Land Law Reform Toward the Ultimate Resolution of Land Disputes in Myanmar: A Combined Legal Approach

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Land Law Reform Toward the Ultimate Resolution of Land Disputes in Myanmar: A Combined Legal Approach

(ミャンマーにおける土地紛争の終局的解決へ向けた土地法改革：総合的な法的分析)

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Abstract

This dissertation intends to identify the legal causes behind the land disputes raised by the Myanmar people, including the vigorous protests against the alleged "land grabbing" by the government, after the introduction of the 2008 Constitution of the Union of Myanmar. Chapter I presents the research questions and hypotheses based on typical land dispute cases, which the author experienced as a member of the governmental dispute resolution mechanism. Chapter II identifies the historical origins of the complex land law regime in current Myanmar as the accumulated results of negative inheritance of exploitative designs of formal law since the British colonial era. Chapter III empirically analyzes the perception gap between the government practice based on formal law and the local farmers' beliefs on their traditional rights, through interview surveys with government officials, farming households, and the members of dispute resolution bodies in four Townships in typical agricultural regions in Upper and Lower Myanmar. Chapter IV presents a comparative legal approach covering the land law reforms in plural States in India, which shares a similar historical background of legal development to Myanmar since colonial independence, but have chosen different legal designs in such reforms. Chapter V presents overall discussions based on the findings from the previous chapters, and also, makes suggestions for future land law reform in Myanmar by referring to Japan's legal experience. Chapter VI concludes this study.

In Chapter I, based on the review of preceding works in the field of law and development studies on the issues of land as well as the author's own experience of being in charge of land dispute resolution at the Special Scrutinizing Committee established by Daw Aung San Suu Kyi's administration in 2016, the research question is presented to identify the legal origins of the roaring land disputes raised by farmers after the introduction of the 2008 Constitution of Myanmar. To address this, a hypothesis is formed that the historical changes of formal law confuse the perception of government officers on the legal nature of "Cultivation Right" (*Lyae Yar Myae Loat Paing Kwint* in Myanmar term), which is the farmers' primary land rights under the current 2012 Farmland Law, while deviating from the people's sense of justice. Also, a related hypothesis is that the perception gap between the people and the government on the requirements for the proof of "actual cultivation" as an element of "Cultivation Right" constitutes another critical cause of

disputes, as the people insist their continued cultivation for many generations as the sole evidence of such rights, while the government tends to require documentary evidence.

In Chapter II, to identify the legal historical origins of the contemporary land disputes, the author has reviewed the historical changes of the farmers' rights stemming back to the pre-colonial "Bobapaing" rights provided in the legal code *Dhammathat*, which was formally eliminated by the British colonial land law unless the proof is done by documentary evidence. Instead, the British established a newly transferrable "Landholder's Right", which was a tenancy status of the state-owned land subject to the unilateral revocation by the government. This revocable status was succeeded by the post-independence 1953 Land Nationalization Act, and further weakened during strong state control under the 1974 Socialist Constitution, and inherited by the present "Cultivation Right" under the 2012 Farmland Law.

Chapter III presents an empirical survey through the interviews with a total of 8 government officials, 8 experienced farmers, and the questionnaires to a total of 120 farmers, to identify the details of the perception gap between the government and the farmers on the nature of farmers' land rights. Four townships are targeted in the survey, Ayeyarwaddy, Bago, and Mandalay Regions, and Shan State, which share a similar agriculture-based socio-economic status with a similar population size, but their legal historical background has a slight difference. The interview survey has found a clear perception gap: a majority of farmers believe that they hold "Bobapaing" rights to farmland, whereas government officials hold a common belief that the farmers can only hold the "Cultivation Right" only when formally registered under the 2012 Farmland Law, which is a mere tenancy status of state-owned land according to the 2008 Constitution (Section 37), which states that the State is the sole owner of the entire national land. Another discrepancy is found on the concept of "actual cultivation" (*Ahma Take Sight Pyo Chin*) and its method of proof as a fundamental requirement for the "Cultivation Right" title under the Farmland Law. While the majority of farmers require a substantive investigation based on the oral testimonies, the government side basically depends on the formalist approach to decide the facts of self-cultivation based on the documentary evidence such as land record and tax receipts.

In Chapter IV, to seek ways for overcoming the critical gap between the government formalism and the farmers' sense of justice as identified in the previous chapter, a comparative legal analysis

looks at the land law reform experiences in four States in India, namely, West Bengal, Uttar Pradesh, Jammu and Kashmir, and Kerala, each taking different paths of land reform due to the Indian 1947 Constitution, which placed the land reform matters under the concurrent list of federal-state jurisdictions. Among them, the legal design choice of Burma's post-independence 1953 Land Nationalization Act was the most comparable to Jammu and Kashmir, which attempted an "ownership to tillers" type reform that included all cultivating households as the beneficiaries. It is questionable, however, whether the legal status of the land title granted to farmers in Burma was comparable to the concept of "ownership" in Jammu and Kashmir.

It is also notable that India has experienced a dramatic path of constitutional changes in pursuit of a better consensus for the land reform, as a result of compromise between the progressive legislations in the state level and the judicial challenges from the conservative sect of landed class. Such serious constitutional debates have something lacking in Myanmar's present legal scene.

In Chapter V, an overall discussion is made to answer to the research question for identifying the legal causes of land disputes, in seeking for a better legal design of land law for the future of Myanmar. To narrow the perception gap between the government formalism and the farmers' historical belief on "Bobapaing" right as identified Chapter II historical review and Chapter III empirical study, the author contends, in light of the post-independence experience of land reform in India as analyzed in Chapter IV, that more active constitutional debates should be explored in Myanmar toward the national consensus in search for a batter balanced land reform policy. Such discussion should require an objective-based interpretation of constitutional provisions, beyond the literal formalist approach that the government practice has been accustomed to.

Also, future law reform is needed to formalize the "Bobapaing" right for the strengthening of farmers' rights. Chapter II found that Myanmar's current "Cultivation Right" is designed after the colonial "Landholder's Right", which was a tenancy of state-owned land, and Chapter III found that such a vulnerable legal nature of "Cultivation Right" is confirmed in the government practice by the literal understanding of Section 37 of the 2008 Constitution. To this, a comparative perspective into Indian post-independence land reforms in Chapter IV found that certain states in India, such as Jammu and Kashmir, have successfully defined the legal nature of farmers' rights

as “ownership”. Also, the post-World War II agricultural land reform in Japan, where a nearly identical type of "land to a tiller" type reform to India and Myanmar was started in the same period, rigorously implemented the distribution of “ownership”, and its results have been maintained for several decades up to the present. Here, the primary elements of Japan’s Agricultural land reform are not only the grant of stable “ownership” to farmers, but also maintains the autonomous system of restrictions of succeeding dispositions of agricultural land ownership under the 1952 Agricultural Land Law, which maintained a system of local autonomous control for the dispositions of agricultural land through the Agricultural Commission formed by locally elected representatives.

Finally, in Chapter VI, the author concludes this dissertation with a series of recommendations induced from the findings from this research toward Myanmar's future land reform in search of a balance of economic growth and the local people’s sense of justice. First, the establishment of “Bobapaing” right as the primary right of farmers on the farmlands, as a permanent, inheritable, and absolute right, but it should be subject to the autonomous management by the agricultural community of the land transfer based on the criteria given by the Law. Second, the Farmland Law amendment to explicitly provide for the principle of “acquisitive prescription” which will facilitate the proof of farmers’ rights, through a work of collecting and reinstating the traditional principle since the King era by using a 10-year term as acquisitive prescription. The Farmland law should be changed to grant the ownership to the actual cultivator for more than two decades, based on the Myanmar’s legal tradition, and also the comparative perspective such as adverse possession under the British common law, also applied in India, and the acquisitive prescription in the continental code countries such as the Japanese Civil Code.

The third, to increase the autonomy of local Farmland Management Bodies by authorizing the mandate to make decisions based on each local condition, including the substantive fact-finding on the farmers’ rights. Fourth, to abolish all colonial land laws and manuals active in the government sector up to the present, in order to overcome the negative inheritance of legal designs which have bound Myanmar farmers to a vulnerable status.

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Abbreviations

AFPFL	- Anti-Fascist People's Freedom League
CRC	- Cultivation Rights Certificate (Form-7)
EAA	- Estate Acquisition Act
FESR	- Framework for Economic and Social Reform
FMB	- Farmland Management Bodies (Myanmar)
GAD	- General Administration Department
J&KAR Act	- Jammu and Kashmir Agrarian Reform Act 1972
J&KBEA Act	- Jammu & Kashmir Big Estate Abolition Act 1950
JAC	- Japan Agricultural Commission
JAL Law	- Japan Agricultural Land Law 1952
KLR Act	- Kerala Land Reform Act 1963
LaNa39	- Land Use Change Certificate
NLUP	- National Land Use Policy
RFCTLARR	- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act 2013
SCAP	- Supreme Command of Allied Powers
Scrutinizing Committee	- Scrutinizing Committee of Confiscated Farmland and Other Land
SLORC	- State Law and Order Restoration Council
SME	-Small and Medium Enterprises
SPDC	- State Peace and Development Council
UPZALR Act	- Uttar Pradesh Zamindari Abolition and Land Reform Act 1950
VFVLM Law	- 2012 Vacant, Fallow and Virgin Land Management Law
VFVL	- Vacant, Fallow and Virgin Land
WBLR Act -	- West Bengal Land Reform Act 1955

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Chapter I

General Background

1.1 Introduction

Immediately after the 2008 Constitution of Myanmar was put into force in 2010, numerous land related claims were started to be raised by Myanmar people against the government of President Thein Sein, particularly involving the cases of land confiscation by the government affiliated entities without compensation during the former military government. To address such claims, President Thein Sein formed the "Farmland Investigation Commission" by Presidential Order No. 4/2012 dated 2013, with the mission to investigate the land confiscation cases beginning after the 1988 coup d'état. To follow this, the "Land Utilization Management Central Committee" was formed by Presidential Order No. 8/2013 dated 2013, for seeking a solution. Then, the government of President Htin Kyaw, which was established after Daw Aung San Suu Kyi winning the general election in 2015, formed the "Scrutinizing Committee of Confiscated Farmland and Other Land" (hereinafter referred to as "Scrutinizing Committee") based on Presidential Order No.14/2016 dated May 2016, at the union level headed by the Vice President as well as each level of local administration, with a mission to bring about the resolution to all land related disputes toward the next general election in 2020. However, this Scrutinizing Committee has seen difficulties in ultimate resolution of such disputes, which constituted one of the root causes of the political tension of Myanmar afterwards. In other words, the land disputes have been a critical issue that jeopardizes the stability of state politics and the peace of civic life in Myanmar.

As an officer of the General Administration Department in charge of the Scrutinizing Committee in Thaningtharyi Region (from October 2016 to February 2017), in Kayin State (from 2019 to 2021), and at the national level (from 2018 to 2019), the author has personally handled roughly 200 land disputes during these years, finding ultimate resolutions to these cases extremely difficult. According to the author's experience, such difficulty stems from not only the limitation of dispute resolution mechanisms but also the complicated substantive bases of the land law regime.

Therefore, the goal of this dissertation is to propose better solutions for the land disputes between the people and the government in Myanmar, specifically by identifying the legal causes

behind the typical categories of land disputes, and proposing a future land law reform that can concurrently peruse economic development and the justice in the society.

1.2 **Problem Statement**

1.2.1 **Status of Land Disputes**

During the four years from 2012 to 2016, the Farmland Investigation Commission received over 20,000 complaints and resolved issues regarding 335,000 acres of land involving more than 30,000 families, but some complicated cases still remained until the formation of the Scrutinizing Committee in 2016.[1]

In 2016, the newly formed Scrutinizing Committee for Confiscated Farmlands and Other Lands received public complaints of more than 4,072 cases, and solved 3,971 of the cases by 2020 since the Committee in 2016,[2] which is the data integrating the results of two channels of dispute resolution, namely, the complaints filed at the Union level and the cases filed in the State/Region[3] governments. The breakdown of the Union level cases and the State/Region level cases is not available to the public. Besides, there is a possibility that a large number of unsolved cases remain unresolved at the State/Region level outside of this official data, due to a delay caused by human resources limitations.[4]

Although there is no authorized data according to the legal issues in these land disputes, based on the author's experience sitting as a committee member for solving these disputes, the main legal issues of these land disputes can be categorized as follows:

(1) Land confiscation cases during the military era by the military or governmental departments which were alleged to be made without following the conditions provided by the 1894 Land Acquisition Act: roughly about 40%

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[1] Human Rights Watch. (2018). *Nothing for Our Land: Impact of Land Confiscation on Farmers in Myanmar*. USA. At 2-3. [URL]

[2] According to the author's own observation as an insider of the Scrutinizing Committees, this data includes cases hastily resolved before the subsequent election in 2020, without proper investigation into the facts.

[3] There are 7 States and 7 Regions and Union Territories in Myanmar under Section 49 of the 2008 Constitution of the Republic of the Union of Myanmar.

[4] According to the author's experiences in Kayin state, there were nearly 1,000 unsolved cases as of 2020.

(2) Objection cases under the 2012 Farmland Law:

(a) Farmland Certificate objection: roughly about 30%

(b) Farmland use change disputes (LaNa39): roughly about 20% mostly involving the farmland mortgage cases.

(3) Land confiscation by the government for private companies: roughly about 10%.

However, each such categorized cases contain several legal issues, which necessitates further investigation, which should be discussed further in the following Section 1.4.

1.2.2 **Government Response for Solving Land Disputes**

In order to address to nationwide land conflicts and claims, President Thein Sein formed the "Farmland Investigation Commission" by the Presidential Order in 2013 with the mission to investigate the land confiscation cases after the 1988 coup d'état. To follow this, the "Land Utilization Management Central Commission" was formed in 2013, for seeking the solution. According to the Commission Reports 1 to 4 in 2003, the Commission found that 489,369 acres of land were confiscated, and the main purposes for confiscation was the government projects for public purposes (mostly military utilization purposes) which constituted 51.5 %, industrial projects which constituted 24.1 %, and agricultural development which constituted 16.8 %.[5]

After the overwhelming winning of the general election in 2015 of the National League of Democracy (NLD) led by Daw Aung San Suu Kyi, the new government of President Htin Kyaw promulgated the National Land Use Policy (hereinafter referred to as "NLUP") in 2016, after a comprehensive process of the public opinion involving ministries, United Nations' organizations, non-governmental organization, and the general public within 8 months. The objectives of the policy provided in Section 6 are as follows –

(1) To promote sustainable land use management and protection of cultural heritage areas, environment, and natural resources for the interest of all people in the country;

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[5] San Thein, Hlwan Moe, Diepart, J.-C., & Allaverdian, C. (2018). Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes. *MRLG Thematic Study Series #9*. Vientiane: MRLG.at- V.

(2) To strengthen land tenure security for the livelihood's improvement and food security of all people in both urban and rural areas of the country;

(3) To recognize and protect customary land tenure rights and procedures of the ethnic nationalities;

(4) To develop transparent, fair, affordable, and independent dispute resolution mechanisms in accordance with rule of law;

(5) To promote people centered development, participatory decision making, responsible investment in land resources and accountable land use administration in order to support the equitable economic development of the country;

(6) To develop a National Land Law in order to implement the above objectives of National Land Use Policy.[6]

In order to solve the land disputes, the NLUP provides to form the impartial land disputes resolution mechanisms at all levels of local administration by including representatives from local farmers' organizations (Section 41 (a)).[7] It also allows such local famers' organizations to solve the disputes by applying local customary laws (Section 41 (b)). In addition, the NLUP provides for various experimental mechanisms for dispute resolution, such as to newly form a special court for land disputes consisting of specially trained judges (Section 42 (a)), to establish independent land disputes monitoring bodies involving all stakeholders (Section 42 (b)), to establish an independent arbitration procedure for the disputes between business entities and farmers (Section 42 (c)), to establish a tripartite land disputes arbitration process between the government, farmers and the business entities (Section 42 (d)), while obliging the government to establish accurate and clear procedural processes in relevant departments, and introduce pilot projects.[8]

But the sole mechanism which was actually established for dispute resolution based on the 2016 NLUP was the system of Scrutinizing Committee of Confiscated Farmland and Other Land (hereinafter "Scrutinizing Committee"), which was formed by Presidential Notification No.14/2016 on May 2016, which was mandated only for the purposes of solving expropriated land

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[6]Section 6 of the National Land Use Policy.
(https://www.pointmyanmar.org/sites/pointmyanmar.org/files/publication_docs/national_land_use_policy.pdf.)
[7] Ibid., Section 41.
[8] Ibid., Section 42 and 43.

cases which occurred during the military period from 1988 to 2012. The 52 Policies and Performance Guidelines were distributed in 2016 to each level of the Scrutinizing Committees as the normative basis for the disputes resolutions. The decision by any administrative level of Scrutinizing Committee can be appealed to the upper level, and the decision by the Union level Scrutinizing Committee is considered final and conclusive (Section 2 of Notification No.14),[9] although the legal effect of such provision is subject to debate.

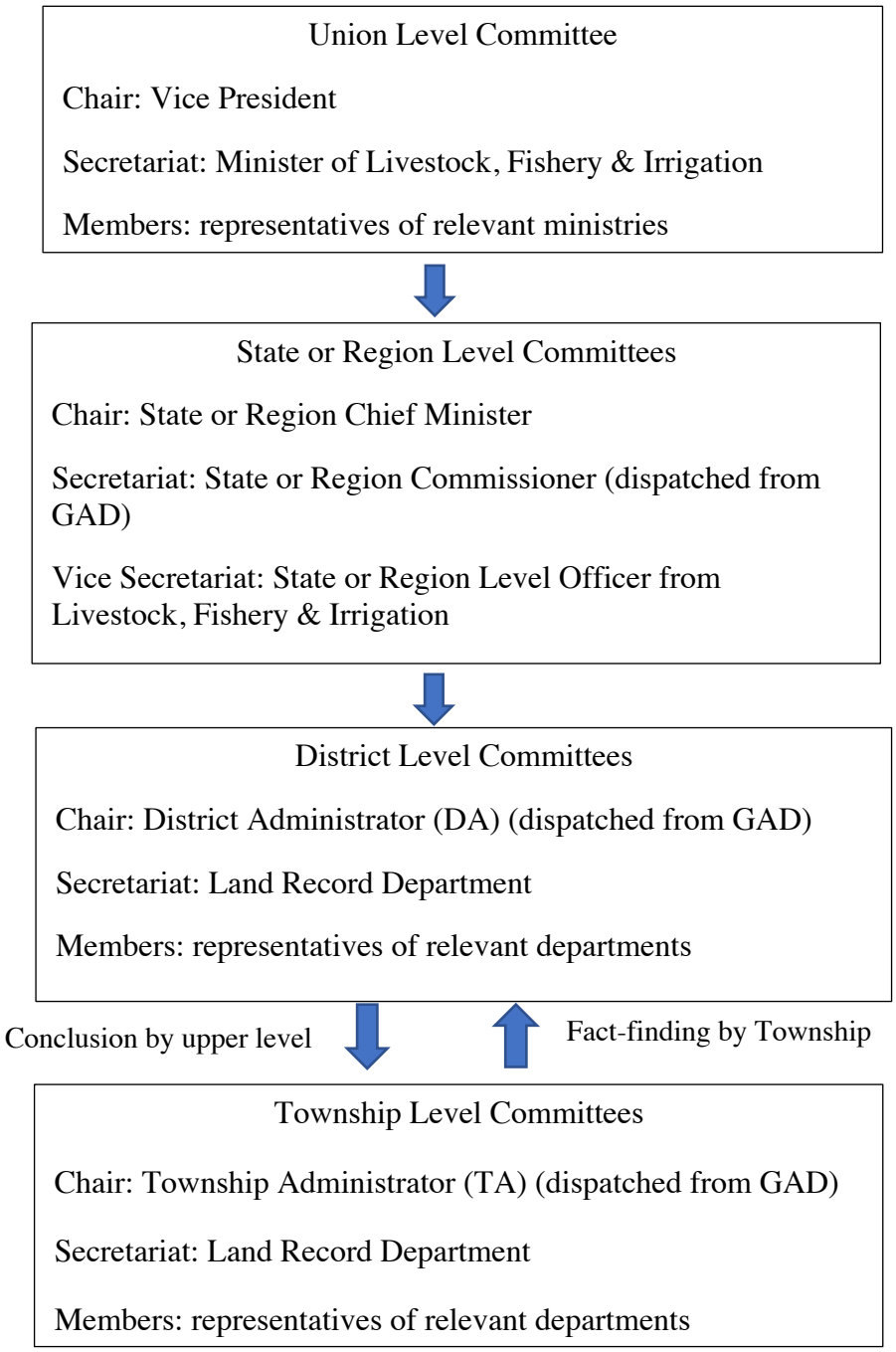
According to the aforementioned Presidential Notification No.14/2016, the structure of Scrutinizing Committees was basically dominated by the representatives of government ministries, but there were a certain number of public representatives nominated in the lower level of District and Township (see Figure 1). Namely, the Union level Scrutinizing Committee is chaired by the Vice President and relevant department representatives are members and the Secretariat is the Minister of Livestock, Fishery & Irrigation. The State/Region level Scrutinizing Committees are chaired by each State/Region's Chief Minister (the head of each State/Region government appointed by the Union President with the approval of the State or Region Hluttaw under the 2008 Constitution),[10] and consist of officers of the State-level General Administration Department, Land Record Department, Internal Revenue Department and so on, and also the local respected persons and the representative of local respected person who are nominated by the Chief Minister. Similarly, the District level Scrutinizing Committees are chaired by each District Commissioner (the administrative head of the district level dispatched from the Union's office of the General Administration Department), and consist of the officers of the district level relevant departments, as well as local respected persons nominated by the District Commissioner, with the district level Land Record Department as the Secretariat. Similarly, the Township level Scrutinizing Committees are chaired by each Township Administrator (the administrative head of the Township level dispatched from the Union's office of the General Administration Department) and consist of the representatives of the Township-level relevant departments, local respected people

[9] The functions and duties of the Union Level Scrutinizing Committee are described in Section 2 of Order No. 14/2016, issued May 5, 2016. There is no clear provision stating that the Union level committee's judgment is final and conclusive. However, the author's experience from attending several union committee meetings has shown that the judgment of the Union Level committee is final and conclusive because there is no appeal route to the court judicial review.

