



Briefing Paper

Land Tenure: A foundation for food security in Myanmar's uplands

1. Background

1.1 Myanmar's uplands: The struggle for food security

The hills and mountains that are Myanmar's uplands range southeast from the Himalayan plateau to form an arc around the country's central plains and river delta. When defined as areas over 1000 feet above sea level, the uplands account for 66% of the country's townships and are home to 42% of the national population¹. All of the nation's States and parts of Divisions are dominated by upland areas inhabited by ethnic groups such as Chin, Karen, Kachin, Kayah, Shan and others.

Smallholder subsistence farmers in the uplands cultivate rice, maize, or millet in traditional rotating fallow systems. But these agricultural systems are subject to a number of stresses. As populations increase and are concentrated into larger villages, land becomes scarce. About 10% of the country's cultivated land area is farmed on slope of greater than 10 degrees which are vulnerable to soil erosion². Shortened fallow periods result in declining yields and increased vulnerability to land degradation. Conflict-affected families in some

upland areas have not yet fully recovered livelihood assets lost during decades of civil strife. Farmers still seek viable alternatives to the opium economy which until recently dominated areas of Kachin and Shan States. Local economies are increasingly affected by regionalization due to porous borders with neighboring countries, presenting both opportunities and constraints for subsistence farm families.



As a result of these and other factors, upland populations are not food secure. A UNDP survey in 2007 found nearly half of the rural population of Chin State to be in food poverty³, and 22% of northern Shan and 23% of eastern Shan households, compared to a national average of 10%. WFP in selected areas of Kokang in May 2010 found 64% of households to be food insecure, with 22% of all households severely food insecure⁴.

Access to land for smallholder farmers is a critical foundation for food security in Myanmar's uplands. Land tenure guarantees seem to be eroding and access to land becoming more difficult in some upland areas. If this trend continues it may have negative impacts for food security and undermine environmental and economic sustainability. This briefing paper explores the relationship between land tenure and food security, as well as key institutional and other factors that influence land access and tenure for smallholder farmers in the uplands today.



1.2 Landlessness and land-poorness: Impact on food security

Inadequate access to land is an important contributor to food insecurity in the uplands and indications are the trend may be increasing. According to a comparison of surveys, the estimates of landless households in Myanmar range from 35% to 53% of the national rural population⁵, which can roughly apply to the uplands as well. While population densities are lower and land is less scarce in remote mountainous areas, the land tends to be of poorer quality, requiring more extensive areas of land per capita to be farmed sustainably. In some upland areas, resettlement and concentration of villages may enable easier access to social services but constrains access to land. As competition for land increases, for example through allocation of large tracts of land to commercial agricultural enterprises, smallholder farmers are vulnerable to loss of not only agricultural but also grazing land. With loss of access

to grazing land, farmers lose the ability to raise draft animals as well as income from raising cattle.

When upland farm families are unable to meet food needs from their land they use a number of coping strategies⁶. Households first try to find work as agricultural or unskilled labor, migrating temporarily or permanently, even to neighboring countries, if there is no labor market locally. Migration might be to areas with possibility to extract forest resources, to engage in artisanal gold mining, or to work in gold, gem or mineral mines. Another common coping mechanism is to increase extraction of common property resources such as orchids, herbs or fuelwood from the forest near the village, which may lead to depletion of these resources. Families may also borrow food, go into debt, and/or ration food intake.

2. Factors influencing upland land tenure

2.1 Customary land tenure institutions

Land tenure in the uplands has historically been regulated by customary law. During the British colonial era, customary law was formalized under the indirect administration of upland areas, a practice which continues to an extent today. Though all laws passed since 1962 extend to the whole country, customary tenure and customary conflict resolution mechanisms may be taken into consideration in upland land disputes up to today. This is partly by default, since most upland rotating fallow fields are not formally or fully registered with the Settlement and Land Records Department (SLRD) of the Ministry of Agriculture and Irrigation (MoAI), which is responsible for the certification and tax assessment of agricultural lands.

Customary land tenure institutions vary between ethnic groups and geographic regions. In parts of Chin State, for example, land management is collective as the village cultivates large hillside plots in rotation, which are cleared collectively, then cultivated in specific individual household plots defined (and inherited) within the large collective area.

