enable public access to data related to large-scale agricultural development schemes:** this data could also be available for local authorities at Village Tract and Township levels to enable a comparison to be made with the ground situation. Projects such as One Map could be instrumental in achieving this. Official information about VFV land applications and objections could be publicized through the usual bulletin board but also through local media and on line.
- ⇒ Improving institutional capacity in order to avoid abuses of power and to implement the provisions of existing laws and rules:
- **Enforcement of VFV land management rules in terms of regulations relating to current VFV land grantees:** the current VFV Land Law makes explicit mention of prior public information on VFV land applications, the possibility to object to these, and the need to verify whether or not the land is actually vacant. Chapter II also mentions the need to specify in the application forms 'whether the lands are in fact vacant, fallow and virgin lands'. But it fails to clearly define procedures to verify land claims on the ground. Article 48 of Chapter 5 of the VFV land management rules also mentions that the grant may be revoked if grantees fail to implement their proposed project and comply with the rules. It also refers to the Central Committee who shall conduct 'constant supervision of the land utilization or cultivation by the person granted rights'.
  - **Checks and balances:** these are necessary given the high potential for collusion between private actors or government in respect of mutual interests. The CCVFVLM cannot to be simultaneously in charge of land allocation and of the associated monitoring. Given the high risks of a conflict of interests, monitoring needs to be conducted by another institution in order to create a check-and-balance relationship conducive to transparency and to responsible agribusiness practices. This is a basis to establish a monitoring and evaluation system that would be responsible to scrutinize the performance of the companies and their commitment to social and environmental safeguards. The underlying objective of this M&E system is the need to regulate much-needed investments in the agricultural sector in order to promote development with equity.
  - Avoid the criminalisation of informal occupancy of lands
- ⇒ Concerning the legal framework.

- It is also necessary to **develop an umbrella land law**, based on the guidelines and principles of the over-arching National Land use Policy. This process could mobilize a genuine and inclusive, multi-stakeholder public consultation process. This law would need to address the unresolved gaps such as the recognition of customary tenure and mechanisms for conflict resolution and accountability of the authorities involved in land administration. It could also address contradictions in 'overlaid' laws and should aim to harmonize the existing pieces of legislation including the sectoral laws such as the Farmland Law, the VFV Land Management Law, the Forest Law, and so on, to ensure consistency. This would be particularly pertinent for the recognition of local land and resource rights which exist at community level but may not have been registered formally. One crucial issue involves a need to address the gap concerning forest areas that are 'non-public forest estates'. This could include the revision of land use categories (see below).
  - Revise the definition of land categories and the procedure to convert land categories.
- ⇒ Applying sufficient land tax on the VFV land grants which may be high enough to dissuade land speculation (eg: an annual tax of 5 to 10 percent of the land's estimated value)
- After the moratorium, if the government is willing to promote agricultural investment and development through LSLA, clear procedures could be established to identify and monitor large-scale agricultural land acquisitions in ways that promote responsible agricultural investment. This includes a respect for smallholder farmers' customary tenure, the effective participation of women, an appropriate and enforceable legal framework, support and mediation from local authorities, affordable access to credit, and encouragement for the diversification of crops and livelihood activities (MRLG 2017).
- ⇒ Return of land and conflict resolution
- Building on the agricultural development strategy, which already plans the development of a clear legal and institutional framework describing how different mechanisms to address land conflicts can be used and possibly be integrated under one comprehensive system: it is crucial to improve conflict resolution processes at the ground level. The National Land Use Policy (NLUP) identifies the following mechanisms: (i) Alternative Dispute Resolution (ADR) at the local level with the involvement of farmers' associations; (ii) special courts; (iii) independent arbitration; (iv) regular courts; and (v) administrative adjudication. Clear procedures for each of these dispute resolution mechanisms will need to be developed.
  - Determine responsibilities and mechanisms to re-allocate reclaimed land to farmers, the State or third parties - identify land to be returned, and specify eligibility criteria to identify land recipients.
  - Ensure that the composition of the land reinvestigation committee does not create conflicts of interest: it is often the case that committee members are themselves directly involved in land confiscation.
  - Integrate the basic principle of 'adverse possession' into conflict resolution processes. This supports claims of legal ownership based upon a history of possession or occupation of the land without the permission of the legal owner.