[10] Article 261(C) of the 2008 Constitution of the Union of Myanmar.

nominated by the Township Administrator as members, with the Township-level Land Record Department as the Secretariat.

Figure: 1 - **Structure of Scrutinizing Committees**



(Source: Compilation by the author)

During the investigation process, the fact-finding is usually entrusted to the Township level, which is headed by the Township Administrator who is dispatched from the General Administration Department of the Ministry of Home Affairs (hereinafter referred to as "GAD"). While the parties can appeal to the upper level, the upper Committees render the decision based primarily on the facts found by the Township level, with additional policy consideration. The traditional mediation style practice is applied for fact-finding, which is a series of open sessions where any relevant parties can join to state opinions, without specific rules for procedure promulgated.

1.2.3 **Complexity of the Land Law Regime in Myanmar**

According to the author's experience sitting as a member of the Scrutinizing Committee at the State/Region level as well as the Union level, the difficulty of ultimate land dispute resolution stems from not only the limitation of dispute resolution mechanisms, but also the lack of clear instruction on the application of the substantive law, beyond the limited guidance given by the 52 Policies and Performance Guidelines issued in 2016. This limitation stems from the extreme complicacy of the land law regime in Myanmar consisting of the mixed heritages among (i) the remaining influence of British Laws as headed by the 1876 Land and Revenue Act for lower Burma and the 1879 Upper Burma Land Regulation, which are still maintained as the fundamental basis of land revenue collection and the land record system, (ii) the remaining post-independence policy for the protection of farmland by the 1953 Land Nationalization Act, which is still influential among the local administrators and farmers even after its repeal by the 2012 land law reform, and (iii) a sudden convert to the promotion of land transactions by the 2012 Farmland Law and the 2012 Vacant, Fallow and Virgin Land Management Law. These accumulated influences of the historical regimes are contradictory to each other and seem to have caused confusion in the forefront of the land administration.

Second, Myanmar has repeated the land law reforms having opposite land policies without efforts for comprehensive national debate and the awareness increase, which has always been unilaterally decided by the union government top-down, resulting in the protest of the local population which lacks knowledge about such land policy changes. The 1953 Land Nationalization

Act was enacted for the purpose of farmland redistribution for tenant farmers and landless farmers and the security of such farmland by the restriction of land sales, but this 1953 Act was implemented as a strict basis of land control during the socialist era, and finally, recently repealed by the 2012 land law reforms. Instead, a series of new laws were introduced, including the 2012 Farmland Law and the 2012 Vacant, Fallow and Virgin Land Management Law, aiming at the free transaction of farmland. This contradictory policy change by 2012 land reform was, however, drafted top-down, and passed through the parliament without open debate or consultation with farmers and other stakeholders through the public comment procedure, and therefore has never been understood properly by local administrations or local population.

Third, the separation of the farmland regime and urban land regime has been maintained since the British era, but the policy coordination in the intersection between them has been poor and confusing, as the land use change system under the 1953 Land Nationalization Act, Section 39 (which was succeeded by the Section 30 of the 2012 Farmland Law) in the intersection between them has added the confusion, while the area of urban planning law is underdeveloped, lacking response to the rapid urban expansion according to the economic growth.

Fourth, the conflict between formal law and informal law, because the local customary norms have been maintained in many parts in Myanmar since the pre-modern era as the notion of justice of local people.[11] For example, "Damaugya" is a customary individual right of exclusive use of the land which was cleared by one's own labor, and such a right can continue for several years even during the temporary recess of cultivation for soil fertilization, but the duration of such a period differs area by area. Apart from this, a certain year of uncontested continued cultivation can also result in an individual right of exclusive use of the land (similar to the "adverse possession" in Western law's terminology), but the time length of possession required for the formation of such a right differs area by area, such as 10 years or 12 years. Further, these exclusive but still temporary

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[11] Hwa, C. S. (1965). Land Tenure Problems in Burma, 1852 to 1940. *Journal of the Malaysian Branch of the Royal Asiatic Society, 38(1/207),* 106–134.pp-106-34, Aung Thwin, M. (1984). Hierarchy and Order in Pre-Colonial Burma. *Journal of Southeast Asian Studies, 15(2),* 224-232., Than Myint-U. (2001). *The Making of Modern Burma.* Cambridge University Press, New York.

rights can develop into a firm perpetual right of land ownership known as “Bobapaing” (grandfather’s land) by a continued cultivation for many generations. Apart from these individual rights, especially in mountainous areas of ethnic minorities, there are communal rights on common land held among the community members, such as the right of collective cultivation in cases of the ethnic people in Kayin State. These customary rights were the formal rights in the pre-modern dynasty era as recognized by the written codes *Dhammathats*, but after the colonial introduction of the formal law regime, they have turned to the status of informal rights even though many people still maintain the customary law as their living law in reality.

1.3 Literature Review to Identify the Significance of this Study

1.3.1 Property Rights as the Basis of Economic Growth

According to prominent economists, secure land right (property rights) is an important social infrastructure for economic growth. Adam Smith (1776) contended protecting one's property rights against expropriation by other people or the government is a critical precondition for encouraging individuals to invest and build up their wealth. According to the neo-institutional economists such as Ronald Coase (1960),[12] economic performance is heavily reliant on property rights, which are a critical component of the social infrastructure that determines economic efficiency in all societies, ancient and modern. Some economists have progressively refined and built on Coase's original work, resulting in a wide approach focusing on the relationship between property rights and resource allocation.[13] According to Armen A. Alchian (1965),[14] private property rights are vital for all societies, and they are rights not merely because the state formally recognizes them, but because the vast majority of people want such rights to be enforced. The establishment of private rights is critical because it allows the owner to profit economically from the use of resources that he has the right to prevent other people from. Harold Demsetz (1967)

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[12] Coase, R. H. (1960). The Problem of Social Cost. *Journal of Law and Economics, 3, 1-44*. The University of Chicago Press. pp. 1-44.

[13] Xu, G. (2013). Property Rights, Law, and Economic Development. *The Law and Development Review, 6(1), 117-142*. Retrieved from https://www.lawanddevelopment.net/dld/r1.pdf

[14] Alchian, A. A. (1965). *Some Economics of Property Rights*. Il Politico, 30, 816-829.

contended that the system of exclusive private right emerges in any society when its social benefits exceed the social costs to recognize private ownership.[15]

Furthermore, according to Keijiro Otsuka,[16] secure land rights make it simpler for landowners to transfer land to competent persons who can perform more productive performance through land markets, resulting in more efficient allocation.

1.3.2 **Problem of Legal Design Choice of Land Reforms**

The idea that strong and legally enforceable property rights spark economic growth has been embraced by the majority of governments and development organizations, and has guided numbers of land reforms to secure the titles to land (often referred to as "land titling projects") under the auspice of leading international development donors, such as the World Bank and the United Nations Development Programme (UNDP).[17] On the other hand, it results in greater land prices, allowing for larger financing based on the land mortgage and realizing a larger scale investment in the economy's expansion. This idea has been further accepted since Hernando De Soto (2000) popularized it.[18] Although there has also been criticism raised about the impact of land titling projects,[19] mainstream economists have defended the agenda by attributing negative results to the limited availability of data, poor governance in developing countries,[20] and that there is a

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[15] Demsetz, H. (1967). *Toward a Theory of Property Rights. The American Economic Review, 57(2),* 347–359. Retrieved from http://www.jstor.org/stable/1821637. pp- 347–359.

[16] Otsuka, K. (2007). *Efficiency and Equity Effects of Land Markets*. In Handbook of Agricultural Economics.

[17] See World Bank/ Deininger, K. (2003), *Land Policy for Growth and Poverty Reduction*. World Bank. Washington, D.C. at 42 contended that increased tenure security created by land titling will boost farming investment due to the it will be a lower probability of eviction of agricultural businesses' tenures. On the other hand, it will result in greater land prices, allowing for larger financing based on the land mortgage and realizing a larger scale investment in the economy's expansion.

[18] De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else.* Basic Books.

[19] See e.g., Bledsoe, D. (2006). *Can Land Titling and Registration Reduce Poverty*. In J. Bruce, R. Giovarelli, L. Rolfes Jr., D. Bledsoe, & R. Mitchell (Eds.), *Land Law Reform: Achieving Development Policy Objectives*. Retrieved from https://documents1.worldbank.org/curated/ar/786221468175470235/pdf/374480Land0law01PUBLIC1.pdf pp.143-175.

[20] Deininger, K., & Binswanger, H. (1999). *The Evolution of the World Bank's Land Policy: Principles, Experience, and Future Challenges.* The World Bank Research Observer, 14(2). pp. 247–276 emphasized the role of the government in regulating the land market in order to improve market efficiency and promote a competitive land rental and sales market. See also Deininger, K., & Hilhorst, T. (2013). *Using the Land Governance Assessment Framework to Help Secure Rural Land Rights: Framework and Experience Thus Far*., in Holder, S. T., Otsuka, K.,

link between rising labor expenses and the scale merit of farm size established by the concentration of land by way of the land market.[21]

While the land titling projects have been widely implemented, the problem of their legal design remains. Holder, Otsuka & Deininger (2013, p. 3) contended that the post war land reform agendas can be broadly classified into four types: (1) land to the tillers reform by eliminating landlordism; (2) tenancy protection perspective; (3) ceiling and land distribution; and (4) tenure security reform that is focused on donors' organizations.[22] Then, these authors emphasized the ineffectiveness of "Land to Tillers" type land reforms, due to the slowness and poor productivity brought on by small-scale agriculture. They, on the other hand, recognized the significance of land titling in poverty reduction by advocating the land market as a mechanism for landless poor to become landed farmers.[23] Among them, Holder et al. (2013) noted that the choice of legislation model has been a factor in unsuccessful land reforms.

Indeed, most donor's land titling projects have been modeled after the Torrens style land titling system, which is a compulsory land registration system first invented by the British colonial reign,[24] that confers the final title of evidence, while excluding succeeding claims such as the "adverse possession" or a claim of title through the long-term possession. The Torrens style land titling is a method for finalizing the land ownership title by a simple method of formalization of such title by the administrative conduct of an entry to the land registry, without allowing the succeeding contests through the judicial review, and therefore considered to be a means of facilitating land transactions, resulting in the automatic prevalence of third-party purchasers over the true owners. It facilitates third-party buyers with documentary evidence of land sales contracts

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& Deininger, K. (2013). *Land Tenure Reform in Asia and Africa: Assessing Impacts on Poverty and Natural Resource Management.* Palgrave Macmillan, pp. 354-379.

[21] Otsuka, K. (2021). Changing Relationship between Farm Size and Productivity and Its Implications for Philippine Agriculture. *Kobe University IBRD Discussion Paper No. 2102*, pp.1-29.

[22] Holder, S. T., Otsuka, K., & Deininger, K. (2013). Land Tenure Reform in Asia and Africa: Assessing Impacts on Poverty and Natural Resource Management. *Palgrave Macmillan*, pp. 354-379.

[23] Rolfes, L., Jr. (2006). *A Framework for Land Market Law with the Poor in Mind*. in J. W. Bruce, R. Geovarelli, L. Rolfes Jr., D. Bledsoe Jr., & R. Mitchell (Eds.), Land Law Reform: Achieving Development Policy Objectives. *World Bank Law, Justice, and Development Series*, World Bank. pp.107-142. World Bank. (2011). Land Policy: Securing Rights to Reduce Poverty and Promote Rural Growth. World Bank., Holder, S. T., Otsuka, K., & Deininger, K. (2013).

[24] Torrens, R. (1882). *An Essay on the Transfer of Land by Registration: Under the Duplicate Method Operative in British Colonies.* Cassell. (MOML edition).

to quickly finalize their titles, but can result in deprivation of the land from ordinary farmers who lack documentary evidence. Because of this peculiar legal design of the finality of title by the Torrens system land titling, significant negative impacts have caused on farmers.[25] Upham (2018) discusses the legal design choices of Cambodian 2001 land law reform under the support of World Bank, which invited social protests until ultimately resulted in the withdrawal of the World Bank. Numbers of legal sociologists,[26] and legal anthropologists[27] have shown through empirical studies the negative results of land titling projects around the world. The results of such design choices of land titling projects have the potential to destroy farmers' livelihoods and have serious negative effects on the farmer population.

Thus, there are both optimistic and pessimistic views on the outcomes of donor agencies' involvement in the legal reforms in developing world.[28] Trubek, D. M. (2014)., as one of the most influential opinion leaders in the field of law & development studies, holds an optimistic view that critical academic watches have guided a certain improvement of the donors' attitudes in law and judicial reforms toward a balanced policy between the pursuit of economic growth and the human rights considerations.[29]

1.3.3 **Myanmar's Context**

Land law reform in Myanmar provides a typical target of law & development studies to test the requirements for the law reforms which can achieve a balance between social justice and

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[25] Upham, F. (2018). *The Great Property Fallacy: Theory, Reality, and Growth in Developing Countries*. Cambridge University Press. See also Kaneko, Y. (2021). *Origin of Land Disputes: Reviving Colonial Apparatus in Land Law Reforms*. in Y. Kaneko, N. Kadomatsu, & B. Z. Tamanaha (Eds.), *Land Law and Disputes in Asia: In Search for an Alternative Development.* Routledge.

[26] See e.g., Carter, C., & Harding, A. (2015). *Land Grabs in Asia: What Role for the Law? (1st ed.).* Routledge.

[27] Benda-Beckmann, F. von, Benda-Beckmann, K. von, & Wiber, M. G. (2008). *The Properties of Property*. In F. Benda-Beckmann, K. von Benda-Beckmann, & M. G. Wiber (Eds.), *Changing Properties of Property.* Oxford University Press.

[28] See, e.g Davis, K. E., & Trebilcock, M. (2008). The Relationship between Law and Development: Optimists Versus Skeptics. *Asian Journal of Comparative Law, 56*(4). NYU Law School, Public Law Research Paper No. 08-14, NYU Law and Economics Research Paper No. 08-24. Retrieved from https://ssrn.com/abstract=1124045

[29] Trubek, D. M. (2014). Law and Development: 40 Years after Scholars in Self Estrangement - A Preliminary Review. *University of Wisconsin Legal Studies Research Paper No. 1255*. Retrieved from https://ssrn.com/abstract=2435190 or http://dx.doi.org/10.2139/ssrn.2435190

economic development. Based on earlier studies conducted from the viewpoint of economists, a hypothetical view is held that the weak legal substance of the farmers' land rights provided under the formal law in the present Myanmar is one of the causes of land disputes.

According to the Nobuyoshi Nishizawa (1991),[30] present injustice in the land regime in Myanmar stems from the British colonization era, when the dramatic increase of landless farmers occurred as a result of the laissez-faire policy that allowed land to be freely claimed by the capitalist sector. One of the major agricultural issues during the colonial era was the deprivation of land from actual cultivators to non-agriculturalists:[31] between 1932–1937, Burma saw a rapid increase of land ownership transferred to non-agriculturists in 40% of the country's land and 52% of its paddy, the majority of which were "Chettiars" or land mortgage-based financers from India, who were absentee landlords. This concentration of half the nation's farmland in the hands of non-agriculturalists, who held land or profit-making businesses rather than investing in agriculture development, caused low productivity, and the paddy prices fell precipitously in 1931 because of the Great Depression, and as a result, the Burmese economy was severely harmed. One of the main causes behind such land deprivation has been attributed to the insufficient legal protection of farmers' land rights, which were purposefully created by British colonial land law as weak "Landholders' Right," rather than the proprietor's ownership rights.[32] However, it is still unclear exactly whether aspect of the "Landholders' Right" gave rise to its legal weakness.[33] Presently, under the contemporary land law reform performed in 2012 under the 2008 Constitution, the phenomenon of rapid increase of landlessness has been triggered similar to colonial times, which requires a further investigation from a legal historical perspective.

This study also intends to contribute to the study field of Rule of Law in Myanmar, where preceding researchers have critically analyzed the government practice based on the notion of

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[30] Nishizawa, N. (1991). Economic Development of Burma in Colonial Times. *Research Report No. 15*, Ipshu Research Report Series at 25-52.
[31] Furnivall, J. S. (1956). *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India.* Cambridge University Press.
[32] Saito, T. (1985). *The Initial Land Systems in British Burma 1826–1876* (in Japanese). Southeast Asian Studies.
[33] Kaneko, Y., & Ye Naing Lin (2021*). Land Law and Disputes in Myanmar: A Historical Struggle for Redefining Property Rights.* in Y. Kaneko, N. Kadomatsu, & B. Z. Tamanaha (Eds.), *Land Law and Disputes in Asia: In Search for an Alternative Development*. Routledge, pp. 244-273.

"Rule by Law" (*Tayar Upaday Soemoehum Mashite Sanit*) [34]. The author, however, holds the view that such a distorted notion of the "Rule by Law" has its origin in the colonial law, while pre-colonial Burmese law had a genuine notion of the "Rule of Law" (*Tayar Upaday Somoe Yay*) which literally means "King or Government is bound by law in Myanmar term", since its inherent legal tradition of pre-modern times where the King's administrative law was implemented within the legal tradition of codified law and accumulated case law, with due respect to local customs.[35] The intention of this study is to consider the ultimate solution of land disputes by overcoming the negative colonial inheritance in the government practice, and to restore the inherent Rule of Law (*Tayar Upaday Somoe Yay*).

1.4 Typical Cases of Land Disputes

To further identify the typical legal issues of contemporary Myanmar's land disputes which will be the focus in this study, the author will present some typical cases of land disputes among those which the author himself handled as a member of the Scrutinizing Committees during the service in Kayin State from 2018 to 2020.

1.4.1 Wasteland Confiscation by the Military vs. Local Customary Land Use

A group of applicants sent a complaint in 2018 to the Kayin State level Scrutinizing Committee, asking for the land title back for their agricultural crops' lands of 330 acres, which were confiscated in 1997 for military purpose by No. 603 military camps, but these land parcels had not actually been used for military purposes and left vacant as of 2018.

The investigation was entrusted from the State level Scrutinizing Committee to the Township level Scrutinizing Committee which further entrusted the case to the Village Tract level Scrutinizing Committees, according to governmental practices, on the issue of whether the applicants had held the possession of alleged vacant land. The Township level Scrutinizing

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[34] Cheesman, N., & Farrelly, N. (Eds.). (2016). *Conflict in Myanmar: War, Politics, Religion*. ISEAS Publishing., Crouch, M. (2007). The Yogyakarta Local Ombudsman: Promoting Good Governance through Local Support. Asian Journal of Comparative Law, 2(1), 219-246., Harding, A., & Khin Khin Oo (Eds.). (2017). *Constitutionalism and Legal Change in Myanma*r. Hart Publishing.

[35] Okudaira, R. (1986). *Burmese Dhammathat*. in M. B. Hooker (Ed.), Laws of South-East Asia, Vol. I, Butterworths.

Committee submitted the affirmative conclusion to the State level. Based on this finding of the Township level, the State level Scrutinizing Committee asked a recommendation and remark to the military representative of the South State Central Military Department in September 6, 2019, on the point whether this alleged land can be returned to the applicants or not.

The South State Central Military Department replied to the Committee that the land could not be returned to the applicants because the lands were still in use by the military, were situated at the center of military operations, and some areas were already built on or are cultivated for the military's families.