The standard and most widespread rule of customary law is *dama-ucha*, which means that the one who cultivates the land (literally “wields the machete”) becomes the owner. In integral traditional systems the village headman or a committee of elders are responsible for land allocation and resolving land disputes, land use rights are often inheritable (and often patrilineal in ethnic minority cultures), and the boundaries of plot

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Room (205), 2nd Floor,
Tower (B), Diamond
Condominium, 497 Pyay
Road, Kamaryut Township,
Yangon 11041,
Tel: 523930-34 Ext: 3205



ownership of each household are generally known by all villagers.

However, customary institutions---including those that regulate land tenure---are in transition. So too are agricultural practices. Both the agricultural and social systems constantly respond in innovative ways to the stresses mentioned above or to other changes in the natural and institutional environment. In those areas of the country that have been subject to conflict, as villages are resettled and recombined, not only traditional land access mechanisms but also social safety networks have been weakened. Yet strong social structures are critical to help villages

and local government administrators maintain and support equitable access to land for farming families, which in turn promotes agricultural productivity and food security.

Key factors that influence land tenure in the uplands:

- Customary tenure and statutory institutions do not always support each other
- The commercialization of agriculture presents both opportunities and constraints for upland smallholder farmers
- Current mechanisms for registration of agricultural and forestry land are positive but face constraints for application on a large scale
- Policy support for development of upland smallholder farming systems has not yet reached its full potential

2.2 Government land management institutions

In Myanmar, about half of the country's land area of 167 million acres is classified as forest land and managed by the Ministry of Forestry (MOF), while one-fourth is classified as agricultural and managed by the MoAI. Of the land classified as forest, about half (or one-quarter of the total national land area) is currently under status of Reserved Forest or Permanent Forest Estate, managed exclusively by the state. The remaining one-fourth of the country's land is classified as 'other', made up of categories such as waterways, grazing land, mining land, settled land, etc. Upland farm, forest and *taungya* (or rotating fallow land) is often land classified as agricultural, but may also be classified as forest land.

In Myanmar, though all land belongs to the state, on agricultural land farmers are given land use rights to cultivate their holdings and profit from the yields.

Though the use rights are inheritable, by law the land may not be transferred, mortgaged or used as collateral. Those with use rights must cultivate the holding or risk losing it.

Land Management Committees responsible for allocating and ensuring proper use of land classified as agricultural are composed of staff of the Settlement and Land Records Department of the MoAI, the General Administration Department under the Ministry of Home Affairs, and township, state/division and national chairs of the State Peace and Development Council, among others.



The last two decades have seen a radical change in Myanmar's economic orientation from a closed socialist to an open market economy. Since the early 1990s both the Ministry of Agriculture and Irrigation and the Ministry of Forestry have articulated plans and policies that reflect the new openness to the market economy and engagement of the private sector in development of the country's natural resources. The Ministry of Forestry has set goals of engagement



for local populations and promotion of social forestry, with a target of 10% of the country's total land area

for multiple use under agroforestry and community forests, in effect to be managed by smallholder farmers.

2.3 The commercialization of agriculture

To promote agricultural growth as one of the pillars of the economy, the government is encouraging expansion of area cultivated and the development of fallow lands through allocation of land to commercial enterprises. The objective to expand the area of agricultural land under cultivation was set partly on the basis of the 1990 land use statistics which showed that about 20 million acres of land classified as agricultural was not being utilized efficiently or at all, and was thus categorized as “culturable wasteland.”

In what has become known as the “Wasteland Instructions” of 1993, a company may now apply for up to 5000 acres of agricultural land at a time, for a cumulative total of 50,000 acres, to cultivate prescribed industrial perennial crops such as rubber and oil palm under thirty-year use rights⁷. (This is in contrast to socialist prescriptions in effect until recently, under which one household was limited to 50 acres maximum use rights for paddy cultivation, and less for most other crops.) By 2010 a total of 1,728,269 acres had been reported allocated to 216 companies in 11 States and Divisions⁸.