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## Endnotes

<sup>1</sup> The land transactions in respect of VFV land less than 50 acres were important in terms of number (n=4,802, 57 percent of the total) but did not represent a significant share of the total area (92,351 acres = 2 percent of total)

<sup>2</sup> Through the meeting of the first Union Parliament's (Pyidaung Su Hluttaw) fourth normal session, 8 August 2012

<sup>3</sup> Duties and Rights of the Central Committee for the Management of Cultural Land, Fallow Land and Waste Land (1991), issued by the State Law and Order Restoration Council, Union of Myanmar. Notification No. 44/91.13 November 1991, and Procedures conferring the right to cultivate land/ right to utilize land (1991), issued by the State Law and Order Restoration Council, Union of Myanmar. Notification No. 1/91.16 December 1991

<sup>4</sup> The Ministry of Agriculture has been transformed into different structures and titles such as the Ministry of Agriculture and Forests (MoAF), the Ministry of Agriculture and Irrigation (MoAI), and the Ministry of Agriculture, Livestock and Irrigation (MoALI). MoAF existed during the socialist period, MoAI during the SLORC/SPDC military rule and MoALI during the democratic republic government of the present day. The use of the ministry title in this study will be in accordance with the respective political period

<sup>5</sup> The amount of land grabbed was recorded as 247,077.06 acres by the Parliamentary Land Confiscation Investigation Commission during the time of the previous 2011-2015 quasi-civilian government. This figure is probably underestimated and does not include the land grabbed by the military prior to 1988

<sup>6</sup> According to the Parliamentary Land Confiscation Investigation Commission, there were 452 cases of complaints about land loss related to the MoAI, and the problems caused by dam construction constituted 233 cases, over 50 percent of the whole number that were a ministry responsibility

<sup>7</sup> Both laws are in a process of revision

<sup>8</sup> The Naypyidaw Council or Regional or State government can approve or reject applications for the right to work on vacant, fallow and virgin lands not exceeding 50 acres, by rural farmers and families wishing to carry out manageable agricultural projects

<sup>9</sup> A special permit allowing the land user to use the land for purposes other than agricultural

<sup>10</sup> A crony company is a company with direct links to military personnel or their family members and therefore accessing specific privileges in terms of business licence or land as in these instances

<sup>11</sup> In fact the figure is much larger but we could not access more accurate figures and it was also not the main purpose of this investigation into agro-industrial land transactions

<sup>12</sup> - which are slightly different from those resulting from our own computation because they do not differentiate between small and large land transactions as we did

<sup>13</sup> The point does not reflect the actual location of the concession but the centre of the Township. The size of the point is in proportion to the total area of VFV land on agro-industrial land granted in that particular Township

<sup>14</sup> For a detailed analysis of these reports, please refer to UST, Pyae Sone and Diepart 2017

## Annexes

### Annex 1 - Brief chronology of the political economy in Myanmar

Period	Political Regime	Economics and Agricultural Policy Measures
1886-1948	British colony	Free enterprises and little intervention by Govt. With over 7 million MT of rice exported, market leader in the world.
4 January 1948	Independent, civilian govt.	Economic nationalism and free market mechanism
Up to 1962	Parliamentary democracy	Economic nationalism and free market
1962 to 1974	Military coup, Revolutionary Council	Nationalism and Burmanization; total self-reliance period. Socialist land tenure system;
1974	Socialist Republic of the Union of Burma (military-led)	Socialist economic system; centralized planning; self-reliance and command economy; civil service structure started deteriorating
1974 to 1988	Socialist Republic of the Union of Burma; Peoples' Council Govt.	Isolated command economy; period of economic stress; import substitution; industrialization; the country fell to LDC status
1988	Political upheaval; military took over the country on 18 September 1988	Abolition of socialist economic systems; adopted swing-door policy under market-oriented economy
1988 to November 1997	State Law and Order Restoration Council (SLORC), military rule	Partial liberalization of economy; opening of economy to foreign firms
1997 to 2011	State Peace and Development Council (SPDC) military rule	Transition to market economy; crony capitalism; poverty incidence measured at 26 percent (2011) slightly falling from 32 percent in 2005 at the Union level
2011 to March 2016	The Government of the Republic of the Union of Myanmar	Parliamentary democracy, quasi civilian govt.; market economy; economic, financial, and monetary reforms and trade and investment liberalization; crony capitalism; land grabbing and corruption continued; could not move poverty line
November 2015	General Election and National League for Democracy (NLD) opposition party wins with landslide victory	End of March 2016 witnesses the hand-over of power from the quasi democracy government to the Democratic NLD Party for the executive and legislative power
April 2016	NLD-led government and Parliament (Hluttaw) headed by the State Counselor Daw Aung San Su Kyi	Power transfer in April 2016