The Kayin State Government sent a letter again to the South State Central Military Department in March 3, 2020 to ask for recommendations and remarks. The South State Central Military Department replied on March 25, 2020 that the total land area confiscated was 358 acres, in which 135.05 acres were categorized as a vacant land since no one named in the land records/no one cultivated these land areas at that time, while 194.95 acres were agricultural crops lands confiscated for the purpose of military camp No. 11. In this agricultural land area of 194.95 acres, 124.15 acres have been compensated on the basis of 600,000 Myanmar Kyat for one acre, which was paid in 2016, but for the remaining 70.70 acres of agricultural crops land, still seventeen households have refused to take the compensation due to their objection to the unfair compensation prices. Therefore, the military contended that it should keep 124.15 acres of agricultural crops land since it was duly compensated in 2016, as well as 135.05 acres of original vacant land, while 70.70 acres of agricultural crops land could be returned to the relevant households.

The decision of the Kayin State level Scrutinizing Committee was that the confiscated land should be separated into vacant land and agricultural land. In case of vacant land, the military could keep such land but traditional cultivators should be considered to give support for their livelihood. In case of agricultural lands, the land originally held by the farmers not used for military purposes should be returned to the real cultivators, and the compensation should be calculated at the present market value in 2016, instead of 1997.

Legal Issues

(1) What is the substantive legal basis to decide whether land is vacant and/or agricultural? (Whether the land held by actual cultivators who lack the land record

due of documentary evidence, or so-called “customary land user”, should be automatically decided as waste land?) (Whether land in temporary recess of cultivation for the fertilization purposes should be automatically decided as waste land?) (Whether the collectively held communal land should be automatically decided as waste land?)

(2) What should the legal remedy be for the cultivators of vacant lands? Should there be a difference between the traditional cultivators since long before the military confiscation, and the newly arrived squatters after the military confiscation? (Whether the adverse possession on the state land is possible?)

1.4.2 **Land Acquisition by Government Ignoring Untitled Land Rights**

The claim of the applicants was to ask the government to return agricultural lands with a total area of 3.773 acres that were confiscated in 1982 for the purpose of use for No. 17 Teak Industry under the Ministry of Natural Resources and Environmental Conservation. The applicants contended that the land acquisition was illegal because it did not follow the procedure of the 1894 Land Acquisition Act, and compensation was not given, and also the ground for the land use for public purpose, which is a fundamental requirement for land acquisition, had been ceased for many years.

According to the fact finding based on the documentary evidence and testimony, the Township level Scrutinizing Committee reported to the State level Scrutinizing Committee that the applicant’s father owned and cultivated these parcels of land for many years, until it was confiscated by No. 17 Teak Industry in 1982. On the second point of the compensation, it was found that compensation was not paid at the time of confiscation. On the use of the teak industry, the Township level Scrutinizing Committee found that the land was once used for the teak industry, but the usage ended on January 1, 2017. Therefore, the Township level Scrutinizing Committee recommended to the State level Scrutinizing Committee that the disputed lands should be returned to the applicants and respective persons.

Accordingly, the Kayin State Cabinet sent the letter to the Ministry of Natural Resources and Environmental Conservation to ask for their recommendation whether to return the lands or

consider compensation for the applicants in 2017. In its reply in 2019, the Ministry made an argument that the applicant did not have any concrete documentary evidence of farmland cultivator's title (*Paing Sai Hmu Htauk Ahtar* in Myanmar term) at the time of confiscation, and instead, the land record was entered in 1987 to issue Form No. 105/106 and LaNa39 (farmland use change permit) on the disputed lands for the name of No. 17 Teak Industry. Therefore, the Ministry did not consider that it was obliged to return the land or compensate the applicants.

In fact, the State level Scrutinizing Committee lacked the mandate to give a concrete decision for the dispute that happened before 1988, under the Guidelines of 52 Policies and Performances, and therefore the case was submitted to the Union level for a consideration outside of the Scrutinizing Committee. However, the Kayin State Government took a discretion to ask to the respective Ministry to consider for the support future livelihood of the applicants.

Legal Issues:

(1) Whether a cultivator lacking the name on the land record (so-called "customary land user") is eligible for protection under the Land Acquisition Act?

(2) Whether the government ministry can confiscate such "customary land user" without compensation according to the procedures of Wasteland Management?

(3) Whether the government ministry needs to return the land when the public purpose cease? What if the ministry had the land certificate?

1.4.3 **Farmland Use Change Permit (LaNa 39) to Private Companies: Evading the Land Acquisition Act**

The Township-level Scrutinizing Committee investigated an alleged land grabbing case of 4.93 acres of agricultural crop land which took place in 2001 when a private company Myanmar Nan Company obtained the farmland use change permit (LaNa39) under the 1953 Land Nationalization Act (Section 39). The applicant, Mr. A, made an argument that such issuance of LaNa39 was, in substance, an unlawful confiscation of land by the government to give a grant to a private company, in the evasion of the procedures of the 1894 Land Acquisition Act. The applicant also contended that he had no chance to make objection to this land confiscation because of the political situation under the military rein at that time.

The Township level Scrutinizing Committee made an investigation, first on the fact whether the total disputed lands of 4.93 acres were cultivated by the applicant before 2000, which was confirmed based on the documents such as the land record shown by the land record department and the continuous tax receipts as well as testimonies from the applicant and a village neighbor. Therefore, the Committee concluded that the applicant held the land used rights (*Myae Athone Pyu Kwint* in Myanmar term) for the crop lands. However, the committee narrowed the size of the claim to 3.75 acres since in January 15, 2009 the applicant had transferred an area of 1.18 acres to Mr. B separated from the total area of 4.93 acres.

Then, the Township level Scrutinizing Committee confirmed the facts that Myanmar Nan Company in 2001 applied for the use of land for the purpose of a stone manufacturing industry, to the Kayin State Peace and Development Council, and to this, the Council allowed the LaNa 39 land use change permit under the 1953 Land Nationalization Act, without taking the procedure under the 1894 Land Acquisition Act.

The next point of the investigation was whether the land had actually been used for the purpose of stone manufacturing afterward. On this, the Township level Scrutinizing Committee found negatively. Accordingly, the Township level Committee reported to the State level Committee via District level Committee that the disputed land should be returned to the applicant and respective persons.

It is noted that the District level Scrutinizing Committee suggested in its report to the State level Scrutinizing Committee, that the applicant and Myanmar Nan Private Company should negotiate under the guidance of the State Government.

The State level Scrutinizing Committee sustained the finding by the Township level on the fact that the applicant had a lawful land use right, but did not make a decision on the question of the validity of the conduct by the Kayin State Peace and Development Council, and of the question of use for public purpose.

<u>Legal Issues</u>

(1) Whether the land confiscation utilizing the LaNa39 farmland use change permit without compensation for farmers is legal? (Whether the answer differs between the farmer with documentary evidence and the so-called customary land user?)

(2) Whether the affected farmers in the government confiscation for private companies are entitled for compensation under the Land Acquisition Act (Sections 38, 39, 40 on compulsory acquisition for a private company in "likely to prove useful to the public")?

(3) What is the legal justification of the 52 Principles (number 10) which allowed settlement of the case where the land confiscation by the government was illegal?

1.4.4 Objection to Land Titling: When "Cultivation Right" Title Offered to the Tenant

The claim of the applicant, Mr. A, to the Kayin State government was to cancel the land title certificate of "Cultivation Right" (*Lyae Yar Myae Loat Paing Kwint˙* in Myanmar term) (Form 7) issued to Mr. B in the simultaneous titling performed by the government upon the promulgation of the 2012 Farmland Law, and issue a new land title certificate (Form 7) to Mr. A on the disputed land for rice-cultivation, a total area of 11.42 acres. Mr. A asserted that he cultivated the land from 1976 to 1988, but in 1989, Mr. A moved to Yangon and entrusted his land to his sister Ms. C. In 1999, Ms. C let another person, Mr. B, cultivate the disputed land on the condition that Mr. B submit to her 90 tins of rice (1 tin = 40.9148 L), which was equivalent to the required amount of rice submission as tax obliged by the government agricultural related department. In sum, Mr. A asserted that Mr. B was only a tenant on his land for a fixed rent by crop.

The fact-finding by the Village Tracts level Farmland Management Body was as follows: Mr. A cultivated the disputed land until 1988 but did not perform any cultivation afterwards. The law applied at the time was the 1953 Land Nationalization Act in which a cultivation right was conditioned for the continuation of "actual cultivation",[36] and therefore, Mr. A lost his right to the farmland by being absent from his land after 1988. In 2000, the Village Tract level Peace and Development Council acknowledged the tenancy right of Mr. B. At that time, Mr. A did not make any objection or ask for the farmland to be returned. Thus, Mr. B has been a lawfully recognized tenant, on the condition to submit the rice crop as taxes to the government, which obligation he has always performed since gaining the tenancy rights. Because the claim by Mr. A occurred after the Village Tract level Peace and Development Council confirmed the tenancy rights to Mr. B, the

[36] Article 6 of the 1953 Land Nationalization Act.

Village Tracts level Farmland Management Body decided that Mr. A has no right of objection, and accordingly Mr. B is entitled for the certificate of "Cultivation Right" under 2012 Farmland Law.

Legal Issues:

(1) What are the necessary elements of "actual cultivation" as a requirement of the "Cultivation Right" under the 1953 Land Nationalization Act? (Whether the entrustment of land within a family from Mr. A to Ms. C can constitute the continuous "actual cultivation" by Mr. A?)

(2) Whether a lessee (Mr. B under a lease contract with Ms. C) is entitled for the land titling of "Cultivation Right" under the 2012 Farmland Law?

1.4.5 **Objection to Land Titling: Illegal Land Sales Contract as Evidence**

The applicant, Mr. A, raised a claim in 2020 to the Kayin State government to cancel the "Cultivation Right Certificate" (Form 7) once issued to Mr. B in 2013 in the simultaneous titling by the government upon the promulgation of the 2012 Farmland Law, and to issue a new certificate Form 7 to Mr. A. According to the applicant, an area of rice cultivated-land of 13.50 acres, which had been cultivated for a long time since his grandfather until 2010 was illegally sold by Mr. C, who was handling the land as the leader of the 100 households' group,[37] to others. Mr. A asserted that because of this illegal selling, some people are now trespassing on his lands and cultivating without his permission.

Kayin State government sent down this case for investigation to the Township level Farmland Management Body, first to determine whether the whole disputed land was actually cultivated by Mr. A until 2010. The Body concluded negative on this point after the investigation, since it found that the disputed land had been cultivated by Mr. B who bought the land from Mr. D on May 26th, 2009, and there was no objection by any parties on these sales thereafter until Mr. A started this complaint in 2019. The Body's investigation was based on the testimony from Mr.

[37] "100 households' group" is a formal community unit for local administration under the 2012 Myanmar Wards and Village Tracts Administration Law.

B and the documentary evidence including the land sale contract, as well as the testimonies from other witnesses as follows:

(1) According to the testimony of Mr. E, who is the first cousin of the former owner Mr. D, the disputed land was cultivated since his grandparents and sold to Mr. B in 2009. Mr. E also testified that Mr. A cultivated the land parcels next to the disputed lands, and Mr. A has no right related to the disputed land.

(2) According to the testimonies of the chief of the Village Tract, Mr. F, as well as a respected person in the village, Mr. G, and in the neighborhood Mr. H, it was unanimously confirmed that the disputed land was brought by Mr. B in 2009.

Based on this investigation in the Township level Farmland Management Body according to the testimony and documentary evidence, the final decision was made by the State level Farmland Management Body according to Section 25 (b) of Farmland Law, that Mr. A has no right to this farmland and the current holder of Form 7 should be maintained as final.

Legal Issues

(1) In the practice of land titling, what factual elements should be proven to decide a title of "Cultivation Right"? (Whether sales contract alone can prevail without the firm evidence of continued "actual cultivation" in the prior stages of the chain of land transactions from C, D to B?)

(2) Which level of governmental body is responsible for fact-finding in the title objection procedure? (The local level fact-finding may involve the risk of manipulation.)

(3) What kind of evidence rules are applied to land disputes? (Technical methods to check the authenticity of documents and the conspiracies of testimonies)

1.4.6 **Farmland under Armed Conflict: Adverse Possession and Lacking of Farmland Use Change Permit (LaNa39)**

The claim of the applicant, Ms. A, was made in 2016 to the Kayin State level Scrutinizing Committee asking to take back disputed land, which is 7.23 acres of rice-cultivated land, located in a village in the territory in Hpa-an Township, Hpa-an District, Kayin State, which used to be partly under the influence of armed groups. The disputed land was taken over in 1997 by a private

group consisting of 19 people, including six influential monks from 12 villages in the name of local community development. This case was a part of the disputed land of a total of 250 acres involving many parties.

According to the assertion of Ms. A, the disputed farmland was given to her by her father, but while she stayed in Thailand to escape from the insurgence, the local private group started the community development operation in her village, and she had no chance to object because she did not receive any information. She contended that the accused private group acted as if it was a government under the Land Acquisition Act. The private group unilaterally took her land without her consent, and lacked the requirement of the public purpose but instead only sold the land to other parties for profit, without paying any compensation to her. Therefore, she requested the government to apply a penalty for this illegal land grabbing.

Also, according to the testimony from Ms. A, after she made the claim to the government in 2016, the group offered to her six residential plots as compensation, and she once tried to accept it. However, because some people were already living on these substituted plots, she changed her mind and sustained the claim to the government to take back the original land.

The State level Scrutinizing Committee entrusted the investigation to the Township level Scrutinizing Committee, first to confirm whether Ms. A actually had a right to the land, based on the fact whether the total disputed land of 7.32 acres was actually cultivated by the applicant before 1997 when the land grabbing occurred. The Township level Scrutinizing Committee confirmed this fact based on the documents such as continuous tax receipts and the testimony from the applicant.

The Township level Scrutinizing Committee next investigated the private group side, and two members of this group testified that in 1997 this group was established under an initiative by a famous monk in Kayin who had an idea for a community development plan for a total of 250.25 acres, and constructed roads, schools and bridges. At that time, most of the land areas were vacant because local famers went to Thailand to do business. The group asked the leaders of 12 villages about this plan, and there were no objections from the villagers. Accordingly, this community plan was developed. In this process, they were met with plenty of complaints from the villagers, and

accordingly the group gave compensation by providing the farmers with alternative residential land (2,400 square feet) per one acre of taken farmland (43,560 Square feet). This compensation was made for all confiscated farmland (a total of 250.23 acres to 31 households)

The testimony was also given by the Township level Land Record Department that, in 2001, the group applied for LaNa 39 (the permit for the non-agricultural use of farmland), but the State Peace and Development Council at that time did not issue it, because of a political concern that this group might be connected to an armed group. But the group continued to use the alleged land for development purposes other than farming, even without the permission from the government.

Based on this fact-finding by the Township level, the State level Scrutinizing Committee decided that this case was outside of the Committee's jurisdiction mandate under the Presidential Notification in 2016, because this case is a private dispute, instead of a case of confiscation by the government. However, in this case, because of the socially influential nature of this conflict that has the potential to be the standard for numbers of similar private conflicts, the Kayin State Government took up the case by forming a special negotiation body headed by the Township Administrator to guide the negotiation between the applicant, the group, and the villagers. As of December 2023, this mediation is still pending. The State Government also suggested that the applicants should submit this matter to the court in failure of this mediation.

Legal Issues:

(1) Whether the taking over of farmland by a local group is legal when such farmland is left vacant for many years due to the owners' overseas migration? (the issue of adverse possession.)

(2) How should the government handle the land disputes in the areas under the influence of the armed group? In particular, whether the parties lacking the formal status (so-called customary land users) only due to the former military government's refusal to issue the permits such as LaNa 39 should be treated with due recognition?

1.5 Research Questions and Hypotheses Induced from the Cases Review

The cases reviewed in the previous section are telling us certain gaps between the formal law implemented by the government and the social perception of what is justice in the side of people, as the typical causes of increasing land disputes in Myanmar.

The applicants of most of the cases raised at the Scrutinizing Committees are claiming for the recovery of once confiscated lands on the ground that the government did not follow the requirement under the 1894 Land Acquisition Act, but in reality, most of such applicants are found to be outside of the protection of the Land Acquisition Act because their status is only as so-called "customary land users" who do not maintain formalization of their rights due to the lack of documentary evidence of the right to land. Rather, the seizures of their lands were justified by the other mechanisms of formal law: Case 1 was justified by the military confiscation of vacant land by the wasteland management scheme, and the applicants who lacked the proof of land record or other documentary evidence (so-called customary land users) were precluded from the land recovery; Case 2 was the typical case of land expropriation for public use, but the relevant Ministry also justified their uncompensated land confiscation by the logic of the wasteland management and ignored the right of the farmers lacking the land record or other documentary evidence (again, so-called "customary land users"); Case 3 was a case of farmland use change permit (LaNa39) utilized by the government to take the farmland to allocate for investment projects, even though the applicant insisted that its substance was the land acquisition by the government for a private company's public use under the 1894 Land Acquisition Act. A fundamental policy question across these disputes is whether the law should extend the protection to the so-called "customary land users" or those who do not maintain the formalization of their right.

The cases of complaints on the land titling by the Farmland Management Bodies also revealed certain discrepancies in the policy of simultaneous land titling of "Cultivation Right" under the 2012 Farmland Law. Case 4 described the tendency of local level Farmland Management Bodies to newly allocate the "Cultivation Right" certificate (Form 7) to the tenant farmers on the ground of "actual cultivation," which implies a certain tendency of the local administration to understand the simultaneous land titling as an opportunity of land redistribution to the landless

class, instead of securing the title of absentee landlords. However, Case 5 is the contest for title between the land purchaser who can show the sales contract as a documentary evidence and the actual cultivator who lacks documentary evidence (so-called "customary land users"); Case 6 involves the issue of local community group as the so-called "customary land users" who lacked the formal certificate for land use change (LaNa39) due to the government's refusal during the period of armed conflict, and also the issue of the adverse possession was involved.

These dispute cases tell us the gap between the government and people on the point of who should be entitled to what right, and such a gap is increasing as the result of the fluctuation of the government's policy choice from the redistribution of farmland to the promotion of free land transactions. Such a policy gap is the most obvious in the cases involving the so-called "customary land users" or those farmers who have continued "actual cultivation" by many years or even many generations, but were somehow left behind in the formalization of their rights, and cannot obtain formal protection. The ultimate question of legal policy choice in this regard is what should be the elements of the formalization of farmers' rights. The aforementioned dispute cases have revealed the gap between the governmental practice and the people's perceptions, and even among the governmental practice in different layers of the administrative structure for the dispute resolution.

Accordingly, the research question of this study is dedicated to the identification of the legal causes of the perception gap between the government administration and the local farmers on the nature of farmers' rights and the element of formal recognition thereof, especially when involving the treatment of so-called "customary land users" or those farmers who lack documentary evidence but have strong belief of their entitlement due to the continued occupation and use of land by many years or even many generations. To this question, a hypothesis goes that this distance of perception on farmers' rights has been caused by the historical changes of formal law, which confuses the present government practice, while deviating from the people's sense of justice. Also, the concept of "actual cultivation", as a requisite for the formal recognition of farmers' rights will be a part of the key questions in this consideration.

1.6 **Methodology of the Research**

This research will first apply a historical legal approach to understand the root causes of the contemporary land disputes, particularly in regard to the causes of the perception gap between the government and the people on the nature of farmers' rights. It will start with a reading on the legal documents of pre-modern codes (*Dhammathats*) and renowned case laws (*Hpyaton)* that were applied in the era before Burma was colonized by the British; then an investigation will be made on the historical background of the formal legal provisions introduced by the British colonial reign, which have constituted the basis of the land administration by the government, with a focus on the legal characteristics of the farmers' primary rights "Landholder's Right" under the twin regimes of the 1876 Land & Revenue Act and 1879 Upper Burma Land & Revenue Regulations, with particular attention paid to the mechanisms which caused the social phenomena of and concentration to absentee landowners and instead the creation of a huge landless population; then this study will reconsider the legal nature of "Cultivation Right" envisaged by the post-independence attempt of land redistribution by the 1953 Land Nationalization Act; then, the legal policy taken during the socialist era will be identified by reading the declarations in that period in regards to the treatment of farmers' rights; next, the land law policies under the post 1988 military reign will be clarified; and finally, the treatment of farmers' rights under the contemporary land law reform under the 2008 Constitution will be studied through a careful reading of the 2012 Farmland Law, 2012 Vacant, Fallow and Virgin Land Management Law and their respective revisions. The focus will be on the treatment of "customary land users", together with the concept of "actual cultivation" required as its key element, in the major areas of laws at stake: namely, as the eligible category of "stakeholders" who can make objections under the Land Acquisition Act; as a defense to the vacant land confiscation without compensation under the wasteland management; as a defense to the farmland deprivation by the use change permit (LaNa39); and, above all, as the eligibility of land titling as "Cultivation Right" under the 2012 Farmland Law.

Next, the author intends a socio-legal research approach through an empirical investigation into the gap between the governmental practice on the treatment of farmers' right and the perception of the local people. The primary method is direct interviews with the counterparts in the author's survey conducted in April through June, 2023, with the government

officials, the representatives of local farmers, and the members of the Scrutinizing Committees and the Farmland Management Bodies, across several States and Regions chosen among various parts in Myanmar which consists of varieties of customs among more than 80 ethnicities.