The commercialization and expansion of agriculture presents both opportunities and threats for smallholder farmers in the uplands. Smallholder farmers may engage in contract farming with companies that provide agricultural inputs and a market, an advantage where agricultural inputs are otherwise difficult to access. But the contracts may further marginalize subsistence households if they do not guarantee land tenure or if they place the burden of risk on the farmer rather than the company. The benefits of contract farming for upland smallholder farmers are not yet proven in the uplands of Myanmar.

Taungya land that is currently fallow reverts to the category of “culturable land”, or “wasteland” and is thus regarded as available for allocation to commercial enterprises. As it is not always formally registered, traditional grazing land is also at risk of being considered “wasteland.” As they are dependent on extensive tracts of land with fallowing built into agricultural systems, upland rotational fallow farming households are particularly vulnerable to loss of access to land.

Most taungya land is not formally registered, certified or mapped. This makes land tenure vulnerable in the face of the rapid transition to a market economy and the commercialization of agriculture.



2.4 Land Registration through the SLRD

Though *taungya* land is assessed and taxed annually on the basis of village records, SLRD ground surveys, and formulas for estimation, most *taungya* land is not formally registered, certified or mapped. SLRD field notebooks which indicate village boundaries through sketchmaps and landmarks, as well as the total amount of land cultivated and a list of holdings per household in that year, are kept for each village and

updated annually. However, the actual boundaries of each household holding are not indicated. This field notebook is the only formal documentation of *taungya* land kept by the SLRD.

Though the field notebook may be used by the Land Management Committee as partial evidence to resolve land disputes, it cannot be used in court as the actual holdings are not specified. This generalized documentation of *taungya* holdings

has been sufficient so far, as until the current commercialization of agriculture, *taungya* land has not had much economic value, and has been regulated according to customary tenure. Yet

in the face of the rapid transition to a market economy based on commercialization of agriculture and land, upland smallholder farmers' *taungya* land holdings are vulnerable.

2.5 Community Forestry Instructions

The Community Forestry Instructions were issued the same year as the Forestry Policy in 1995, to engage local populations in management and protection of forest. This is a landmark Instruction, as it is the first time that households are able to obtain certified use rights to forest land. In a move to share responsibility and benefits, forest user groups (FUGs), on the basis of a management plan approved by the Forest Department, may gain thirty-year use rights which are documented in a Community Forestry Certificate (CFC).

Since the release of the Instructions, government staff, bilateral and UN agencies, and a number of NGOs have worked to apply the instructions in all geographic zones of the country, including the uplands, delta and dry zone. Due to efforts of communities, government departments and development agency partners, 41458 hectares of Myanmar's land have been designated community forestry by 2009⁹.

The Instructions are a positive and welcome mechanism for smallholder upland farmers to gain land access guarantees. According to the results of a multi-stakeholder review workshop in 2009, in addition to access to forest land and products, community forestry has provided upland farmers with benefits such as enhanced social cohesion, increased knowledge and skills, and environmental services through protection of water sources¹⁰. Yet it has not yet been applied as extensively as it could be. Constraints on wider application of the instructions include capacity of local farmers, forestry staff and supporting aid agencies to implement the complex series of steps leading to certification. A particular difficulty is creation of the forest management plan, as it requires long negotiation within the community as well as between village, forestry personnel and authorities, and strong facilitation skills for those who are supporting the process. Trust and confidence is needed on all sides for community forestry to be successful.

2.6 Rotational fallow systems and policy

Rotational fallow systems in the uplands are diverse, complex and adaptive. Upland farming strategies incorporate annual and perennial crops as well as livestock, use forest and field, and rely on gathered, hunted and cultivated products, sometimes in collective and sometimes in individual tenure arrangements. They also rely on periods of forest fallow alternating with periods of cultivation.

While land registration through the Ministry of Agriculture and Irrigation

and the Community Forestry Instructions under the Ministry of Forestry are both positive policies and practices that help farmers secure land tenure, they are constrained by several practical and procedural factors. Registration of both kinds of lands is costly, time-consuming, and most often a confusing process for smallholder farmers.