## Annex 2 - Life of a sugarcane plantation in a Zeyawaddy

Year	Events in land- based investments in the sugar industry
3rd Anglo-Burmese War (1885)	A Maharaja who fought with the British was honoured by the British government who granted a large amount of land in the vicinity of Zeyawaddy, Burma to his relict, Maha Devi. The grant emanated from Queen Victoria, British Empress, in recognition of the Maharaja's loyalty
	The Maha Devi passed the grant on to an Indian serviceman of great loyalty to her. This man became the owner and, with Indian labourers from Bihar, cleared the jungle on the land that had been granted (Zeyarwaddy) and converted it into paddy fields
1932	Mr. Rai Bahadur Harikar Prasad, son of the owner of the land that had been granted at Zeyawaddy, cultivated sugarcane instead of paddy. He used Indian tenants
1934	R.B.H Prasad constructed a sugar factory with the capacity to crush 1,000 tons of sugarcane per day. This factory was constructed by the Duncan Stewart Company of Scotland, and began to operate in 1935
1937-38	Production of white sugar exceeded 18,000 tons
	The cane that was crushed came from Taungoo and Yamethin Districts and acreage rose to 34,714 (1937-38). This represented the largest cane and sugar output in Myanmar at that time
1954	The factory was nationalized by the New Independent Myanmar Government. It was managed by the Ministry of Industry No.1 (MI-1)
Date unknown	The factory was transferred to the MoAI from MI-1
Date unknown	MI-1 took back the factory from the MoAI
Date unknown	MI-1 leased the factory to a private company
2010	An initial Indian population of approximately 6,000 has increased to nearly 200,000 today

### Annex 3 - Life of a rubber plantation in Taninthary Region

Year	Milestones for old natural rubber estates
1908	Under British colonial rule, land was granted to the applicants who were mostly British companies. Crown Rubber Co. was the pioneer
1920	The number of rubber estates increased in terms of the number of companies and the acreage
WW II	Plantations were destroyed. Local people grabbed the land and estates were divided
Japanese rule	The Japanese rulers recognized the original owners
Post WWII	Rehabilitation of natural rubber estates
1964	The military (Revolutionary Council) nationalized the large rubber estates
Until 1988	State-ownership continued during the socialist rule
1988-2010	Political upheaval and military rule continued (SLORC/SPDC); rubber estates were under the ownership of the MoAI; the Ministry of Industry and the military-operated economic cooperation and holdings took some rubber estates from the MoAI
2010	Production failed under the MoAI and the Ministry of Industry (1)
	The military government privatized some rubber estates operated by the ministries
Date unknown	An authorized minister sold rubber estates to his close interest groups

### Annex 4 - Land granted under the military regime to agro-business groups to cultivate paddy in Myanmar (as of February 1999)