Then, a comparative legal approach will be attempted covering the post-WWII land reforms in targeted States in India, namely, West Bengal, Uttar Pradesh, Jammu and Kashmir, and Kerala, for better understanding the comparative characteristics of the legal design of land law reform in Myanmar, basically through a combination of the doctrinal legal analysis on differences and similarities of the wording of the land law systems of target States and the legal policy changes learned from the periodical law amendments as well as the leading cases at the court. A particular focus will be on the definition of land right, and the necessary requirements in its proof in the dispute resolution mechanisms.

1.7 **Structure of the Research**

The research will, following the presentation of research questions induced from the review of typical legal causes of land disputes in contemporary Myanmar revealing the gap of perceptions between the Government and the local people on the required element for the recognition of farmer's land rights (Chapter I), intend to identify the legal origins of such perception gap through the historical analysis on the changes of law (Chapter II); then, it presents the results from the empirical investigation through interview surveys in Myanmar to identify the detailed government practice at the various spheres of land law administration, the notion of local farmers, as well as the members of dispute resolution committees at the forefront of village levels (Chapter III); and then, it presents the findings of comparative study on the different legal settings of the post-WWII land reform in selected States in India, by studying a similar dilemma with Myanmar in search of better legal designs for policy balancing (Chapter IV); and then an overall discussion that combines the historical, empirical and comparative legal approaches in the previous chapters will be attempted in order to find hints for future land law reform in Myanmar for better policy balancing, while referring to the lessons obtained from Japan with a focus on its recent agricultural land law reforms (Chapter V). The final chapter (Chapter VI) will be devoted to the conclusion with some recommendations for future legal reforms in Myanmar.

Chapter II

Legal History of Land Law: Origin of Farmers' Rights

2.1 Pre-modern King's Era: "Bobapaing"

Dhammathats, *Hpyathon* and *Yazathat* are the main legal sources in Burmese legal history during the King's era, which ruled the entire country prior to the British occupation until the surrender in the 3rd Anglo-Burmese War in 1888. British colonial rulers deemed that the concept of law in pre-colonial Burma was not based on written laws, but rather on practices, usages, and conventions known as "unwritten customary rules."[38] But in fact, Burma[39] had long been established a series of written legal codes since the latter half of the 11th century and the middle of 13th century, which is believed to be the codification of customary rules at that time.[40] Among them, a series of texts of *Dhammathats* have been conveyed to the present, stemming back to Bagan Dynasty in the 11th century. Burmese researchers identified the Mon Buddhist model as an origin of such codification works from the earlier Bagan period.[41] *Dhammathats* are not rigidly structured laws; rather, they provide rules of wisdom for kings and queens, ministers, and magistrates to rule by and for the populace to live by, in accordance with the prevailing social mores of the time.[42]

There were a number of *Dhammathats* according to the ruling dynasties, such as *Duttabaung Dhammathat* compiled during the time of Sri Ksetra Kingdom Manu, *Dhammavisala Dhammathat* of the Pagan Kingdom, the *Waguru Dhammathat* (*Wareru Dhammathat*) 1270, *Pyanchi Dhammathat* 1614 of the Taungoo Dynasty, the *Myingun Dhammathat* 1650 of the Konbaung Dynasty and *Manugye Dhammathat* 1782 under the King Alaungphapaya during the Konbaung Dynasty. Among them, the *Manugye Dhammathat* is one of the complete sets of

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[38] Jardine, J. (1897). *Buddhist Law. The Imperial and Asiatic Quarterly and Oriental and Colonial Record, 4(7 & 8).* (Reprinted in 1969, Liechtenstein: Kraus Reprint) and Hooker, M. B. (Ed.). (1988). *Laws of South East Asia (vols. 1 & 2).* Singapore: Butterworth & Co (Asia).

[39] "Burma" was used during the king's era till 1989. The reigning military administration (since 1988) changed the country's name from "Burma" to "Myanmar" in 1989. As a result, the author will refer to "Burma" prior to 1989 and "Myanmar" from 1989 to the present.

[40] Nyo Nyo Thin (2006). The Legal System in Burma and the Foreign Legal Assistance. *Keio Law Journal* at 390.

[41] Okudaira, R. (1986) ibid. in Footnote 35, at 24.

[42] Maung Maung (1963). *Law and Custom in Burma and Burmese History.* Martinus Nijhoff, The Hague, Netherlands at 7.

Dhammathat and was the first one translated into Burmese from Pali, allowing local citizens to understand the essence of the *Dhammathats,* whereas previous *Dhammathats* were mostly written in Pali or Pali-Burmese, making it difficult for local people to comprehend.[43] The majority of scholars consulted it for translation into English and their academic studies (Richardson, 1847; Okudaira, 1986, 2000). The *Manugye Dhammathat* consists of 14 volumes, including the volume 8 which provided for the issues of land rights.

The second source of traditional Burmese law was the collections of judicial decisions, *Hpyathon*, which are a compilation of precedents that had a significant impact on Burmese legal literature. *Hpyathon* are broken down into three main categories: religious obligations, judgments rendered by legendary figures, and final rulings by the King and Court on actual cases.[44]

Yazathat, which refers to the King's Royal Edicts and Ordinances, is another essential idea in Burmese legal history in addition to *Dhammathats, Hpyathon* and *Yazathat* are made up of the King's orders and ordinances for the purpose of promoting safety, security, and peace.[45]

The issues of land right are provided in Volume 8 of the *Manugye Dhammathat*, according to which, no other forms of land rights were recognized except for the following seven categories:

(1) Land that was passed down from ancestors;

(2) Lands that have been acquired through purchase, second;

(3) Lands assigned by the writer, measurer, or superintendent of forests;

(4) Land which had no owner and has been cleared of forests;

(5) Land received form gifts;

(6) Gifts from the king;

(7) Unclaimed land that has been worked with the owner's knowledge for at least ten years without him stopping or preventing it.[46]

There is a precious research work which depicts the historical changes of land order during the Burmese Kings' era by Bagan Minister U Tin, who wrote a voluminous book "*Myamma Min*

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[43] Okudaira, R. (2000). A Comparative Study on Two Different Versions of the *Manugye Dhammathat*: A Leading Law Book in Eighteenth Century Burma. *Myanmar Journal of Asian and African Studies, No. 59*, 181-195.at 182.
[44] Okudaira, R. (1986) ibid. in Footnote at 35.
[45] Nyo Nyo Thin (2006) ibid. in Footnote 40 at 392-393.
[46] Paragraph 2, volume 8 of the Manugye Dhammathat (1782), translated by Richardson, D. (1847). *Dhammathat: Or the Laws of Menoo*. Translated from the Burmese, Maulmain Baptist Press.

Okchokpon Sadan (Myanmar Kings Administration Documents)" in 1920s,[47] which categorized the land into five types as follows:[48]

(1) Four types of Ayartaw Myae [49] belonging to the king (State Land);

(2) Three types of land related to the Ayartaw Myae (State Land);

(3) Three types of "Bobapaing" land (ancestral land);

(4) four types of land related to "Bobapaing" land (ancestral land);

(5) Wathtu Kam Myae (three types of religious land).[50]

Thus, under these five types of land, a variety of subcategories of land existed. Namely, the first types of State land (1) were subdivided into four types of land belonging to the king: Nansin King Land, Sonetha Inheritance King Land, Theinsu King land, and Youngpaundpa land (Queen land)[51]. Under Nansin Kind land, three types of land were subdivided once more.[52]

Land related to State land (2) were subdivided intro Asarpay Myae (land for the king servants), Akaisar Myae (land for towns and villages), and Akyisar Myae (land allowing for the village leaders, towns leaders). These three types of land were the king's grants for a set period of time.[53]

"Bobapaing" (literal meaning is the land of grandfather) of above (3) was the land category for the exclusive land use of private people. Three different types of "Bobapaing" land were referred to by U Tin: first is "Damaugya" land, refers to land that had never been owned before, was cleared by the first proprietor and was then left to his succeeders; second, king-allowed land

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[47] The author U Tin was assigned by the Burma Commission to compile five parts of this book, and all information was taken from the parabiaks (the traditional folding paper manuscript from Burma is known as a parabaik in Burmese; it was painted on mulberry bark paper). U Tin used all available information, including daily orders from the king, monthly king notes, year notes, special notes, town records, king servants' records, king assembly records, records pertaining to the king's affairs, payabiaks, as well as *Dhammathats*, etc. stemming from the Burmese year 729 (A.D. 1337) to 1885 until the last year of the country's last Konbaung king.

[48] See Bagan Minister U Tin (1920). *Myamma Min Okchokpon Sadan with appendix to King Bodaw Phaya's Yazathat Hkaw Ameindaw Tangyi.* (Reprinted 1963). Department of the Historical Manuscripts and Culture. (Original work published 1920)., 6 volumes, 1st volume at 1 to 3.

[49] In Myanmar Language, the word "Myae " refers to the Land.

[50] Bagan Minister U Tin (1920) ibid. in Footnote 48, Volume 5 at 19.

[51] This was one type of the land that Kings gave to his Queens and she could get taxes from her lands.

[52] Bagan Minister U Tin (1920) ibid. in Footnote 48 at 21 to 30.

[53] Ibid., at 48 at 29.

known as Minpay Myae or land granted by the king to an individual or family; and third, Ngewoungepaung Myae, which is land acquired through purchase or mortgage.[54]

These three different types of "Bobapaing" land were owned by the original owners for many generations, and no one was allowed to disturb or take any of it. The legitimate landowners could sell or mortgage their land to new owners, who would then have the right to own it as "Bobapaing" land rights.[55]

Land related with the "Bobapaing" land of above (4) were subdivided into four types according to the different usage: Naysa Myae refers to land allocation for agricultural and residential purposes; Sar Myae refers to land allocation only for agricultural purposes; Thayemoe Myae refers to land allocation for the king's military servants; and Athe Myae or communal land refers to land for all of the locals who have lived there since the village or town was established, and can be farmed by the community residing in the village where the land is located.[56] Wathtu Kam Myae was divided into 3 types as pagoda's land.

As for the legal substance of these land rights, *Manugye Dhammathat* Volume 8, Section 1 categorizes them into two kinds: (1) perfect land rights (*Myaethay* or finalized land in Myanmar term) and (2) contestable land rights (*Myaeshin* or active land in Myanmar term). *Myaethay* can arise for two types of land: (1) land provided by the King for his servants, and (2) "Bobapaing" land that has arrived by hereditary succession and has long been in the possession of the head man's family who use and cultivate for sustenance. All other types of lands are categorized into contestable land rights *Myaeshin*, which includes hereditary estates, purchased land, land obtained as a result of other's departure and leaving it, land that has been openly occupied and worked without interruption for ten years, forest land that has been cleared, land allotted or given by officers, the land measurer, head man, or superintendents. In case of land sales (or mortgage) of the perfect land right *Myaethay*, the original owner's descendants (sons, grandsons, or great grandsons), as well as the parties having a claim as partners in working the land, can reclaim the

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[54] Bagan Minister U Tin (1920) ibid. in Footnote 48 at 30.
[55] Ibid., at 31.
[56] Ibid., at 32 to 34.

land from the purchaser/ mortgagee at any time by paying the proper amount. Therefore, it is understood that the perfect land right is not subject to an immediate sale. [57]

As for the rule for title contest between the original owner (or his descendants) and the new purchaser in land sales, *Manugye Dhammathat* Volume 7, Section 41 requires the establishment of 10 years' continuous cultivation. There are two possible cases: (i) If the buyer of land sales has cultivated the land for more than 10 years after the land sales, the original owner (or his descendants) is unable to reclaim the land anymore, unless he had filed a claim to suspend the completion of the 10 year period (acquisitive prescription); and (ii) If the seller of land remains in the possession of land (pledge) but failed to cultivate it for more than 10 years (if he cannot cultivate the land for a certain reason, such as being sent to another location by king's command, his family or relative must cultivate on his behalf), the buyer will proclaim the possession of land. Thus, in both cases, the criteria of land title was the actual cultivation for 10 years.[58]

According to *Manugye Dhammathat* Volume 1, Section 5 [59] provides the ten-year prescription. The latter owner, who worked on the land for ten years without being interpreted by the prior owner, may obtain the land, and also *Manugye Dhammathat*, Volume 8, Section 1[60], it is stated that working and cultivating farmland is necessary for considering the nature of the possession of land rights, and this provision can be considered a warning for the loss of land rights in cases of long-term abandonment of farmland that beyond the length of fertilization accepted by the customary rule, nearly ten years, and is considered evidence of extinction prescription.

The highlight of land order in the pre-colonial dynasty era is summarized in Figure 2-1. One of the remarkable points is that the pre-colonial Burma already had had the uncontestable strong land title of "Bobapaing" as a *Myaethay* right, which was compatible to the modern ownership concept. All of the three different types of "Bobapaing" land were confirmed by a long-term holding by the original holder for many generations, and established as a land right which no one was allowed to disturb.[61] The legitimate holder of "Bobapaing" could sell or mortgage their land to others, but such buyer or mortgagee could obtain "Bobapaing" land rights only after the 10 years' prescription period.[62]

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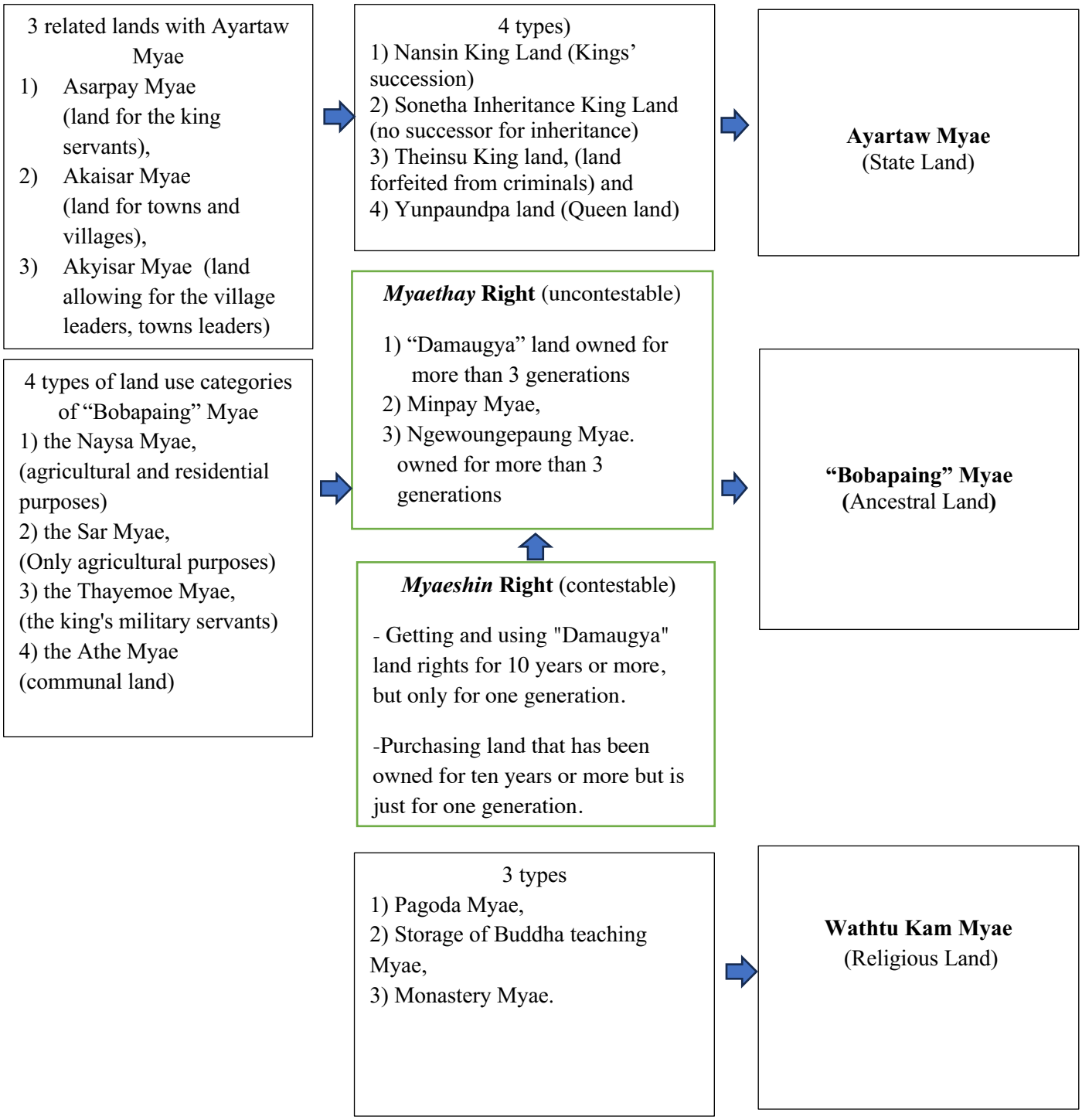
[57] Richardson, D. (1847) ibid. in Footnote 46 at 223 to 225.
[58] Ibid., at 220.
[59] Ibid., at 11.
[60] Ibid., at 223.
[61] Bagan Minister U Tin (1920) ibid. in Footnote 48, Volume 1 at 1 to 3 and 29 to 31.
[62] Ibid., at 31.

Figure:2-1**- Land Rights during the King Era**



(Source- Compilation by the author based on the information from *Manugye Dhammathat* (1782) and Bagan Minister U Tin (1920))

2.2 British Colonial Era: "Landholder's Right"

As Myanmar was gradually subjected to British reign through three Anglo-Burmese Wars, the land regime was formed through a patchwork of various experimental systems, resulting in a certain complexity (see Table 2-1). Following the 1st Anglo-Burmese War in 1824, Rakhine and Tanintharyi were under British control. Next, the British took over Rangoon (Yangon) in the 2nd Anglo-Burmese War in 1852 was came under the British by 1854, which included the whole of Ayeyarwady delta (present Ayeyarwady, Bago, and Yangon regions), together with the coastal regions of Rakhine, Mon, and Tanintharyi, and later the whole of this Lower Burma came under the authority of the Governor General of India in 1862 as British Burma. Then, the British won the 3rd Anglo-Burmese War in 1885 to conquer the Upper Burma, which corresponds to the present Mandalay, Sagaing, and Magway Regions as well as Chin, Kachin, and Shan States.

Table: 2-1 **- Land related Laws Promulgated During Colonial Times (1885 to 1948)**

Area	Laws	Purposes	Nature of the Land rights
Land Revenue	1876 Lower Burma Land and Revenue Act	To administer land for Town and Village Lands, Agricultural Lands, and Vacant and Fallow Land with an emphasis on collecting Land Taxes and other Sources of Revenue.	2 Types 1. "Landholder's Right" 2. Lands at the Disposal of Government
	1899 Lower Burma Town and Villages Lands Act	The Lower Burma Town and Village Lands Act of 1889 defines a landowner's responsibilities and rights, as well as how they may be acquired or lost. The Town and Village Lands were the only subject of this Act.	2 Types 1. "Landholder's Right" 2. Lands at the Disposal of Government

	1889 Upper Burma Land Revenue Regulations and Manual	In order to administer land and collect taxes and revenue for Upper Burma	2 Types 1.“Bobapaing” Lands 2. Ayartaw Myae
	1881 Forest Act	To manage forest lands	Same treatment for whole Burma
Waste Land Management	1863 Waste Land Claims Act`	The processes for granting waste land to the private sector and nominating nationalized areas as waste land for the private sector.	Same treatment for whole Burma
Land Expropriation	1894 Land Acquisition	The methods for acquiring various sorts of lands. Using the interests of the public purposes and private businesses in exchange for compensation. The President has the only authority to expropriate all sorts of properties while disregarding various property rights. Only registered landholders are recognized by this law.	Same treatment for whole Burma

(Source - Compilation by the author)

Table: 2-2- **Legal Nature of Private Land Rights in Upper Burma and Lower Burma in British Time**

	Upper Burma	Lower Burma
Legal Substance of Private Land Rights	-right to occupy -right to use and cultivate -right to mortgage -right to sell and transfer -right to succession (Section 23(e)/24 1889 Upper Burma Land and Revenue Regulation)	-right to occupy -right to use and cultivate -right to mortgage -right to sell and transfer -right to succession (Section 8 of 1876 Land and Revenue Act)
Revocation of right	No revocation	subject to revocation if any obligation (registration, cultivation, etc.) failed to be me
Registration	Registration (Section 29 1889 Upper Burma Land and Revenue Regulation)	Registration (Section 13 of 1876 Land and Revenue Act)
Wasteland Management	Unregistered land deemed as state land (1862 Waste Land Claims Act)	registered land deemed as state land (1862 Waste Land Claims Act)
Land Acquisition for Public Purpose	Land acquisition for public purpose/ company use upon compensation (1894 Land Acquisition Act)	land acquisition for public purpose/ company uses upon compensation (1894 Land Acquisition Act)

(Source - Compilation by the author)

Meanwhile, number of land regulations, including the Patta System, the 1862 squatter system, the 1858 Lease Act, the 1863 Waste Land Claims Act, and others, were put into effect in the concurred areas following the Second Anglo-Burmese War in 1852. Then, the Lower Burma Land and Revenue Act was passed in 1876 to compile these colonial land regulations for an

integrated tax collection system covering [63] all agricultural land, towns lands, villages land, and virgin land in Lower Burma. After the Third Anglo-Burmese War, the 1889 Upper Burma Land and Revenue Regulations and the 1898 Lower Burma Towns and Villages Act were adopted in Upper Burma.