And, while the agricultural land registration mechanism and the Community Forestry Instructions are each useful in their own right, they may not provide a comprehensive

Current mechanisms for registration of agricultural and community forestry land, though they are positive practices, may not provide a comprehensive framework appropriate for tenure guarantee needs of rotational fallow systems.



framework appropriate for the tenure guarantee needs of rotational fallow systems. The current mechanisms are bound by concepts of agriculture on the one hand and forest on the other, and may only be applied on land classified respectively as agriculture and forest. Upland villages may be cultivating taungya or even permanent paddy on land classified as forestland, or establishing or protecting forest on land classified as agricultural. Because they are constrained by the division between agricultural land and forestry land, the current mechanisms may not adequately support and protect the tenure of diverse upland systems that depend on flexible--- and alternating--- use of land for agriculture, forestry, and agroforestry.

Land classification boundaries themselves, set a century ago under colonial administration, in some cases no longer reflect the actual use of land in question, nor even match ecological characteristics of the land. While the current system of land classification was originally designed to protect the farmer, it has the unintended impact today of constraining sustainable land use and

land tenure guarantees for upland farmers.

The government's policy for development of the uplands is to transform rotational fallow (*taungya*, or shifting cultivation) to permanent farming systems. Upland systems are in transition and constantly adapt to changing conditions to maintain productivity. However, depending on the context, creating permanent plots may not be the best or only approach to helping upland agricultural systems become more productive and sustainable. Moreover, if not carefully implemented, such a policy could have unintended negative impact on upland farmer access to land.

In some cases it would be more accurate to view upland rotational fallow farmers as stewards of the forest, or as managers of rotational forest¹¹. A shift in perspective away from a focus on simply making agriculture permanent and towards a focus on sustainable and productive forest and land management---whether or not it includes components of rotational fallow---would enable policy support for holistic and locally appropriate tenure institutions.

Support farmers' own innovations for productive and sustainable integrated agroforestry systems that incorporate both rotational fallow and permanent cultivation.



3. Moving toward land tenure security for a food-secure future

3.1 Tenure and institutional frameworks

Operating in a situation of rapid-onset and chronic stresses, upland households in Myanmar need support of government and non-governmental agencies and the private sector for material inputs, knowledge, skills and institutional frameworks that will help them in these transitions without undermining household food security. The primary institutional support needed is land tenure guarantees. The parameters in policy and practice that could promote secure land tenure and thus build a foundation for food security in the uplands might have the following characteristics:

- A holistic policy framework that recognizes that upland farmers use both forest and agricultural land, sometimes in parallel and sometimes in rotation
- A legal framework that formalizes customary land tenure patterns and is based on customary institutions for decision-making
- Tenure guarantees that are equitable and benefit the entire village, not just an elite

- Mechanisms for registration and formalization of agriculture and forestry land that are simple, practical and, ideally, integrate use of land for agriculture, forestry and agroforestry
- Tenure guarantees that are sufficient to enable farmers to resist encroachment and provide mechanisms for recourse
- Access to inputs for agriculture and forestry livelihood activities and guarantees of benefits accrued from these activities

A recent review of the agriculture sector supports greater access by marginalized households to land and resources:

The country has more than 7 million acres of potentially cultivatable land, some of which could be developed for agricultural production. However, national benefits in aggregate terms would be substantially higher if access to land and water resources is improved for small/marginal, landless and ethnic minority households. With improved access to skills and technology along with capital, poor and destitute households could come out of the vicious cycle of poverty within a short period of time¹².

3.2 Points for further consideration

Some points to discuss and actions to consider for moving in positive directions:

1. Regarding Engagement of Multiple Stakeholders:

- Engage multiple stakeholders in government, communities, private sector, and non-governmental organizations to move forward cooperatively on the points set out here, through forums for sharing information and taking action
- Strengthen the participation and involvement of the upland farmer within local dialogue and multiple stakeholder forums
- Recognize and honor the cultural value in ethnic societies of traditional land management practices and the social systems that support them, as well as the economic value of traditional knowledge and farmer innovations

2. Regarding Policy:

- Develop a comprehensive and unitary land use policy that is rooted in inter-ministerial cooperation and implemented through bottom-up planning
- Streamline and make equitable and accessible the current land tenure mechanisms
- Develop a new framework or tenure mechanism which supports diverse locally managed upland systems and validates customary tenure and rotational fallow as an agricultural practice.
- Strengthen and extend the application of the Farmers' Rights Protection Act
- Review the impact and effectiveness of the "Wastelands Instructions"

