

Land Policy in Areas of mixed control in Myanmar

Towards equitable and sustainable land governance in Southeast Myanmar

October 2020





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This briefing paper is intended as an introductory information resource for policy-makers and officials, providing its readers with an appreciation of the key issues, challenges and options for co-operation on Land Policy in areas of mixed control in Myanmar. Its aim is to make a constructive contribution to equitable and sustainable land governance in areas of mixed control in Southeast Myanmar.

HIGHLIGHTS

There are over-lapping land governance systems simultaneously in force in areas of Southeast Myanmar subject to mixed control between ethnic armed organisations (EAOs) and the Union of Myanmar Government. This means that land governance in these areas can be complicated, not least for rural people seeking to secure their livelihoods.

To aid an understanding of land governance in mixed control areas, this briefing paper aims to:

- › provide an overview of the situation of land governance systems in mixed control areas of Southeast Myanmar, noting examples from both Union Government and Karen National Union Land Policies;
- › explain the challenges faced in terms of security of tenure, land title documentation and assertions of ownership and how this can cause insecurity; and
- › identify ways forward, recommending a set of actions the Union Government and EAOs could undertake to meet the challenges of security of land tenure in areas subject to mixed control during the interim period.



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INTRODUCTION

Across Myanmar, land and resource-related rights are of fundamental importance to the livelihoods and well-being of rural populations. Aside from being a principal source of livelihood income, land can have a religious significance and it can be part of an individual's or communities' identity.

What is Land Policy?

Land policy relates to all aspects of land administration and the management of land rights – for example leasing and ownership of land – and to land use and land planning.

Where can you find Land Policy?

Land policy is contained in statements and texts issued by relevant authorities, it can be set out in rules and regulations and laws.

Security in land rights is critical to the livelihoods and income security of rural people. A 2015 assessment by the Union Ministry of Planning and Finance and the World Bank found that poverty in rural areas is more than twice that of urban areas – with 38.8% of the rural population estimated to be poor compared to 14.5% of people in the towns and cities of Myanmar. The 2014 census noted 70% of the population of Myanmar living in rural areas - as rural people derive their income from the land, it is very important that they are able to do so securely and that their land rights are both clear and respected. Without this, there are significant risks of greater rural poverty. Another imperative for greater security in land rights relates to the effects of conflict.

Since the late 1940s, parts of Myanmar – including areas in the Southeast of the country - have seen on-going civil conflict. Whilst the majority of the country is controlled by the Union Government, there are a number of areas that are controlled by EAOs. There are also some areas that are subject to mixed control by Government and

EAOs simultaneously. It is in these areas of mixed control where land policy becomes complicated and it is, of course, in these areas where a majority of people rely on the land for their livelihoods and income. Where rural communities in mixed control areas are able to enjoy secure property rights the potential for conflict is reduced.

In these mixed control areas there is a need for greater mutual understanding of respective – Government and EAO - land policies and systems by relevant authorities and people in these areas.

Importantly, there is a need for co-ordinated approach on the part of relevant land authorities in mixed control areas. This briefing note provides an overview of what Land Policy looks like in areas subject to mixed control, it briefly sets out key parts of the Union Government land policy as well as the land policy of the Karen National Union in order to illustrate an example situation of land policy in an area of mixed control. It concludes by putting forward a number of simple recommendations for co-ordinated action between relevant authorities in areas of mixed control.

LAND POLICY IN MIXED CONTROL AREAS IN 2020

For people living in areas subject to mixed control by Government and EAOs, they often need to meet the administrative and land management requirements of two land policy systems. This can be very difficult – for example if required to secure the correct documentation for two systems that do not have the same requirements or use the same documentation. As with other contexts, failure to secure the correct documentation and permits for land use in mixed control areas can leave people vulnerable, and may result in them losing their land and their livelihoods.

In both Government and EAO controlled areas, there is the need to take account of the difference between policy – at central levels, which can be detailed on land management requirements – and practice - at local District and Township levels - where staff maybe under-resourced and the implementation of land related processes can be weak.



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THE UNION GOVERNMENT'S LAND POLICY

There are numerous pieces of legislation that give legal effect to the Union Government's land policies, some of these even date from the Colonial period.

Some of the main Union Government laws relating to land use date from 2012 – for example, the Farmland Law and the Vacant, Fallow and Virgin Land Management Law.

There are different Union Ministries and Departments involved in land administration and management – for example, the Ministry of Agriculture, Livestock and Irrigation maintains the Land Registry, including the cadastre system for recording land boundaries and the General Administration Department is responsible for land lease payments and in decisions on farm use rights.

As of mid-2020, the 2016 National Land Use Policy remains subject to review, including the recognition given to customary land title. A new National Land legislative bill is anticipated. The extent to which new land legislation recognises customary land title will be of significant interest to people in ethnic areas and land rights groups.

EXAMPLES OF EAO LAND POLICY

The KNU Land Policy (of December 2015) sets out the principles, rules and regulations relating to land on the part of the KNU. The KNU Land Policy covers land tenure rights and the categories of claimants of those rights. The KNU Land Policy recognises customary land ownership rights as well as processes of consultation and compensation in the public acquisition of lands and the rights of internally displaced people to reoccupy their lands.