<Legal Nature of "Landholder's Right" in Lower Burma>

According to this historical process, colonial land law was characterized by a separation of Upper and Lower Burma. In Lower Burma, the 1876 Lower Burma Land and Revenue Act was characterized by the declaration (as of 1958) of the British government that ownership of all the lands in Lower Burma belonged to the British Empress Queen. The act classified all farmland into either of two categorizes: (i) State Land at the disposal of the government and (ii) "Landholder's Right" which vested to people.[64] In addition, "grants" and "licenses" were allocated in the urban areas in accordance with Section 4(2) of the Lower Burma Town and Villages Act for residential, commercial, and construction purposes.

A remarkable point of "Landholder's Right" was its legal substance as a tenancy of state-owned land under the aforementioned declaration of state land ownership, which was subject to the unilateral revolution by the state in cases of failure to fulfill the conditions such as paying land taxes regularly, if the land was abandoned for 2 years without consideration of the recess of fertilization purposes (Section 11).

<Requirements of the Proof of "Landholder's Right" in Lower Burma>

The criteria of the proof of "Landholder's Right" was establishment of the landholding of a 12 years period before September 9, 1889,[65] but this proof of "landholding" here did not require actual cultivation.

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[63] Kaneko, Y., & Ye Naing Lin (2021) ibid in Footnote 33 at 249.
[64] Zaw Min - U (Natmauk) (2016). *Bobapaing Lands and Conflicts under Land Laws*. Yangon: Swedaw Press. (Myanmar Language). at 25.
[65] Section 4(10) and Sections 8(a)(b)(c).1899 Lower Burma Town and Village Act.

<Legal Nature of "Bobapaing" Rights in Upper Burma>

In Upper Burma, two specific laws were enacted: the Lower Burma Town and Village Act 1899 and the Upper Burma Land and Revenue Regulations 1889. This 1889 Regulation differentiated between two types of land: *Ayartaw Myae* (State Land) and "Bobapaing "(for private and religious land).

"Bobapaing" was expressed as the absolute land ownership rights (*Din Pyae Kyat Pyae Paing Sai The Myae*) according to Sections 282 to 285 of the Upper Burma Land and Revenue Manual.

<Requirements of the Proof in State Land / Non-State Land Separation in Upper Burma>

To prove a "Bobapaing*",* a long-term continued cultivation for more than 10 years after the clearance of land (or "Damaugya") had to be established. In accordance with Sections 24 and 23(a) of the Regulations, farmers could apply within one year from the introduction of Regulation to prove their rights with the necessary documents and factual evidences in order to obtain the "Bobapaing" land right, to which the collector took his discretion to grant "Bobapaing" rights or otherwise designated the land as state land. If this proof of "Bobapaing" failed, the land was destined to be categorized as *Ayartaw Myae* (State Land) under Section 23(d) of the Upper Burma Land and Revenue Regulations below:

> Section 23. "State land" in the following sections of this Regulation land belonging to or at the disposal of the Government, and includes –
>
> (a) Land formerly termed royal land;
>
> (b) Land held on condition of rendering public service or as an appanage to or emolument of a public office;
>
> (c) Islands and alluvial, formations in rivers;
>
> (d) Waste-land and land included within reserved forests; and
>
> (e) Land which has been under cultivation but has been abandoned and to the ownership of which no claim is preferred within two years from the 13th July, 1889.

Thus, this separation policy of state land – non-state land in Upper Burma resulted in the loss of a large portion of private land holding. If a farmer fails to prove his "Bobapaing" by 10 years continuous cultivation, his land was deemed as a waste land, and came under the definition of the state land in Section 23 of the Upper Burma Land and Revenue Regulation. This state land – non-state land separation was similar to the so-called "wasteland management" method that the British colonial land policy applied in many colonies,[66] which deemed non-registered private land as state land and put it for commercial purposes through the grants, leases, and licenses.[67]

<Difference of Legal Nature: "Landholder's Right" vs, "Bobapaing" Right>

As a result of such a gradual historical process of British colonial land law, two different regimes of private property rights were applied to Upper and Lower Burma (Table 2-2): While the land regime of Lower Burma was characterized by "Landholder's Right" as a transferrable tenancy of state land under the 1876 Land and Revenue Act, Upper Burma was characterized by the binary separation of "Bobapaing" for private land and *Ayartaw Myae* (State Land) under the 1889 Upper Burma Land and Revenue Regulation, which often resulted in the elimination of private rights in Upper Burma. This separation of Upper and Lower Burma land regimes has caused the complexity of land management in Myanmar up to the present because of the basically continued application of these basic British laws, regulations and manuals by the government until the present time.

At a glance to their legal functions, Upper Burma "Bobapaing" land and Lower Burma "Landholder's Right" look basically similar in terms of the right to occupy land, the right to live and cultivate on land, the right to mortgage, the right to sell and transfer land, and the right to succeed land to heirs (Section 8 of 1876 Land and Revenue Act and Section 23(e)/24 of 1889 Upper Burma Land and Revenue Regulation). [68] But a fundamental difference exists between them

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[66] Kaneko, Y. (2021). *Origin of Land Disputes: Reviving Colonial Apparatus in Land Law Reforms*. in Y. Kaneko, N. Kadomatsu, & B. Z. Tamanaha (Eds.), *Land Law and Disputes in Asia: In Search for an Alternative Development*. Routledge. at 7 to13., also refers to the wasteland management by the state land declaration in other parts in Asia, such as 1870 Netherland East India, as well as in the state land – non-state land separation policy applied in Japan's Meiji government in the same era.

[67] General Administration Department Training Institute (1992) *GAD Institute Handout*, at p.6 to 7 (in Myanmar Language) (revised in every year since first publication).

[68] Zaw Min- U (Natmauk) (2016) ibid. in Footnote 62 at 27.

in terms of the security of tenure: while Upper Burma "Bobapaing" land right was irrevocable by anyone, Lower Burma "Landholder's Right" was a tenancy of state land subject to the revocations by the government if the obligations were failed to be met by a landholder (Section 9 of 1876 Land and Revenue Act). For example, the cessation of cultivation for more than two years, and the failure of registration constituted the cause of revocation of "Landholder's Right".

In sum, during and after colonial times, farmers in both Upper and Lower Burma could obtained a similar right of "Bobapaing" or "Landholder's Right" if they could successfully prove their continuous landholding within a short period of time limit. But if they failed to prove their rights, their land was deemed as waste land and categorized into the state land. Particularly in Upper Burma, a simple classification was made for state land/ non-state land differentiation, which resulted in many landholders lost previous land rights unless they successfully claimed to prove "Bobapaing" right. In Lower Burma, even anyone could obtain "Landholder's Right", but it was a fragile right subject to revocation when any conditions were failed to be met.[69] The 1862 Waste Land Claims Act and 1894 Land Acquisition Act were the main Acts that have been used to cancel the "Landholders' Right" of the farmers since colonial times.

Figure 2 illustrates the overall image of such separated land regime during the colonial period.

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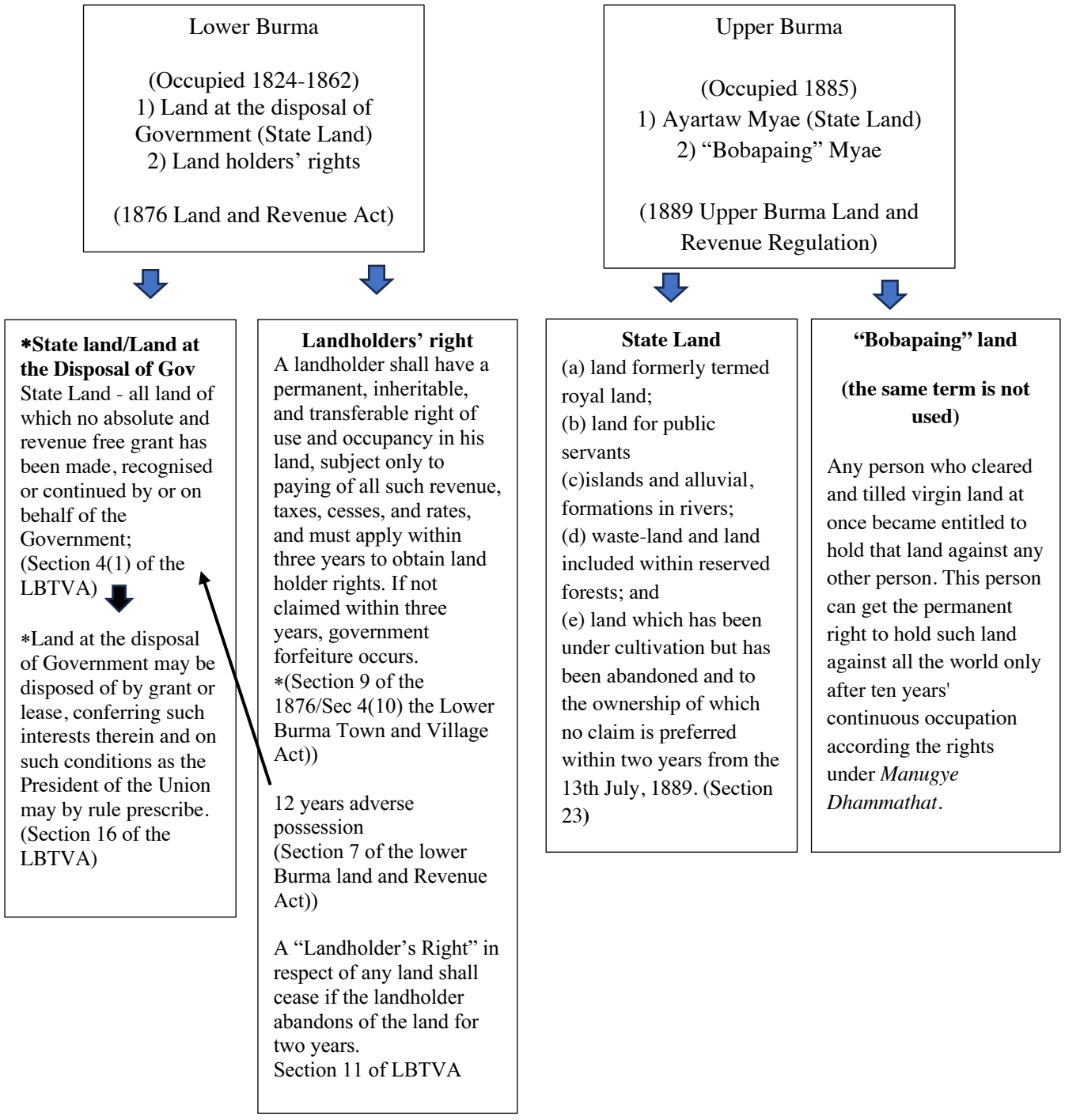
[69] According to Section 15 of the 1879 Land and Revenue Act, any person needs to apply for record "Landholder Right", but Section 7 of the Act states that only those who have been in continuous possession of land for 12 years are eligible. As a result, the registration system is utilized to show 12 years of possession. Furthermore, pursuant to Section 13 of the Act, the petition must be filed within 12 years; hence, if a person fails to claim recorded land holders' rights within two years, his land is forfeited under Section 11 of the Act. And also, under section 6(b) of the Land and Revenue Act, Section 26 and 27 of the Limitation Act 1909 is referred for 12 years possession of ownership. According to Section 16, revenue officials may cancel recorded registration rights within 5 years if they discover inaccuracies or problems with the recorded registration right. If the revenue officer does not cancel within 5 years, the recorded rights are stable, and under Section 17 of the Act, even the civil court must follow and determine based on the recorded registration right. As a result, it is clear that the British government adopted the Torrens method for land registration, as evidenced by the effect of final evidence.

Figure: 2-2**- The Separation of Land Rights in Lower and Upper Burma**



(Source- Compilation by the author)

<Common Requirements for the Proof of Title under Torrens-Style Title Registration>

The deprivation of private land systemically occurred in British Burma, due to the failure of proof under the Torrens style title registration. Both of the 1879 Lower Burma Land and Revenue Act (Sections 15-17) and the 1889 Upper Burma Land Revenues Regulation (Sections 30-53) introduced the Torrens-style title registration, which gave the conclusive title after the completion of 5 years objection period for contests.[70] Once the title is thus finalized, even the judicial court could no longer challenge this conclusive title. This title registration system allowed the security for land transactions, and the eligibility of compensation in the land acquisition for public purposes or company use under the 1894 Land Acquisition Act. But if anyone failed to obtain this registration, such unregistered land was deemed as state land, and the holder was evicted under 1862 Waste Land Claims Act. The 1894 Land Acquisition Act was neither applied to the protection of unregistered rights in cases of taking for public purpose projects (Section 5A).

2.3 **Post-Independence Land Nationalization Act**

On January 4, 1948, Myanmar achieved its independence as a nation state. The Constitution of the Union of Burma was ratified on January 4, 1948 after being promulgated on September 24, 1947. Because most of the land areas had been concentrated into the possession of absentee foreign landlords during the colonial era, particularly to Indian financers "Chettiars",[71] the government head by the first prime minister U Nu purposed the policy to take back the agricultural land to the farmers based on Section 30 of the 1947 Constitution which reads as follows:

(1) The State is the ultimate owner of all lands.

(2) Subject to the provisions of this Constitution, the State shall have the right to regulate, alter or abolish land tenures or resume possession of any land and distribute the same for collective or co-operative farming or to agricultural tenants.

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[70] Kaneko, Y., & Ye Naing Lin (2021) ibid. in Footnote 33 at 250-251.

[71] "Chettiiars" are Indian rich class people who holds the lands without cultivation and let the people to cultivate the lands and receive profits from the lands.

(3) There can be no large landholdings on any basis whatsoever. The maximum size of private landholding shall, as soon as circumstances permit, be determined by law.

Accordingly, the initial Land Nationalization Act was passed in 1948, with the goal to reclaim the land from absentee landowners and transfer it to small-scale farmers and landless farmers. The 1948 Act was repealed by the 1953 Land Nationalization Act in response to the call for a compensation plan for the landowners whose land is nationalized by the government for distribution.

The following five guidelines were crucial for carrying out the entire process of implementing the 1953 Land Nationalization Act:[72]

(1) Prohibition of tenants' and cultivators' status under Land Nationalization.

(2) Permitting the owner-cultivator within the ceiling limit.

(3) No exemptions may be granted to non-cultivators.

(4) Establishing the guidelines for distribution and exemption.

(5) The State has resumed considering the suitable compensation.

The President was responsible for resuming the possession of all agricultural land, excluding those included in Table 1of the Act, [73] in accordance with Section 5(1) of the Act, which is the owner-cultivator within the ceiling of standard portion of land called "Tat-ton-hton" equivalent to 50 acres. [74]Accordingly, the possession of the land within 50 acres was secured for the farming household.

<Legal Nature of Farmer's Right>

There is no explicit name given to the right of farmers on such secured or distributed land, but their legal characteristics were provided by the Act. As for the legal nature of the rights of farmers whose agricultural land was secured, Section 9 (1) of the Act provided as follows:

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[72] Yin Yin Nwe (2009). Land Nationalization Programme and Its Implementation (1948-1962). *Hinthada University Research Journal, 1(1),* 2009. pp-111-120 at 116.

[73] Table 1 is the provision of the land ceiling for the farmers who can maintain 50 acres the agricultural lands for standard households of 4 adults family members.

[74] The Act provided the name of the "Ta-ton-hton" that is an area of land can be cultivated with two heads of cattle.

(a) The rights to possess the land, cultivating on it and to enjoy all the benefits arising therefrom.

(b) The rights to sell, transfer possession, and or donation to religious institution and religious personal, to any agricultural association, any agriculturalist, or any non-agriculturalist who commit in written agreement that the land will be used in accordance with the means prescribed in Section 3, paragraph (C) of this Act, and,

(c) The rights to divide, or to exchange the land with other agricultural land.

Section 10 (1) of the Act provided the rights to farmers relating to the distribution of lands as follows:

(a) The rights to possess the land, cultivating on it and to enjoy all the benefits arising therefrom.

(b) The rights to sell or transfer possession, to any agriculturalist association where the chief of that agriculturalist family is a member.

(c) The rights to divide, or to exchange the land with other agricultural land.[75]

Thus, the 1953 Land Nationalization Act made it illegal to sell, mortgage, transfer, or divide any land to non-agricultural users. While the secured land could be sold to an agricultural organization, other farmers and even non-agriculturalist who signed a letter of promise to cultivate the lands under Section 9(1), the distributed land was only allowed to sell to the agricultural association where the chief is the agriculturalist, and not allowed to sell to other individuals, under Section 10(1) of the Act. In either case, the goal of this Act was obviously set on the protection of farmland from the concentration to non-agricultural use.

However, a reference should also be made to the provisions which provided the government discretions to revoke the land rights of farmers in cases of the infringement of various obligations imposed on the farmers (Sections 11, 12, 29-33). Under Sections 29 through 33, the secured or distributed land rights will be canceled by the government without any compensation if the right holders do not follow under Section 11 and 12 of the Act, such as the transfer of land to non-agriculturalists under Section 9(b) and Section 10 (b); cease to be an agriculturalist family,

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[75]Section 10(1) of the 1953 Land Nationalization Act.

leaving land fallow without sufficient cause; failure to pay land revenue, violation of the restrictions of mortgage, sales or other transfer. This power of the government to revoke the land was also confirmed by Sections 29 to 32 of the 1947 Constitution which provided that the government may seize land for a number of reasons, including failure to comply with the terms of a mortgage or transfer probation, failure to maintain an agricultural household status, nonpayment of taxes and revenues, and leaving the land fallow without a good reason.

Thus, although the legal nature of the land rights under the post-colonial Land Nationalization Act was characterized by the control of transfer to non-agricultural use, which was different from the freely transferable "Landholder's Right" under colonial land law, the Act maintained the same characteristic as the colonial "Landholder's Right" as a revocable right, subject to the unilateral control of the government when any legal conditions were failed to be met.

<Requirements for the Proof in Dispute Resolution>

For the management of Land Nationalization Act, the respective land committees are formed under Chapter 8 of the Act and chapter 2 of the Land Nationalization Rules 1954 as Ward and Villages Tracts Land Committees with 7 members by election system (Rules 3), District Land Management Committees by direct appointed by President for 8 members (Rules 41).

According to Rules 43, the person first needs to apply to the Ward and Village Tracts Committees in order to claim for his land secured from the nationalization within the ceiling limits. The requirements for this proof are provided in Chapter 3 Section 6 of the Act as follows:

(a) The family must be agriculturalist family.

(b) One of the family members must possess the land continuously since January 4, 1948.

(c) One of the family chief or chiefs of the family must have been living as agriculturalist since January 4, 1948.

(d) Most of the family members must be citizens of Union of Burma.

According to Rule 48(2), the Ward and Village Tracts committees shall decide for the first instance. If the disputes occur, an appeal can be sent to the District Land Committee that has the sole right to decide the land disputes cases (Rules 48(1)).

The additional clarification for the proof requirements is provided in Part 1 Rule 52 such as follows-

(a) The head of that household; his primary employment must be working the land with his own hands. Or he must have continually worked with his own hands. Alternatively, he must supervise and work on farm land as his primary activity throughout the relevant year.

(b) Whether or not the members of the married family are blood relatives to the head of the married family. Marriage or no marriage They must rely on the chief's income while living together.

(c) one of the household's heads; Must be a Union citizen;

(d) one of the household's heads; has to declare in writing in Form 17 that he would engage in the farmers' organization created in accordance with Section 13 of the Act and the rules, as instructed by the authority chosen by the President of the State.

(e) The head of that household; Or family members are not getting exempted land rights from the state's confiscation of the agricultural land under Section 6 of the Act.

Under Part 3 of the Rules, the distributed land has to be listed and mapped under Rule 63. According to Rules 8(1), the District Land Committee can decide the land disputes cases by examining witnesses, which is final and conclusive. In addition, under Rules 50, the District Land Committee need to investigate not only the witnesses but also the land record and registration certificates to decide the disputes. Thus, the method of proof required documentary records as necessary evidence, which is a practice succeeding the colonial system where the non-registered land rights were revoked by the government.