	Company/ Department	Township	Place	Acres granted	
Ayeyarwady Region	Myanmar Group	Billion	Nyaungdone	Nyaungdone Island, Baw Di east	41,808
			Maubin	West Ayeyarwady	
			Pantanaw	Kwin	
	2	Yuzana Group	Pantanaw	Moegoke-Di Doke south	20,380
			Nyaungdone	Ah Ywe Kwin	1,500
	3	Olympic	Pantanaw	Moegoke-Di Doke north	20,650
			Danubyu	Ye kyaw kwin	
	4	Wawawin Co.	Maubin	Nyaungdone Island	13,880
	5	Service International (SI) Group	Nyaungdone	San Kin	30,000
			Danubyu		
	6	Ayeyar Shwewar	Thar Baung	Sitpin Gyi, Htanpin Hla	
			Ye Kyi	Kan Gyi Daung kwin	33,547
			Kyaung Kone		
			Kan Gyi Daung		
	7	Sein Thra Phyu Agric.	Maubin	Nyaungdone Island	460
	8	Myanmar Golden Star	Maubin	Thone Gwa Island	5,600
	9	Orchard Agric.	Nyaungdone	Nyaungdone Island	5,050
	10	Shwe Naga Min Agric. Co.	Maubin	Nyaungdone Island	1,000
	11	Arkar-Oo Pantanaw	Pantanaw	Baw Di West	5,080
12	Myanmar Rice Trad- ers Asso	Pantanaw	Baw Di West	5,082	
13	Toetetaung Agric. Co.	Pantanaw	Baw Di West	470	
14	Golden Green Agric.	Kyaung Kone	Ye Tar Gyi Gyi Aine	5,556	
15	Klo Sein Agric. Co.	Inn Ga Pu	Klo Sein	5,858	
16	Military camps, West- ern South Command	Thar Baung	Sit Pin Gyi	2,075	
17	U Saw Win	Thar Baung	Sit Pin Gyi	1,000	
18	U Tin Shwe	Mau Bin	Nyaungdone Island	450	
19	Landmark Construc- tion & Engineering Co.	Aine Me	Aine Me island	3,923	
<b>Total</b>				<b>203,369</b>	

Yangon	1	Ministry of Home Affairs	Taik Kyi	Sin Gyan	2,000
	2	Yangon City Development Committee (YCDC)	Taik Kyi	Sin Gyan	1,500
	3	Dagon International (Agric.)	Htanta bin/TK		18,000
	4	Golden Plough & Agric. Mechanization Dept.	Taik Kyi	Sin Gyan	2,080
	5	Steel Stone Group	TK & Htantabin		5,000
<b>Total</b>					<b>28,580</b>
Magwae	1	Myanmar Billion Group	Min Bu	Sa Pho	29,000
	2	Yu Za Na Group	Min Bu	Kyi Kan	30,000
			Min Hla	Kan Boke	
	3	Service Int'l (SI) Co. Ltd.	Nga Phe		40,000
			Sa Lin		
	5	Shwe Family	Sin Baung We	Ko Pin	10,000
	6	Shwe Ta Zin Syndicate	Sin Baung We	Thar Zi	20,000
	7	Aung Htaik Min Co.	Taung Dwin Gyi	Ye Twin Gaung	7,000
			Aung Lan	Shwe Pan Taw	
	8	Olympic Co.	Sin Baung We	Aye Ka Yit	5,000
9	Asia World Co.	Sa Lin	Te Bo Kan	10,000	
10	Dagon Int'l	Pwint Phyu	Ye Boke Gyi	36,000	
<b>Total</b>					<b>198,400</b>

Source: The Mirror 19 January 1999

**Annex 5 – Allocation of forest and virgin lands to agro-business companies for palm oil plantations in Tanintharyi Region (total area of land granted to individual companies from 1995 to the reporting period, 25 November 2013)**