Like the Union Government, the KNU also have a number of Departments who are mandated to have oversight of land issues, for example, the Karen Agricultural Department, the Karen Forestry Department, the Karen Justice Department and others. The KNU

Land Policy sets out the role of Central and Village Land Committees in determining allowable household and collective use of communal land and being responsible for local administration of land issues. The KNU operates a system of certification of land use with an accompanying Registry. In recent years, the KNU has issued 81,308 individual land titles and 185 community forest certificates to communities.

The New Mon State Party (NMSP) also have a land policy – under their Federal Policy, a drafting Committee has been working on a Mon Region Land Policy. NMSP's Land Department are engaged in the registration of land title for individuals.

THE 2015 NATIONAL CEASEFIRE AGREEMENT AND LAND

The Nationwide Ceasefire Agreement was signed in 2015 by leaders of the Executive, the Hluttaw and the Tatmadaw and eight Ethnic Armed Organisations, including the KNU (others signed the NCA in subsequent years).

In the case of mixed control areas that are subject to both NCA signatory EAO and Union Government land administration systems, it can be helpful to recall the NCA's under-takings and references that relate directly and indirectly to land management.

Article 9. f) ...avoid forcible confiscation and transfer of land from local populations,

and

Article 25 a) The Ethnic Armed Organizations that are signatories to this agreement have been responsible in their relevant capacities, for development and security in their respective areas. During the period of signing ceasefire and political dialogue, we shall carry out the following programs and projects in co-ordination with each other in said areas... [to include] projects concerning the health, education and socio-economic development of civilians.



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LAND IN MIXED CONTROL AREAS – THE CHALLENGES PEOPLE FACE

In mixed control areas, one of the main challenge that people face in respect of land is their security of tenure. Security of tenure is the certainty that their rights to land will be recognized by others and protected by the authorities.

Sources of security of tenure include customary land tenure as well as legal and administrative systems for land title registration. For example, the KNU Land Policy sets out a definition of communal land and the process for recognition, certification and recording in the relevant registry of communal land. A significant problem in mixed control areas is where customary land tenure is not recognized, for example, where Union Government authorities may have classified communal land (under the 2012 Vacant, Fallow and Virgin Land Law) as ‘vacant land.’

In context of mixed control it is possible to find farmers who have enjoyed communal land tenure and have been working a piece of land for years, often for generations – who do not have any official documents to prove they are entitled to farm the land – or – they may, for example, only have EAO land documents. They are at risk when their security of tenure is challenged – whether by authorities, by commercial companies or by military actors. In these cases, land may be appropriated and individuals may find themselves subject to legal action for trespass. In Mon areas, one of the main causes of complaint are larger companies, often in extractive-type industries, taking and utilizing large areas of land which is already claimed by ethnic communities, with official Government support that seeks to encourage investment.

Other challenges people face relate to the NCA and the extent to which the provisions and under-takings on land (noted above) are implemented and how respective Government and EAO land authorities do – or don’t - liaise with each other. Even subsequent to the signing of the NCA in 2015, incidences of armed conflict have caused the displacement of people from areas under mixed control, with cases noted of when conflict abates and people return to their homes,

they have found their land occupied, often by private commercial companies. These circumstances show up the challenges of two land policy systems prevailing in mixed control areas. Where tensions may be evident and trust between Government authorities, civil society and EAOs is strained, people are wary that if they take their land complaint to one side – the Government or the EAO – the other side may take against them.

Where two land policy systems are in effect in mixed control areas, it is important to note that there is often a power imbalance, with the greater resources of the Union Government being evident.

It is also important to note that there have been longstanding reports of the Tatmadaw have been involved – in different ways – in the appropriation of land, with complainants who have lost land to the Tatmadaw often finding it difficult to find recourse or to be able to afford legal action for compensation or return of their land. A frequent concern raised by people who have faced land disputes with the Tatmadaw is how and where to take a complaint (as well as weighing the potential risks in doing so).

THE WAY FORWARD – RECOMMENDATIONS

Taking a people-centred approach, there are steps that both EAOs and Union Government authorities with responsibility for land issues may take to work through the challenges of security of tenure for people in mixed control areas.

As in other areas of shared interest, improved co-ordination and engagement between respective Government departments, such as MOALI and MONREC, and EAO counter-parts can make a contribution to mutual understanding and trust-building in respect of land issues.

Recognizing the challenges of land administration in mixed control areas and the under-takings in the NCA, a simple framework developed at national level for co-ordination on land issues could be elaborated as a joint under-taking, this would set out basic principles



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and a process for handling land issues and complaints. Where land-use complaints and disagreements arise, early discussion and effort seeking to arrive-at negotiated settlements should be invested in by both competent Government and the Tatmadaw and EAO authorities.

Specific actions may include:

- › Investment in training and knowledge and operational capacity of respective local authorities on respective land management policies and the nature of land complaints.
- › Enabling face-to-face meetings between EAO and Government officials with competence over land decisions, where needed also engaging an appropriately ranked Tatmadaw officer on land management issues in mixed control areas.
- › Stronger adherence to NCA under-takings that have a bearing on land issues, specifically Article 25. under-takings on EAO, Government and Tatmadaw co-ordination on development projects, including ‘...projects which may have a major impact on civilians living in ceasefire areas.’

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