2.4 **Socialist Era: Landed and Tenant Farmers' Treatment Equalized**

The implementation of farmland redistribution under the Land Nationalization Act was in delay. It was reported that only 17% of the eligible land (3,557,000 acres)[76] had been nationalized and distributed to farmers during the performance from 1953 to 1958. In 1965, there were 350,000

[76] Taylor, R. H. (2009). *The State in Myanmar*. University of Hawaii Press. at 224.

of landlords, 30% of whom were still foreigners due to the unsuccessful implementation of the Land Nationalization Act. Therefore, some scholars concluded that this program gave benefits to the existing landed farmers as better-off entities, but did not achieve progressive results for the redistribution to landless farmers. [77]

As the social criticisms increased against this limited result of redistribution, in 1958, the Myanmar government was put under the Caretaker Government by General Ne Win, who established an inquiry commission to conduct research into the Land Nationalization Act performance over the preceding six years. The commission's findings were presented to the government in September 1959, which made recommendations for the Act's implementation for the entire nation.[78]

In 1960, Prime Minister U Nu reestablished the civilian government structure and drew up the Four-Year Economic Plan for increasing productivity of cultivation, planned and diversified agriculture. But his party Anti-Fascist People's Freedom League (hereinafter referred to as AFPFL) failed in the general election in 1960, and on 2 March 1962, the Revolutionary Government led by General Ne Win took power, and declared the plan for improved implementation of land redistribution.

After the military had taken over the country in 1962, the country's structure began to follow the Burmese way of socialist system. The late U Nu government attempted to promote the protection of tenancy rights in response to the social criticism against the unsatisfactory results of redistribution. [79] The Law on Disposal of Tenancies was passed in 1963, which established the State's right to cancel landlord-tenant agreements, and added further limitations on an individual's right to own or rent land. As part of Ne Win's socialist goal, a series of laws for protecting smallholders were put into place, including the Law Safeguarding Peasants Rights 1963, which was designed to shield indebted farmers from creditors foreclosing on their land properties. [80]

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[77] Boutry, M., & Mya Darli Thant. (2020). The Implementation of the Vacant, Fallow and Virgin Land Law: A Case Study in Sagaing Region. MRLG Case Study Series #3. pp. 89. Yangon at 66.
[78] Yin Yin Nwe (2009) ibid. in Footnote 70 at 119.
[79] Takhashi, A. (1991). *Land Tenure and Agricultural Products Sale in an Irrigated Rice Village in Upper Burma: Comparison with a Village in Lower Burma.* Institute of Developing Economies.
[80] Obendorf, R. (2012). *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow, and Virgin Management Law.* Yangon: Food Security Working Group's Land Core Group at 66-67.

Finally, the Socialist Republic of the Union of Burma 1974 Constitution was adopted, and its Section 18 declared that the state remained the ultimate landowner. In this stage, the Land Nationalization Act was suspended by the socialist government, and the agrarian reform's motto was changed from "land to the tiller" to "the right to cultivate to the tiller." This means that the legal nature of farmer's land right was weakened from an ownership-like one to a tenancy-like one. Ne Win government furthered the policy line to reduce the gap between small-scale landed farming and tenant farming, especially after the Central Agricultural Committee's pronouncement in 1970 referred to both independent farmers' and tenant farmers' rights as "Cultivation Right" (*Lyae Yar Myae Loat Paing Kwint*, which literally means a right to use for cultivation purposes).[81]

Ne Win government placed a strong emphasis on consumer welfare,[82] and farmers were compelled to cultivate a particular crop to meet with a predetermined yield, and the government controlled a set price under the system known as "Compulsory Delivery Quota." If farmers failed to sell a predetermined quota to the government at a predetermined price, the government withheld the authority to confiscate land.[83]

However, this socialist regime's procurement policy to set a quota system for crops had a significant negative impact on farmers' livelihoods by requiring them to sell at prices below those determined by the market and by imposing a fixed paddy quota that was determined based on the cultivated area. The "Cultivation Right" were taken away from farmers if any of these conditions were not met, and the local Authorized Land Committee reassigned it to prioritized applicants who met the standards.[84]

2.5 **Post 1988 SLORC and SPDC Era**

Significant changes occurred in Myanmar's politics since the military coup d'état in 1988 led by Tatmadaw's Chief of General Staff Saw Maung. The 1974 Socialist Constitution of the Union of Burma was suspended, and the transition to a market-oriented economy was declared, with an expectation to boost the economic development. All governmental powers were

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[81] Obendorf, R. (2012) ibid. in Footnote 78 at 78.
[82] Boutry, M. et al., (2017) ibid. in Footnote 75 at 68.
[83] Taylor, R.H., (2009) ibid. in Footnote 74 at 224-225.
[84] Boutry, M. et al., ibid. in Footnote 75 at 68.

consolidated under the State Law and Order Restoration Council (hereinafter referred to as "SLORC"). The SLORC swiftly appealed the liberalization of economy with the adoption of the Foreign Investment Law in 1988, which made it possible for foreign investors to invest in Myanmar, and also the Domestic Investment Law followed for domestic investment promotion, together with the liberalization of foreign trade by private companies since November 1988. The State-Owned Economic Enterprise Law was passed in 1989, impressed a narrowed restriction for private business entry, with the exception of only 12 industries that continued to be under the monopoly of state-owned enterprises.[85] In 1997, the SLORC government was followed by the State Peace and Development Council (hereinafter referred to as SPDC) which had a reign from 1997 to 2011. The basic regime of the military controlled promotion of the market economy was unchanged.

The land policy of such military-led period was characterized by the active utilization of "wasteland management". The Central Committee for the Management of Cultivable Land, Fallow Land, and Waste Land was established by the military government in 1991, and its responsibilities were outlined in a series of SLORC declarations such as the 1991 Waste Land Instruction and the 1991 Procedures conferring the right of cultivation to utilize land. The 1991 Waste Land Instructions was expected as a crucial tool for encouraging large-scale extensive agricultural growth in Myanmar through the utilization of wasteland. The Central Committee approved 946 requests totaling 148,927 acres between 1991 and 1995, according to data from the Survey and Land Records Department.[86] However, this active implementation of wasteland management has become the causes of numerous land disputes in the succeeding stage, as discussed later.

On the other hand, smallholder farmers were put under the same agricultural policy of non-transferable "land to cultivate to the tiller" rights as the previous era. Therefore, farmers still subject to a weak status as a tenant of the government owned land, lacking the free option to select the crops they grow, and subject to the revocation by the government when failing to meet the governmental conditions.[87]

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[85] Nakanishi, Y. (2013). Post-1988 Civil-Military Relations in Myanmar. *Institute of Developing Economies (IDE) Discussion Paper No. 379*. IDE-JETRO.
[86] Ibid.
[87] San Thein et al., (2018) ibid. in Footnote 5 at p.11.

2.6 **2008 Constitution Era and 2012 Land Law Reform: "Cultivation Right"**

The current Constitution of the Union of the Republic of Myanmar was adopted in 2008 and put in forced in 2010, which initiated the Myanmar's new political system of parliamentarian democracy. The President-led government began to guide the nation's economic development, even though the posts of numbers of civilian officers in the ministries were occupied by the former military personals.

Following the initial round of political reforms in which the administration of President U Thein Sein made significant efforts toward the freeing of political prisoners and the signing of tentative ceasefire agreements with ethnic armed groups, the second round of changes after May 2012 centered on the Framework for Economic and Social Reform (hereinafter referred to as FESR) adopted by the Myanmar Planning Commission. This second wave of reform covered the land issue as one of the pillars as well as public finances, monetary policy, business, investments, the growth of the private sector, food and agricultural development, health and education, communication services, and infrastructure development initiatives. The opinion leaders emphasized that Myanmar still faced significant difficulties in managing land use, particularly in ensuring the security of land rights of smallholder farmers and rural communities, particularly in rural states and regions with a high concentration of ethnic minorities, despite the new governmental commitments to political, economic, and social reforms.[88]

Accordingly, a number of laws were introduced for reforming land related issues. In the year 2012, the government introduced the Farmland Law (Law No. 2/2012) and its implementation rules (Ministry of Agricultural and Irrigation Notification No.62/2012), as well as the Law on Vacant, Fallow and Virgin Lands Management (Law No. 10/2012) and its implementation rules (Ministry of Agricultural and Irrigation Notification No. 1/2012), both of which have served as the cornerstones of Myanmar's 2012 land reform.

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[88] Soe Nandar Linn (2015). Myanmar: Conflicts over Land in a Time of Transaction. *Economic and Political Weekly, 5(50).* (https://www.epw.in/journal/2015/9/conflict-transition-and-development-special-issues/myanmar-conflicts-over-land-time.)

<Legal Nature of Farmer's Right >

However, there has remained a controversy on the legal nature of farmer's right, which was explicitly named as "Cultivation Right (*Lyae Yar Myae Loat Paing Kwint*)" in Chapter 2 of 2012 Farmland Law, without naming it as the modern term "ownership" nor the traditional term of "Bobapaing." Instead, the term "Cultivation Right" reminds us of the terminology equivalent to the aforementioned British colonial "Landholder's Right" under the 1876 Land and Revenue Act subject to easy loss upon the government discretions. In fact, the 2012 Farmland Law maintains a provision in Section 3 that the state, as the original owner of all lands, grants permission for cultivation use.[89] Therefore, the legal status of the "Cultivation Right" of farmers under the 2012 Farmland Law has not changed from that of the previous era under the socialist constitution through the SLORC/SPDC periods in terms of its weak status subject to the revocation by the government up on the failure to fulfil the conditions.

This issue also relates to the question of constitutional interpretation. While Section 35 of the 2008 Constitution stipulates that "The economic framework of the Union is a market economy system," which has become the basis to promote the land transfer, but Section 37(c) provides that "the Union shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law" which means the Union government shall protect private property of the citizens based on the constitution provision.

Section 37(a) of the same Constitution states that "The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and below the ocean, and in the atmosphere in the Union," which is an expression remaining from the previous constitutions, namely 1947 Constitution's Section 30(1) and the 1974 Socialist Constitution Section 18. As a result, "Cultivation Right" is constituted as a transferrable right but it is subject to the control by the state as landowner, which reminds us of a similarly vulnerable legal nature of "Landholder's Right" during the British colonial time as a transferable tenancy of state-owned land.

Also, the land reform featured the nationwide simultaneous registration of farmland titles under the 2012 Farmland Law. Thus, even though the 2012 Farmland Law newly liberalized the

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[89] Kaneko, Y., & Ye Naing Lin (2021) ibid. in Footnote 33, at 256.

land transactions to non-agriculturalist (Section 3(e)/9), the vulnerable legal status of the "Cultivation Right" o has not been changed from the previous era.

<Requirements for the Proof in Dispute Resolution>

The nationwide simultaneous registration of farmland was performed soon after the introduction of the 2012 Farmland Law, but there was no particular reference manual for the operation in the proof of "Cultivation Right" beyond the provisions in Rule 3 of the 2012 Farmland Rules for the requirements to apply for the title of "Cultivation Right Certificate" (Form 7) [90], which reads as follows:

Rules 3 - A citizen of 18 years of age applicable with one of the following shall apply through ward/village tract farm land management committee, by getting free the application format for the right of work on farm land at the concerned Ward/Village Tracts Administration Office, and filled up completely,

(1) A family or family member of the farmer who has got the right to work on farmland.
(2) Head or family member or guardian who has got the right to work on farmland.
(3) Being common beneficial farmer family if it is the right of work jointly owned by family member on the farmland acquired one of the family members of a farmer as a consolidated and undivided property.
(4) Being in legal possession of inheritance as per existing law before the Farmland Law coming into force.
(5) Being a legal beneficiary as per law or rules after the Farmland Law come into force.
(6) Being someone recommended by ward/village tract administrator and the two witness of the adjacent farmland, to be working actually on the applied farmland.
(7) Being someone approves by the record of the department to be someone who has got the right to work on farmland.
(8) Being someone who can submit the evidence to get the right to work on farmland.

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[90] Section 6 of the 2012 Farmland Law provides for the issuance of "Cultivation Rights Certificates"(Form 7). It refers both to land use rights or agricultural cultivating rights. Form 7 is sometimes referred to as a "Land Use Certificate" in various translations. However, the author uses "Cultivation Rights Certificate" for more accurate translation because this certificate is solely permitted for farmland Cultivation Rights.

It was only in 2016 that the Central Farmland Management Body released the Letter No. 12/Laya-5/ (003 /2016) to elaborate the standards for resolving farmland disputes on the issuance of Form 7 to one party. In particular, the person who met the about qualification can apply for the Form 7 and can get it. Paragraph 2016 Letter No.12 has added a certain substantive requirement, such as the "efficiency" of agricultural business and the improvement of agricultural productivity, as follows:

(1) The "Cultivation Right" must be inconsistent with the definition of an agriculturalist as defined in Section 3 (C) of the 2012 Farmland Law.

(2) "Cultivation Right" holders shall efficiently conduct agricultural business on farmland.

(3) When providing Form 7 to applicants, increasing agricultural productivity must be taken into account.

(4) After receiving the certificate, the person must retain the land in accordance with the law and rules, must not carry out the farmland use by other methods without permission, and shall not fallow the farmland without sufficient reason.

In relation to the proof of farmer's rights, the following procedural requirements were are added under Paragraph 6 of the 2016 Letter No.12, which also include a certain substantive requirement such as the actual cultivation for five years:

(1) The government land records and maps must be checked first, and if the disputed land is not stated in the land records and maps, the relevant farmland administrative bodies must go on the ground and examine, measure, and register it.

(2) If there is a discrepancy between certificate holders and present farmers, all land transaction documentation must be thoroughly reviewed.

(3) Shall investigate who cultivates on the disputed land each year over the preceding five years, and how this "Cultivation Right" was obtained each year.

(6) All witnesses must testify in front of at least four members of the farming administration body.

Thus, the initial implementation of the title certificate issuance had a problem of lacking clear criteria for the proof, while the succeeding implementation under the 2016 Letter abruptly

increased substantive requirements such as efficiency and productivity, and the annual confirmation of the actual cultivation of “Cultivation Right” for the past five years by the government records and/or the testimony of witnesses.

<Vacant, Fallow and Virgin Land Management>

The 2012 Vacant, Fallow and Virgin Land Management Law (hereinafter referred to as “VFVLM Law”) is a legislation that exclusively focuses on the utilization of waste land meant for the country's economic growth, which is a legal framework inheriting the aforementioned British colonial system of waste land grant. According to Section 2(e) 2(f) of the VFVLM Law:

“Vacant and Fallow land means the land which may carry out agricultural or live- stock breeding business and which were rented and carried out in the past and abandoned for various reasons and having no person to rent and carry out and the lands that are reserved and determined by the state.” (Section 2(e))

“Virgin Land means virgin lands and wild forest which have not been cultivated even once, whether trees, bamboos and bushes grow on it or not, whether the topography is level or not. Such expression also includes the reserved forest, pasture and fishery lands legitimately cancelled to carry out agriculture, livestock breeding, mineral production and other businesses permitted by the government which are in accordance with law.” (Section 2(f))

Therefore, if the land falls under the 2012 Law's definition of "Vacant and Fallow land” and/or “Virgin land," the government has the absolute discretion to grant such land to a developer for economic development. Given the government's tendency to solely focus on official documents such as farmer booklets and tax receipts in deciding the characteristics of “Vacant and Fallow land” and/or “Virgin land “, there is a high risk that the farmers who have been cultivating his ancestry land for livelihood since long time s are forced to evict under 2012 VFVLM Law.

The VFVLM Law Section 4 allows farmers and developers to obtain the “Cultivation Right” (*Lyae Yar Myae Loat Paing Kwint*) and/or “land use right” (*Aton Pyu Kwint)*, which are the terminology equivalent to the British colonial Waste Land Gant Act. The weak legal nature of the colonial “Landholder’s Right” under the 1876 Land and Revenue Act which is subject to easy loss

due to the violation of public obligations,[91] which was inherited by the 1953 Land Nationalization Act [92] is succeeded by "*Loat Paing Kwint*" under the VFVLM Law (Section 16) as well as the Farmland Law (Section 19).

Then, the Myanmar government was succeeded by Daw Aung San Suu Kyi after the 2015 general election, who introduced a new land policy with a focus on sustainable development and the utilization of land resources for people's livelihood: namely, the National Land Use Policy (NLUP) in 2016. Chapter 1, Section 6 of this NLUP outlined the following issues as its primary objectives:

(1) To promote sustainable land use management and protection of cultural heritage areas, environment, and natural resources for the interest of all people in the country;

(2) To strengthen land tenure security for the livelihood's improvement and food security of all people in both urban and rural areas of the country;

(3) To recognize and protect customary land tenure rights and procedures of the ethnic nationalities;

(4) To develop transparent, fair, affordable and independent dispute resolution mechanisms in accordance with rule of law;

(5) To promote people centered development, participatory decision making, responsible investment in land resources and accountable land use administration in order to support the equitable economic development of the country;

(6) To develop a National Land Law in order to implement the above objectives of NLUP.

Based on these objectives, the Daw Aung San Suu Kyi government was expected to achieve a balanced policy to encourage responsible investment while enhancing the security of farmers' land rights to improve people's livelihoods and food security, placing individuals at the center of the policy.[93]

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[91] Sections 8, 11, 15-17 of the1876 Land and Revenue Act.
[92] Sections. 4, 11, 29-32 of the 1953 Land Nationalization Act.
[93] OECD. (2020). *OECD Investment Policy Reviews: Myanmar 2020*. OECD Investment Policy Reviews, OECD Publishing, Paris at - 238. (https://doi.org/10.1787/d7984f44-en.)

The NLUP also called for the establishment of a series of impartial institutions for land dispute resolution across the country. But none of them have ever realized: starting with the establishment of specialized land courts, which are currently nonexistent, nor the independent, tripartite arbitration processes that involve the government, civic groups, farmers, and the corporate sector, which have not yet established. A right of appeal at the judicial court for the government decisions is also demanded by the NLUP but has not yet been met with.

2.7 Summary: Origin of the Farmers Lacking Access to the Formalization

In summarizing the major findings from the historical review of the legal nature of farmer's land rights in this Chapter, the author first needs to emphasize the absolute and stable nature of traditional "Bobapaing" right, which was the formal land right of farming household recognized by the written code *Dhammathats* as well as accumulated judicial case law *Hpyathon* and king's law *Yarzadat*, as the result of many generations of continuous cultivation after the initial start as either (i) "Damaugya" right on land cleared from forest, (ii) king's allowance, or (iii) completion of 10 years period after the land transfer. Once such "Bobapaing" was recognized, even the king refrained from taking such land.

However, the British colonial law eliminated such absolute nature of "Bobapaing" by introducing the dualistic land regime in Upper and Lower Burma: namely, denial of various categories of private land tenures by the state land/ non-state land separation in Upper Burma, where the land was automatically deemed as state land unless the proof of "Bobapaing" was successfully done; while in Lower Burma, a new concept of land right "Landholder's Right" was introduced by the British, where farmers' previous "Bobapaing" or ""Damaugya" rights were eliminated unless newly registered as the title of "Landholder's Right" .

Besides, even if a farmer successfully obtained "Landholder's Right" title, the legal nature of such "Landholder's Right" was designed as vulnerable as a tenancy status on state-owned land subject to the governmental revocation when the farmer could not meet with the conditions set by the government under the colonial law.

Such a vulnerable legal nature of "Landholder's Right" was succeeded to the farmer's right under the post-colonial independence 1953 Land Nationalization Act, and then, further

weakened by the implementation in the Ne Win era under the increased state discretion as "the ultimate land owner of national land" under the 1974 Socialist Constitution (section 18), which has basically been succeeded up to the present, under the present 2008 Constitution (section 37), and resulted in the government reference manuals such as the Letter No. 12 of 2016 for the dispute resolutions for the present "Cultivation Right" under the 2012 Farmland Law as well as the VFVLM Law.

Thus, despite the campaign for the advanced characteristic of transferability of "Cultivation Right" under the formal law of present Myanmar, the legal historical review in this Chapter has identified its vulnerable legal nature under the government operation manual, which seems to be a negative inheritance from the British colonial law's "Landholder's Right", through the implementation of the post-independence 1953 Land Nationalization Act, and even weakened under the strong state ownership under the 1974 Socialist Constitution, which has been succeeded in the present 2008 Constitution.

Then, in the next Chapter 3, the author will further investigate into the gap between the government's actual practice of the formal law and the farmers' perception in actual life, through the empirical approach by interviews and questionnaire.

Chapter III

Empirical Analysis on the Perception Gap on Farmers' Rights

3.1 Purposes, Target and Structure of the Survey

3.1.1 Purpose of the Survey

The purpose of this chapter is to present the survey results from the author's interviews and questionnaire survey conducted with the government officers and the farmers as well as the members of dispute resolution bodies who are also experienced farmers in each area in four townships of typically rural part in Upper and Lower Myanmar. The survey was conducted during April through June, 2023 for the purpose to identify the gaps between the government and farmers on the understanding of the legal nature of land rights, and also the actual status of implementation of land-related laws and regulations.

The questions asked in this interview survey are originated from several hypothetical considerations developed from the legal historical review in previous Chapter II as follows: First, the difference of legal frameworks historically applied between Upper and Lower Myanmar may have developed different perceptions of farmers, which deserve a close investigation. As described in Chapter II, the British colonial administration reigned Upper and Lower Burma separately, as the result of its gradual penetration through three Anglo-Burmese wars. The author in particular holds an assumption that the farmers in Upper Burma have historically developed a stronger attachment to the land, and therefore they are more resisting to the pressure of urbanization and industrialization.