Companies	Allocated acres	Planted acres	With or without mill	Remarks
Yuzana 1	144,787	144,787	60 FFB <sup>†</sup> ton/hr (1)	In Kawthoung Township, Malaysia-made CPO mill, refinery mill (1) in Yangon
Annawa Tun	37,955	19,756	60 FFB ton/hr (1)	Yuzana company in a different name
Shwwe Myay Yadana	29,100	6,600		Yuzana company in a different name
Yuzana 2	138,707	29,734		In Bokepyin Township
Pokaung 1	2,002	2,002	Without mill	Sells FFB to CPO mill in Launglon
Pokaung 2	27,550	12,100	Without mill	In Kawthoung and Karathuri Townships
Htoo trading	700,000	2,075		Surrendered the land after timber extraction and held the land scaling down to 30,000 acres; U Tayza's company
Myanmar Naing	70,000	No planting	No palm oil estate nor mill	Company belonging to the son of a former senior general in the military government
Dagon Timber	18,601	13,378	Without mill	Sells FFB to Yuzana CPO mill
Aungzin mar	10,000	5,690	Without mill	Sells FFB to Yuzana CPO mill
South Dagon	13,245	8,646	30 ton/hr mill (1)	Mill structures locally fabricated; 150 T/d refinery mill (1) in Yangon
Taung Pine Shwe Yaung	7,200	150	Without mill	
Shwe Kan Bawza	39,314	7,205	2 ton/hr mill (1)	Locally-made small mill
Myan Naing Myint	2,308	2,308	Small CPO mill (1)	
Asia World	10,200	10,200	Small CPO mill (1)	
Shwe Than Lwin	1,463	1,438	Hand-made CPO mill (1)	
Vintage 1	400	400	Hand-made CPO mill (1)	
Annawa soe moe	6,000	6,000	Without mill	Sells FFB to CPO mill in Launglon
Steel Stone	3,000	2,067	Without mill	Sells FFB to CPO mill in Launglon
Shwe padoma	1,200	300	Small mill	
Evergreen	7,000	-		
Super One	750	750		Sells FFB to Yuzana CPO mill
Shwe Ahhon	49,600	246	No mill	Applies to DICA for JV with Malaysia; the company of the former Chief of the Police Forces; if focus on palm oil rather than timber extraction, it will be a big player
Arm Strong	1,500	375	No mill	
Aung Ye Phyo	200	200	No mill	
Coastal Development	2,000	200	No mill	

Auto Industrial Group (AIG)	133,600	100		100 percent investment by Korean company in partnership with the Ministry of Agriculture on a product share basis
Taw Win Shwe Pale	42,200	350	No mill	Partnership plan to work with a Malaysian company, named as Prestige Plantation Company, with proposed equity share of 80 percent from Malaysia; applied to DICA
Pyae Phyo Htun	21,895	3,635	Small mill	
Vintage 2	1,520	720		Start to plant
Thein Khun	500	405		Start to plant
Sein Lan Htar Nay	5,400	150		Start to plant
Myanmar Aveior	775	775	No mill	
Tat Nay	1,500	1413	Small mill	
CKB	2,000	1,876	Small mill	
Maung Wait	1,020	1,020		Abandoned due to a personal problem
SI	42,200	40		Applied to DICA for partnership with a Malaysian company involved in timber extraction in Africa; local people suspect it will be exploiting timber instead of operating as a palm oil estate as stated
Advanced sea-food	17,000	450		
Dawai Company	20,000	-		
Sein Pyae Shan Aung	10,000	-		
MEC	6,539	6,539		Myanmar Economic Holdings
Myanmar Awba	18,500	-		

Source: Regional Department of Industrial Crops Development, MoAI, Dawai.

FFB= Fresh fruit bunch (commercial output of palm oil)

CPO = Crude palm oil extracted from FFB

DICA= Directorate of Investment and Companies Administration

FDI= Foreign Direct Investment

Total land acreage allocated - 1,648,731; Total land acreage planted- 294,080 as of November 2013

## Annex 6 - Other types of land use in reserved forests and protected public forests (November 2012)

Category of land use	Acres
Gold/minerals	7,883.45
Teak/hard wood (private plantations)	281,199.53
LSLA to ABCs for rubber/sugarcane/ other crops	370,731.54
LSLA to ABCs for palm oil	458,585.00
Dam water reservoirs	348,233.40
Encroachment (by local farmers and others)	1,681,667.62
Total	3,168,300.54
Percentage of total forest land area	7.71

Source: Forest Department, Ministry of Environmental Conservation and Forestry (MoECAF) now changed to Ministry of Natural Resources and Environmental Conservation (MoNREC)