3. Regarding NGO/UN practice:

- Mainstream land tenure into uplands livelihood development projects
- Ensure that the tenure institutions and agricultural technologies promoted are equitable, supported by participatory planning, and based on farmer innovations

4. Regarding the Private Sector:

- Engage the private sector in a way that empowers smallholder farmers while meeting needs of commercial interests
- Strengthen regulation of private sector

5. Continued Learning:

- Through multiple stakeholder processes and action research, gain a deep and collaborative understanding of the situation of upland farmers, their agricultural innovations and how to support any positive trends
- Implement pilot projects for continued learning

Through access to secure land tenure guarantees and investment inputs, smallholder farmers, including *taungya* farmers in the uplands, can and must be enabled to make a meaningful contribution to national goals of Myanmar: a developed nation with agriculture as the base of a robust economy.



Endnotes

- ¹ National Commission for Environmental Affairs Myanmar (NCEA) and Project Secretariat UN Environment Programme Regional Resource Center for Asia and the Pacific. March 2006. Myanmar National Environmental Performance Assessment (EPA) Report. Asian Development Bank, Global Environment Facility, United Nations Development Programme (UNDP). p 32-33.
- ² NCEA. 2006. p 33.
- ³ UNDP. 2007. Integrated Household Living Conditions Survey.
- ⁴ World Food Programme (WFP). May 2010. An Analysis of the Food Security Situation in Selected Areas Across Kokang. Vulnerability Analysis and Mapping Unit (VAM).
- ⁵ Food and Agriculture Organization (FAO). Jan 2007. Identification and Assessment of the Poor, Food Insecure and Vulnerable in the Union of Myanmar. GCP/INT/952/EC-MYA (8). EC/FAO Cooperative Program. p 49.
- ⁶ United Nations Office on Drug and Crime (UNODC). Opium Poppy Cultivation in the Golden Triangle: Lao PDR, Myanmar, Thailand. October 2006. Pp 30-33. (Although this report details coping strategies of farmers who are affected by opium eradication, the strategies are the same for loss of land or other shocks to household food security.)
- ⁷ Government of the Union of Myanmar. September 1993. Duties and Rights of the Central Committee for the Management of Culturable Land, Fallow Land and Waste Land AND Procedures Conferring the Right to Cultivate Land/Right to Utilize Land.
- ⁸ Department of Agricultural Planning (DAP), Ministry of Agriculture and Irrigation (MoAI). 2010. Myanmar Agriculture in Brief. p 82.
- ⁹ Dr. Nyi Nyi Kyaw, Deputy Director General, Department of Forestry. April 7, 2010 Presentation at REDD workshop, Department of Forestry and UNDP. Naypyitaw.
- ¹⁰ FAO, Food Security Working Group (FSWG) and UNDP. 11-12 February 2009. Stakeholder Workshop for Community Forestry: Its experiences and future in Myanmar. Workshop Proceedings.
- ¹¹ Kerkhoff, E.E. and Sharma, E. (compilers.) 2006. Debating Shifting Cultivation in the Eastern Himalayas: Farmer Innovations as Lessons for Policy. Kathmandu: International Center for Integrated Mountain Development (ICIMOD).
- ¹² FAO, UNDP. August 2004. Myanmar Agricultural Sector Review Investment Strategy. Vol 1-Sector Review. p 36.

The Food Security Working Group (FSWG), established in 2003 is a network of over 47 national and international NGOs, working on improving practices related to food security in Myanmar. The FSWG supports its members with a range of services including: technical seminars/trainings, dissemination of information, access to resources, learning and exchange forums, representation, opportunities to collaborate in evidence-based research, and advocacy.

This briefing paper is the synopsis of a fifty-page report entitled *Upland Land Tenure Security in Myanmar: An overview*. For a copy of the full report contact the FSWG Coordinator at fswg.coordinator@gmail.com or Room (205), 2nd Floor, Tower (B), Diamond Condominium, 497 Pyay Road, Kamaryut Township, Yangon 11041, Tel: 523930-34 Ext: 3205