On the other hand, another assumption holds that the government practice has ignored such people's strong perception of their land rights because the land law reform in 2012 has chosen the term "Cultivation Right" as if treating farmers as "tenants" of government land, rather than strong ownership-like rights.

Target areas were, namely, Tada-U Township (Mandalay Region) and Nyaungshwe Township (Shan State) from Upper Burma, and Nyaungdon Township (Ayeyarwady Region) and Nyaunglebin Township (Bago Region) from Lower Burma. A brief description of these four targets areas in terms of area size, population, household numbers, main businesses, the number of townships, towns, wards, villages tracts and villages are provided in Table 3-1, while the

detailed characteristics of each area will be explained in the following Section 3.1.2. Population size and cultivated land areas are similar between them, which enables a comparative analysis. In all these areas, agriculture is the primary industry, known as the famous origin of agricultural crops nationwide, and the local population depend on the agriculture as their main source of income. However, they are not very far from the urban areas, and therefore they are not free from the impact of urbanization and commercialization, such as the increasing cases of land use change for purposes other than agriculture, and the population drain due to young generation losing interest in framing and leaving in search for other employment. Tada-U Township in Mandalay Region is a typical of such cases, due to the recent construction projects of the Mandalay International Airport and Yangon-Mandalay Highways since 1995, which acquired 20% of the land areas in this Township according to the 1894 Land Acquisition Act.

Table 3-1: **Fundamental Characteristics of 4 Target Townships**

	Upper Myanmar		Lower Myanmar	
Areas	Tada- U Township (Mandalay Region)	Nyaungshwe Township (Shan State)	Nyaungdon Township (Ayeyarwady region)	Nyaunglebin Township (Bago Region)
Total Area (acres)	232953.6	359308.8	222867.2	181017.6
Cultivated Land (acres)	160,846	66,915	131,262	138,513
Population	152,077	172,823	199,227	219,293
Number of Family Households	35,186	35,962	47,232	46,440
Main Business	Farming	Farming	Farming	Farming
Number of Township *	1	1	1	1

Number of Towns*	1	1	1	4
Number of Wards*	3	8	10	13
Number of Village Tracts*	61	35	44	48
Number of Villages*	165	445	308	151

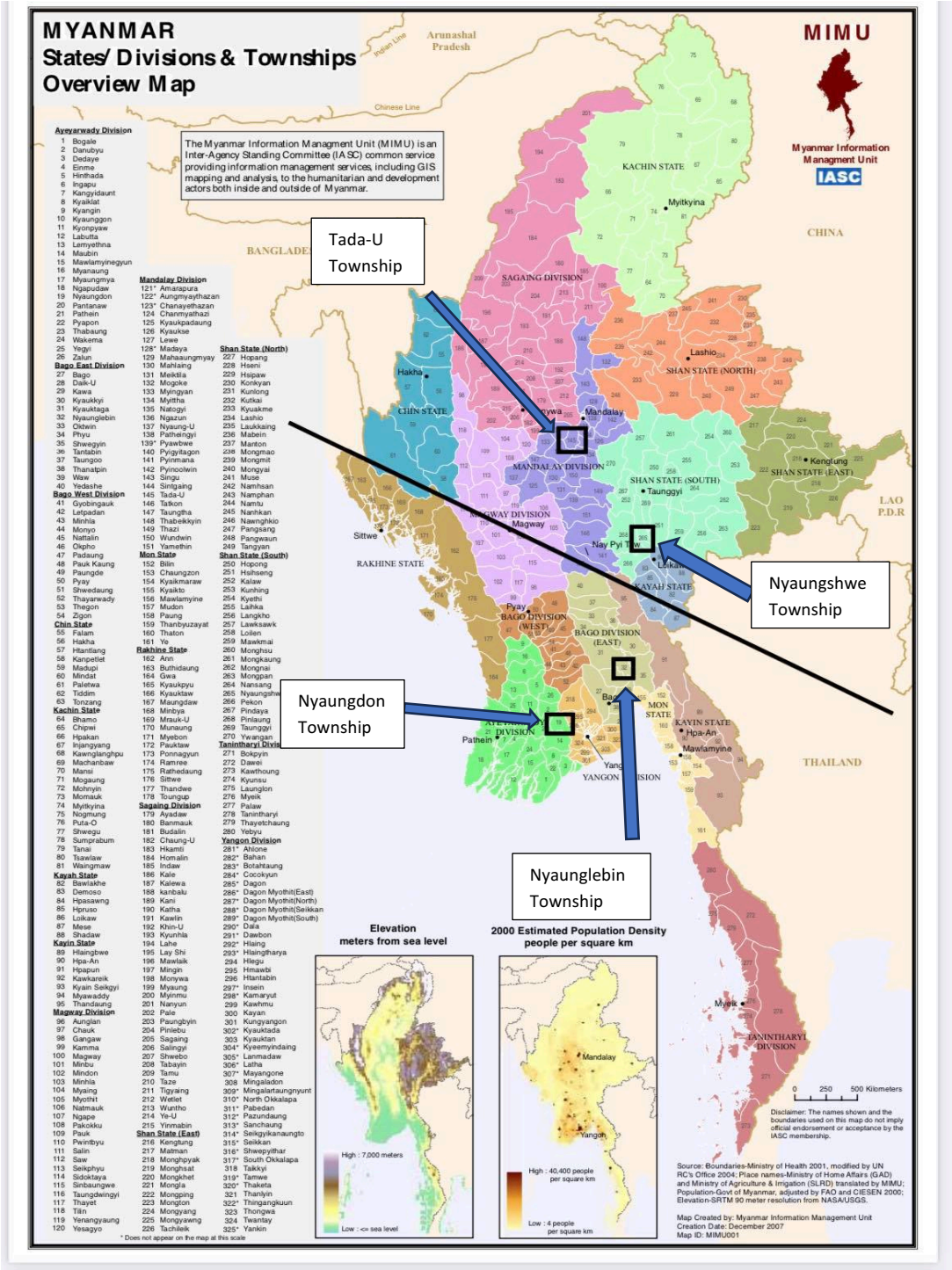
(Source: Information and Statistics Year Books (2022), General Administration Department, Ministry of Home Affairs, Myanmar)

(*Note: According to Section 51 of the 2008 Myanmar Constitution, villages are organized into a village-tract; wards are organized into a town or township; and village-tracts and wards or towns are organized into a township.)

3.1.2 Profiles of Target Townships

In this section, the profiles of the four targeted Townships, Tada-U Township, Nayungshwe Township, Nayungdon Township and Nyaunglebin Township will be discussed. The author uses a line to clearly distinguish between upper and lower Myanmar. The 4 townships in Upper and Lower Myanmar are shown by the square blocks on the maps. The following map (Figure-3-1) illustrates the locations of the selected townships.

Figure: 3-1 - Myanmar States/Divisions & Townships Overview Map



(Source: Myanmar Information Management Unit (MIMU) (December 2007), The Myanmar States/Divisions & Townships Overview Map, Map ID:MIMU001.)

3.1.2.1 **Tada-U Township Profile (Mandalay Region, Upper Myanmar)**

The Tada-U Township [94] is located in the Kyaukse District of the Mandalay Region, which is one of Myanmar's seven States and seven Regions. It is connected to the Sintkai and Myitthar townships in the north, as well as the Ngahtoegyi and Nganzun townships. In the south of the township, the West and Sagaing Townships and the Ayeyarwaddy river are connected. Tada-U Township is one of the dry zone regions in Myanmar, with a population of 1,520,077 in 2022, the majority of whom are Burmese ethnic people. The township of Tada-U consists of 1 town, 3 wards, 61 village tracts, and 165 villages.

As shown in the governmental report[95], rice, several types of beans, sunflowers, corn, and sugarcane are the most common crops grown in the Township's agricultural industry, which is its main business. The breeding of animals is a secondary source of income in the Township. The following Figure-3-2 displays a map of the Tada-U Township. [96]

History of this area is characterized as a typical of Upper Burma during dynasty era. During colonial era, this area was concurred by the year 1885, and the 1889 Upper Burma Land and Revenue Regulation was adopted since the promulgation of this Regulations in 1889.

According to such a historical process, legal status of majority of farmers is expected to be mostly the landed farming succeeded for many generations, as the government statistics shows 70% are landed farmers, 20% is the tenancy status farmers and 10% is landless farmers who are doing other businesses than agriculture. [97]

On the other hand, recent urbanization and commercialization has affected this area, as typically including the large-scale land acquisition cases occurred since 1995 for the construction of the Mandalay International Airport and Yangon-Manual Highways since 1995, which acquired 20% of the land areas in this Township.

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[94] The Tada-U Township, Town, Wards, Village Tracts, and Village were officially established by Government Order No. 102/42/state (1) on December 12, 1972 and order No. 3/57/a-hta(2) on March 5, 1973.
[95] Para 30 of the Tada-U Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar at 27 to 29 (Myanmar Language).
[96] Tada-U Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar at 1 to 40. (Myanmar Language).
[97] Ibid., at 27 to 29 (Myanmar Language).
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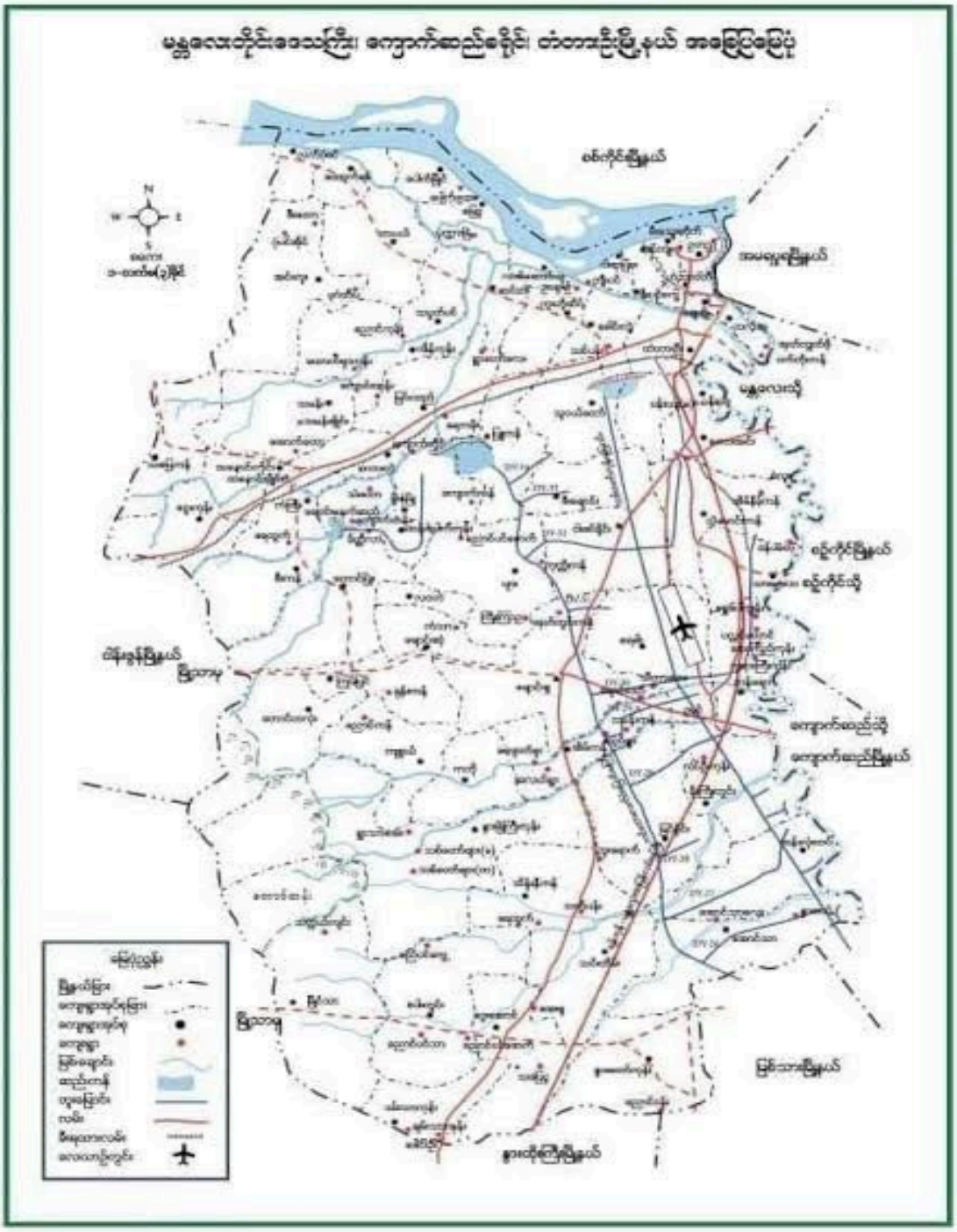
Figure: 3-2 - Location Map of Tada-U Township



(Source- Tada-U Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar.)

3.1.2.2 **Nyaungshwe Township Profile (Shan State, Upper Myanmar)**

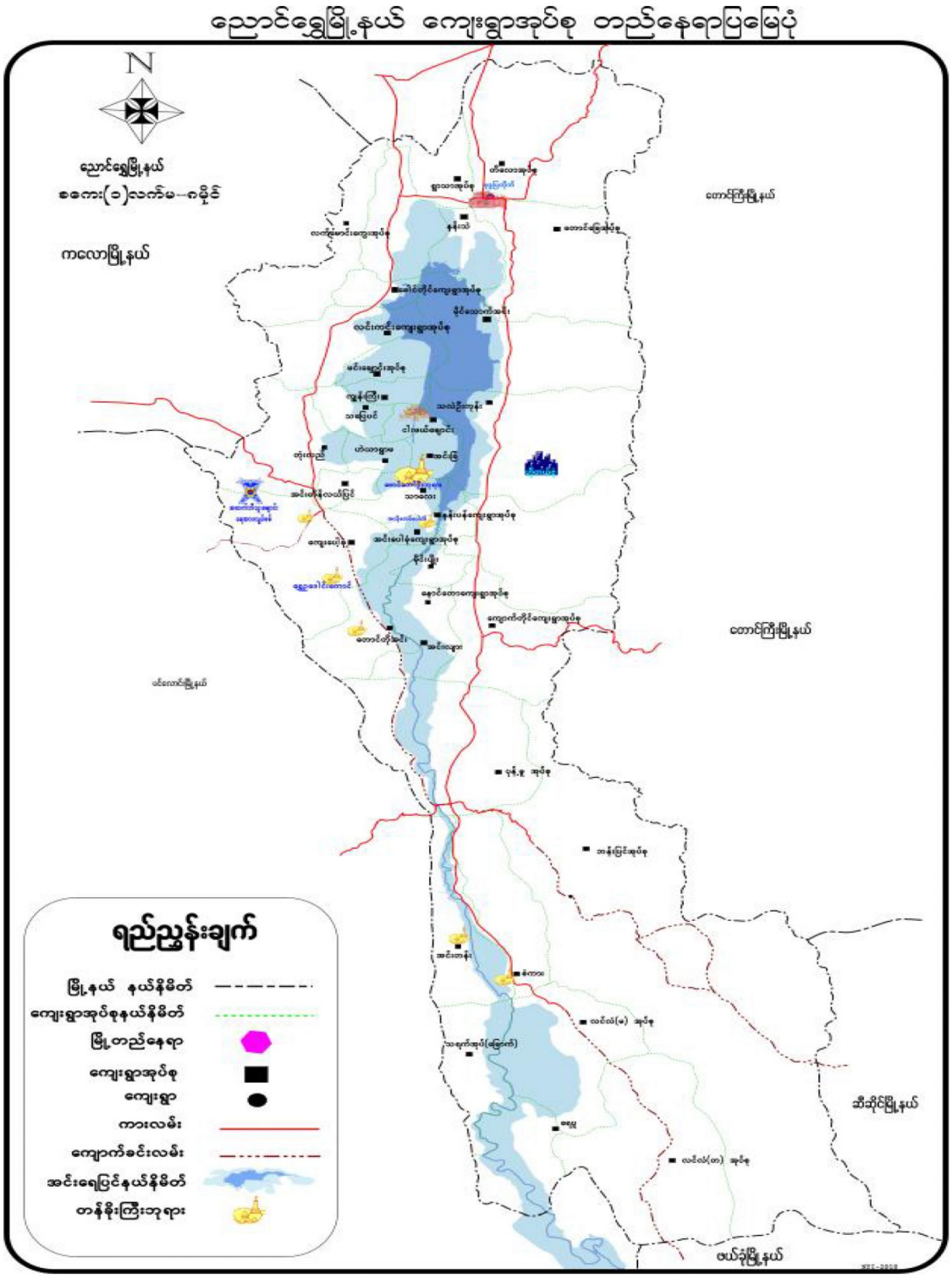
Nyaungshwe Township is an area in the Taunggyi District of Shan State, Myanmar. It is located southwest of Taunggyi and south of Sakangyi. The major city is Nyaungshwe. The popular tourist destination and freshwater Inle Lake is located south of the town of Nyaungshwe. Nyaungshwe was formerly the capital of Yawnghwe, one of the numerous Shan principalities that existed in pre-colonial and colonial Burma (collectively known as the Shan States). The total population is 173,642, with the majority belonging to ethnic groups from Shan. The township consists of one town, eight wards, 35 village tracts, and 445 villages.

This township's history is defined as typical of Upper Burma throughout the dynasty era. This territory was legally concurred by the year 1885 during the colonial era, and the 1889 Upper Burma Land and Revenue Regulation had been enacted since the issuance of this Regulations in 1889.

Agriculture is the primary industry of Naungshwe Townsip, but because this Township is renowned for Inle lake and its beautiful scenery, the service industry is also one of the Township's primary sources of income. According to the government statistics, the status of the farmers is 80 % landed and 12% long-term tenants and 8% landless farmers.[98] The following Figure-3-3 depicts the Naungshwe Township.[99]

[98] Naungshwe Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar at 20 to 25. (Myanmar Language)
[99] Ibid., at 1 to 32.

Figure: 3-3 - Location Map of Nyaungshwe Township



(Source- Naungshwe Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar.)

3.1.2.3 **Nyaungdon Township Profile (Ayeyarwady Region, Lower Myanmar)**

Nyaungdon Township[100] is a region of the Maubin District in Myanmar's Ayeyarwady Division. It is linked to the Yangon Region in the east, Htdandapin and Tidegyi townships in the west, Danyuphu and Tontae townships in the north, and Danuphyu and Tudegyi townships in the south. The township consists of one town, ten wards, forty-four village tracts, and thirty-eight villages. Due to its location in a delta region, the township has an abundance of lakes, ponds, and small rivers. The total area is 359308.8 acres and the majority of the 199,277 inhabitants are ethnic Kayin or Burmese.

This township's history is described as typical of Lower Burma throughout the dynasty period. During the colonial era, this region was legally concurred by the year 1852, and the 1876 Burma Land and Revenue Act had been enacted and has been used in this township since the enactment of this Act in 1876.