### Annex 7 - Land developed and cultivated by agro-business companies as of 30 September 2016

R/S	No. of Cos.	LSLA acres	% land developed	Palm oil	Rubber	Sugar cane	Rice	Pulses	Oil seed crops	Maize	Other	% planted area
NPT	5	9695	44.29			12		7			4,003	41.48
Kachin	113	918509	10.1		5,557	299	1,654				31,897	4.29
Kayin	1	1011	0.38									
Sagaing	30	342193	2.5		235			3,955	393	293	31,36	2.34
Tanintharyi	47	369164	56	197,022	8,016						796	55.75
Bago	14	14227	44.6		653	204	1,912				1,082	27.07
Magwae	19	88039	57.6				40	3,316	7,945		3,561	16.88
Mandalay	10	17420	21.6			571		229	162		361	7.59
Yangon	9	11911	83.6		371		771				371	12.7
Rakhine	10	112398	12.2		1,340						8,635	8.87
Shan	65	209952	23.4		11,767	462	31	30	445	9,106	11,796	16.02
Ayeyarwady	57	190482	65.5		7,166		5,129				1157	7.06
Union	380	2285001	25	197,022	35,104	1,548	10,156	7,537	8,945	9,399	66,795	14.73

### Annex 8 - The two companies allocated the largest land areas in Myanmar, 2010.

Company	Region/State	Township	LSLA (acres)	Sub-total	
Yuzana	Kachin	Phar Kant	46931	224636	
		Tanaing	160443		
		Karmaing	17272		
	Taninthary	Kauk Thaug			210278
		Kamauk Gyi			
		Bokepyin			
		Kara Thuri			
	Magwae	Minhla	2617	2617	
	Ayeyawaddy	Nyaung Done	1402		
Pantanaw		19336	20738		
Annawahtun (Other name of Yuzana)	ditto	Kamauk Gyi, karathuri, Bokepyin	30900	30900	
Shwe Myae yadana (Other name of Yuzana)	ditto	Karathuri	25000	25000	
Total acres of Yuzana				514,169	
Htoo Trading Co.	Kachin	Sin Bo	45770	45770	
	Taninthary	Taninthary	70625	70625	
		Bokepyin			
		Kamauk Gyi			
	Magwae	Pyint Phyu	6455	10037	
		Minbu	3582		
Shan-North	Yak Sauk	8050	8050		
Ayer Shwe Wah (Other name of Hott Trading Co.)	Ayeyawaddy	Thar Baung	22595	35319	
		Ye Kyi	7318		
		Kyaung Kone	1627		
		Kan Gyi Daunk	3779		
Total acres of Htoo Trading				124,031	

Source: LSLA allocated to companies and individuals, 2010, DAP report

### Annex 9 - Area of land allocated (acres) in three districts of Tanintharyi Region (as of the end of November 2012) for palm oil and rubber plantations

District	Fallow/Virgin		Reserved Forest/ Protected Forest		Total Acres	
	Applied	Allocated	Applied	Allocated	Applied	Allocated
Dawei	26,948	26,940	68,166.6	8,147.5	95,106.6	35,087.5
Myeik	76,873	76,873	556,833.0	9,194.7	633,706.1	86,067.7
Kawthaung	383,824	383,824	142,184.6	68,762.0	526,008.6	452,506.0
Total	487,637	487,637	767,184.2	86,104.2	1,254,821.3	573,741.2

Source: Office of the Tanintharyi Regional Government, December, 2012.

(Remark: Palm oil land is concentrated in Kawthaung District while natural rubber plantation land is situated in Dawei and Myeik Districts)

*The **Mekong Region Land Governance** Project aims to contribute to the design of appropriate land policies and practices in the Mekong Region. It responds to national priorities in terms of reducing poverty, improving tenure security, increasing economic development, and supporting family farmers, so that they can be secure and make good decisions on land use and land management. MRLG is operating in Cambodia, Laos, Myanmar and Viet Nam since April 2014, with the support of SDC and the German cooperation. For more information on MRLG, please visit [www.mrlg.org](http://www.mrlg.org).*

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