As for the industry, because Nyaungdon Township is renowned for its freshwater rivers and ponds, agriculture is the township's primary industry, and rice is its primary export crop. According to the government statistics, the status of the farmers is 90% landed farmers and 10% long-term and short terms tenants.[101] The following Figure 3-4 displays the Nyaungdon Township area.[102]

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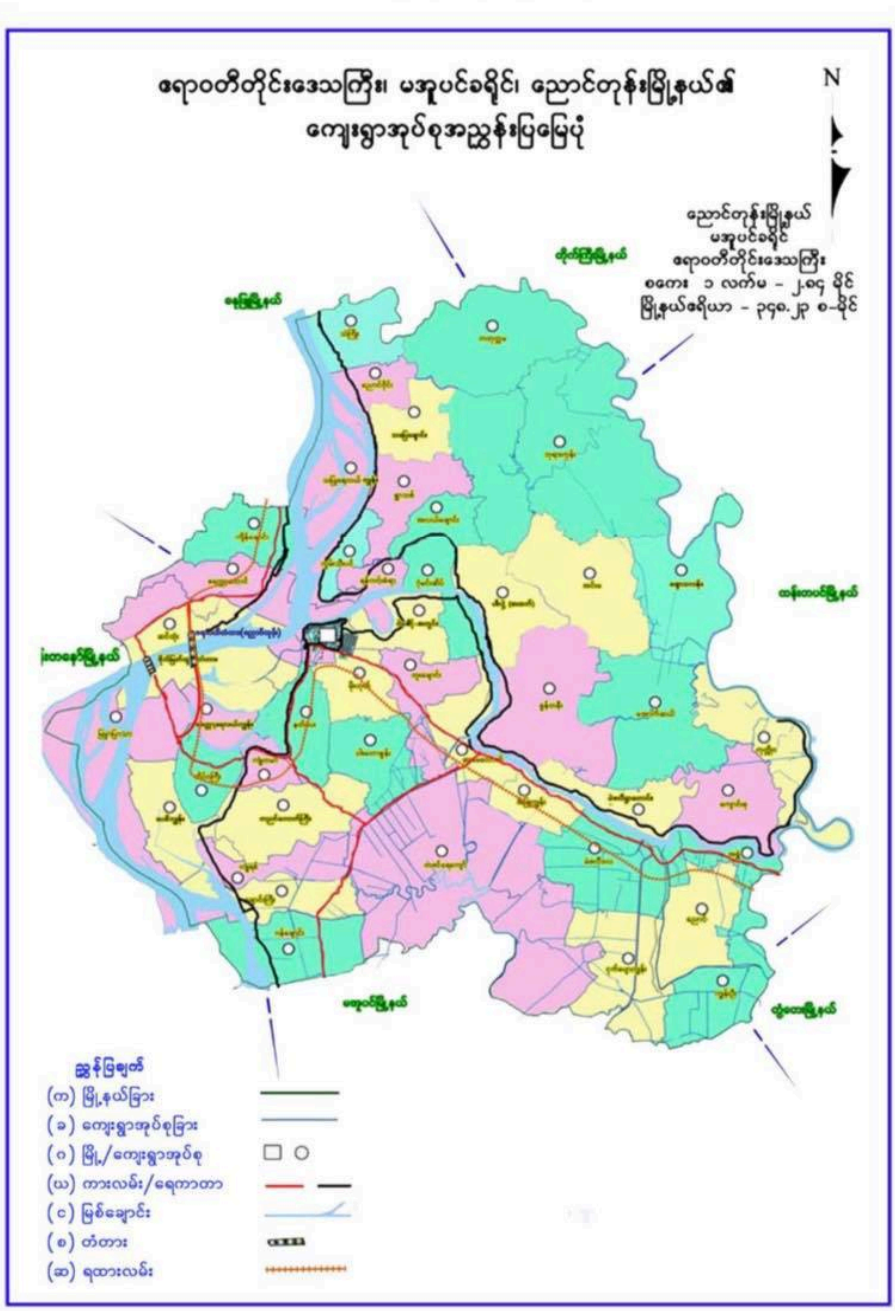
[100] The Nyaungdon Township, Town, Wards, Village Tracts, and Village were officially established by British Myanmar Gazetteer order No. 333 on October 25, 1884.
[101] Naungdon Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar at 20 to 25. (Myanmar Language)
[102] Ibid., at 1 to 28. (Myanmar Language)

Figure :3-4 - Location Map of Nyaungdon Township

ညောင်တုန်းမြို့နယ်ပြမြေပုံ



(Source- Nyaungdon Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar.)

3.1.2.4 **Nyaunglebin Township Profile (Bago Region, Lower Myanmar)**

Nyaunglebin Township[103] is a region of Myanmar's Bago Division's Bagon District. It connects the Sittaung river and Shwekyin Township to the east, Wall and Daide-U Township to the north, Daide-U and Kyattadar Townships to the west, and Kyattadar Township to the south. The township is comprised of four towns, thirteen wards, 48 village tracts, and 151 villages. The majority of the 219,755 inhabitants are of Kayin or Burmese ethics groups, and the land area is 572.84 square miles in total.

The history of this township is characterized as typical of Lower Burma throughout the dynasty period. During the colonial era, this region had been concurred officially by the year 1852, and the Burma Land and Revenue Act had been passed and is stilling using in it since its enactment in 1876.

Agriculture is the primary industry of the township.[104] According to the government statistics, the status of the farmers is 60% landed and 20% long-term tenants and 20% landless farmers who are doing other businesses than agricultures. [105] The growing effects of urbanization and industry, such as the development of the Hantharwaddy International Airport, which has been under construction since 2001 and is approximately 48 miles from Yangon's central business area, are characteristics of this region. The following Figure 3-5 illustrates the Naunglebin Township area.

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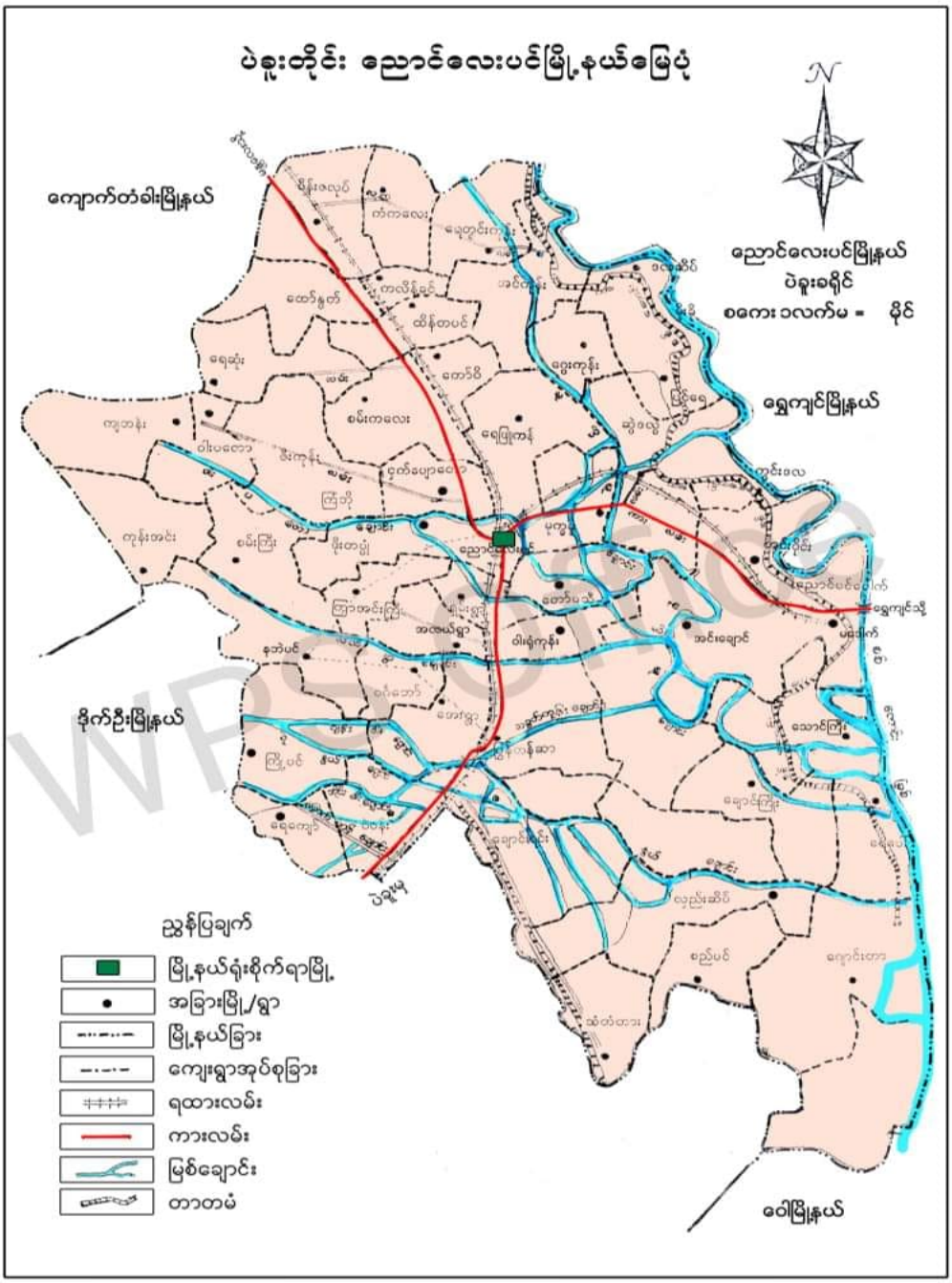
[103] The Nyaunglebin Township, town, wards, village tracts, and village were officially established by government order No. 1074 on October 31, 1972.
[104] Naunglebin Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar at 1 to 12. (Myanmar Language)
[105] Ibid., at 20 to 25.

Figure: 3-5 - Location Map of Nyaunglebin Township



(Source- Nyaunglebin Township Information and Statistics Year Book (2022), General Administration Department, Ministry of Home Affairs, Myanmar.)

3.1.3 Structure of Survey

The survey was conducted during April through June 2023, designed with three objectives: first, to determine the perception gaps between the government and farmers regarding their understanding of the nature of land rights; second, to determine the basis for the government's practice of land titling and other land administration in determining the existence of land rights; and third, to identify the issues and challenges of land dispute resolutions.

The survey consists of three parts as attached in Appendices 1 to 3, the first part is the semi-structured interviews with government officials of each target township to ascertain the actual practice of land administration. Due to the current political situation in Myanmar, the author was not permitted to return to the country for the purpose of interviews; and instead, thanks to the permit as of March 6, 2023 of the Director General of the General Administration Department, Ministry of Home Affairs of Myanmar, online interviews were conducted by the cooperation of four target Townships' Administrators, Township Officers from the Land Record and Statistics Department, Agricultural Department, and other Departments associated with land management. (Appendix -1)

The second part is a structured questionnaire to the local farmers, which was distributed through the village tract leaders and community volunteer groups and answered by randomly selected 30 farmers per township, for a total of 120 farmers of four target Townships. (Appendix-2)

The third part is the in-depth interviews with total 8 experienced farmers (2 per each township) who have experienced in land dispute resolution, whom the author connected through the village tract leaders and assigned volunteers groups of target townships. The purpose of this interview is to ascertain the legal causes of the major points induced from the second part questionnaire. (Appendix-3)

The whole structure of the survey is summarized in Table 3-2 below. The author expresses special gratitude to those who took bother to give detailed answers to this survey, for their warm understanding and sincere cooperation.

Table: 3-2 - **Structure of Government Interview, Farmers' Questionnaires and Interviews**

	Tada-U (Mandalay Region, Upper Myanmar)	**Nyaungshwe (Shan State, Upper Myanmar)**	**Nyaungdon (Ayeyarwady Region, Lower Myanmar)**	**Nyaunglebin (Bago Region, Lower Myanmar)**
Government Interview	Mr. Phyo Zaw Ko Ko (Township Administrator) Mr. Khin Maung Myint, Staff officer, township land record and statistics department Officers from relevant departments	Mr. Kyaw Swar Lin (Township Administrator) Mr. Zaw Lwin, Staff officer, township land record and statistics department Officers from relevant departments	Mr. Kyaw Soe (Township Administrator) Mr. Hla Myo, Staff officer, township land record and statistics department Officers from relevant departments	Mr. Kyaw Bhone Maung (Township Administrator) Mr. Zaw Htoo Aung, Staff officer, township land record and statistics department Officers from relevant departments
Farmers' Questionnaire	Randomly selected 30 households	Randomly selected 30 households	Randomly selected 30 households	Randomly selected 30 households
Farmers Interviews	Mr. Win Bo Mr. Soe Hlaing Oo	Mr. Mae Mr. Yaung	Mr. Aye Kyu Mr. Htwe Maung	Mr. Bo Bo Aung Mrs. Khin Ohn Than

3.2 Government Side Interview: Questions and Results

As for the government side interview with the Township Administrators, the Township Land Record and Statistics Department, and other Departments associated with land management, the questions included the basic characteristics of the township, land-related policies of General Administration Department's Administration, the details of land management practice under the 2012 Farmland Law (especially the issuance of Form 7 certificate for "Cultivation Right"), 2012 VFVLM Law, and 1894 Land Acquisition Law, with a particular focus on the government's perception on the nature of land rights and the basis of determination of the existence of such rights in the performance on land management. Appendix-1 shows the government interview questions and the summery of answers. The following describes the essence of the major findings.

3.2.1 Characteristics of Agricultural Sector in Target Townships

As shown in Table 3-3, major characteristics of the agricultural sector in 4 target Townships, such as the total population and the ratio of males to females, are comparable between them (Q1 (a)). As for the region's major industries (Q1(b)), rice cultivation is greater than any other crop in two townships in Lower Myanmar, but the situation is quite different in Upper Myanmar, where other crops than rice are farmed to a greater extent. The ratio of SMEs in commercial business is nearly 25% in all townships. As for the major source of household income (Q1 (b)), is based on the agriculture business mostly by cultivating rice, beans and other.

As for the agricultural class structure (Q1 (d)), landed farmers are the majority in all four townships, but there was a slight difference in ratio. In Upper Myanmar, Tada-U Township has 70% landed farmers and 10% landless farmers, whereas Nyaungshwe Township is made up of 80% landed farmers and 8% landless farmers. In Lower Myanmar, Nyaungdon Township has 90% landed farmers and no landless farmers, whereas Nyaunglebin Township has 60% landed farmers and 20% landless households engaged in other types of business such as manufacturing works.

Table: 3-3 – **Government Answers to Q1: Characteristics of the Agricultural Sectors of Target Townships**

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
1(a)	Characteristics of the Township Population & area	Male – 71,300 Female – 80,777 Total – 152,077 Total area 363.99 sq miles	Male – 92,343 Female – 95,752 Total – 188,059 Total area 574.8466 sq miles	Male – 112,685 Female – 118,669 Total – 231,327 Total area 348.23 sq miles	Male – 108,203 Female – 115,875 Total – 224,078 Total area 282.84 sq miles
1(b)	Regional Industry %	- Rice 8.59%, - other crops 69.36%, - mining 1.61%, - Manufacturing &SME 20.44%	- Rice 25%, - other crops 50%, - mining 1%, - Manufacturing &SME 24%	- Rice 50%, - other crops 25%, - mining 0.01%, - Manufacturing &SME 24.99%	- Rice 40%, - other crops 35%, - Manufacturing &SME 25%
1(c)	Major Livelihood of Households	- Framing 60%, - commercial 20%, - worker 5%, - other 15%	- Framing 25%, - commercial 25%, - worker 10%, other 40% (tourism, hotel, travel agency)	- Framing 75%, - commercial 5%, - worker 15%, - other 5%	- Framing 40.6%, - commercial 35%, - worker 14.4%, - other 10%
1(d)	Structure of Farming Households %	-Landed farmers: 70 %, -Tenants at fixed rent: 10%, - Tenants by sharecrops: 10%, - Landless farmers: 10%	- Landed farmers: 80 %, - Tenants at fixed rent: 5%, - Tenants by sharecrops: 7%, - Landless farmers: 8%	- Landed farmers: 90 %, -Tenants at fixed rent: 5%, -Tenants by sharecrops: 5%, - Landless farmers: No	- Landed farmers: 60 %, - Tenants at fixed rent: 10%, - Tenants by sharecrops: 10%, - Landless farmers: 20%

(Source: Compilation by the author based on Interview results from 4 Townships)

3.2.2 **Periodical Changes of Land Administration Policy**

The second part of the government side interview, questions were asked to identify the periodical changes of land policies implemented by the local administration, namely, from the post-independent era, socialist era, SLORC/SPDC era, to the post-2012 land law reform. The answers to the questions are summarized in Table 3-4.

Table: 3-4 – **Government Answers to Q.2: Periodical Changes of Land Policies**

No	**Questions**	**Tada-U (Mandalay Region, Upper Myanmar)**	**Nyaungshwe (Shan State, Upper Myanmar)**	**Nyaungdon (Ayeyarwady Region, Lower Myanmar)**	**Nyaunglebin (Bago Region, Lower Myanmar)**
2(a)	Post-Independence Era (1950s-60s)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)
2(b)	Socialist Era (1970-80s)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Tenants under 1963 Tenancy Act	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)
2(c)	SLORC/SPDC (1988-2011)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Tenants under 1963 Tenancy Act	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)

2(d)	Post-2012 Land Law Reform	Freedom of land transaction; Grants under – VFVML*	Freedom of land transaction; Grants under VFVML	Freedom of land transaction; Grants under VFVML	Freedom of land transaction; Grants under VFVML
2(e)	Revocation of "Cultivation Right"	When farmer fails to cultivate more than 5 years	1-When farmer does not vacant the land without any reason (Section 19(c) of Farmland Law.) 2-Failure to pay tax is not the main reason for revocation; 3-Farmers fail to obtain land use change. Notice issued for 3 times before revocation.	1-When farmer fails to cultivate for a certain period (not specify in Law but probably 1 year and above) 2- When farmer fails to pay the tax 3- Farmer fails to obtain permit for land use change	When farmer fails to cultivate more than 2 years
2(f)	Experience of Revocation; Prior procedures for revocation; (e.g. order for improvement) Procedural manuals	No revocation 2012 Farmland Law	No revocation 2012 Farmland Law	No revocation 2102 Farmland Law	No revocation 2012 Farmland Law

(Source: Compilation by the author based on Interview results from 4 Townships)

(* VFVML stands for the 2012 Vacant, Fallows and Virgin Management Law)

As for the land policy in the post-independence era of 1950-60s (Q2 (a)), the answers of all targeted townships similarly referred to the policy goal of allocating land to the actual cultivators. However, the concept of "actual cultivators" differed: while the answers in Tada-U Township (Mandalay Region, Upper Burma) and Naungdon Township (Ayeyarwady Region, Lower Burma) consider the "actual cultivators" as including landed-farmers, fixed rent tenants, and sharecroppers, Nyaungshwe Township (Shan State, Upper Burma) and Nyaunglebin Township (Bago Region, Upper Burma) responded that the "actual cultivators" mean only for landed farmers and fixed rent tenants, excluding sharecroppers.

As for the land policies in the socialist era during 1970-80s (Q2(b)), the answers of Tada-U Township (Mandalay Region), Naungshwe Township (Shan State), and Nyaunglebin Township (Bago Region) centered on distributing land to the "actual cultivators", including landed-farmers, fixed-rent tenants, and sharecroppers. But the answer of Nyaungdon Township (Ayeyarwady Region) was the tenant's protection policy under the 1963 Tenancy Act.

The answers for the land policies of the SLORC/SPDC era in the 1990s to 2011 (Q2(c)) were the same as their respective answers for the previous socialist era in the 1970s to 1980s.

The answers for the land policies following the 2012 land law reform (Q2 (d)) was identical between all target townships: promotion of the freedom of land transactions by the holders of the certificate of "Cultivation Right" (Form 7), and the grants of Vacant, Fallow or Virgin land management under the 2012 Vacant, Fallow and Virgin Land Management Law according to the official land record book.

Asked particularly about the criteria for the revocation of once entitled "Cultivation Right" under the 2012 Farmland Law (Q2(e)), answers of target townships are divided. Tada-U Township (Mandalay Region) responded that the revocation may occur if a farmer fails to cultivate for more than five years. Nyaungshwe Township (Shan State) responded that the revocation should occur according to Section 19(c) of the 2012 Farmland Law which prohibits farmers from vacating land without cause, while the failure of paying tax does not always trigger an immediate revocation. Farmers who fail to obtain the permit for land use change (LaNa 39) can be the target of revocation after three times' notices.

Regarding the actual experience of renovation of "Cultivation Right" (Q2(f)), all Township Administrators lacked the experience of such a revocation. They all referred to the 2012 Farmland Law as the basis when the revocation is necessary.

In sum, even though all officials hold the essential understanding of the periodical land policy changes since the post-independence land reform up to the present, a variation was found in the understanding of technical details, such as the concept of "actual cultivators" as an element of farmer's rights, and the substantive and procedural bases to trigger the revocation of once entitled farmer's rights. Such a variety of answers might be the result of different regional conditions, including the impact of aforementioned legal history, such as the separate legal treatment by the British colonial law that created a large population of tenant farmers and landless groups, and the fluctuating implementation and periodical suspension of land distribution under the Land Nationalization Act 1953 (e.g. whether to include sharecroppers to the land distribution), and the degree of urbanization and industrialization that affects the frequency of land transactions after the 2012 land reform repealed the transfer restrictions under the 1953 Act.

Such technical deviations can result in an instability of the implementation of land related laws. When the concept of "actual cultivation" varies, the practice of Form 7 land title issuance under the 2012 Farmland Law can frustrate. Accordingly, the practice of the designation of "vacant, fallow and virgin land" under the 2012 VFVLM Law may also fluctuate, as this decision is based on the farmland title record, as identified in this interview survey. Thus, it is implied that the lack of manuals clarifying the concepts of key terminologies constitutes the legal causes behind the contemporary increase of land disputes.

3.2.3 **Implementation of the 2012 Farmland Law**

Question No.3 seeks to understand the government's performance in relation to farmers' land rights under the 2012 Farmland Law, particularly in the Form 7 insurance, with an interest to discover the perception differences between the government and the farmers in terms of the nature and acceptance of land rights. The interview results are displayed in Table 3-5.

Q3(a) asked about the factual elements and related evidences required in the claim of "Cultivation Right" under the 2012 Farmland Law. Nyaungdon Township (Ayeyarwady Region)

accepts three factors: land tax receipts; the opinion of village tract leaders; and "actual cultivation" for more than five years. There is no explicit mention to the five-year time limit (or adverse possession) in governmental documents in their hand, but the township land record officer commented that he was taught this from his senior officers.

Nyaunglebin Township (Bago Region) explained that accepting "Cultivation Right" is contingent on five factors: land records, land tax receipts, land sale contracts, the opinion of the village tract leaders, and instructions from the central committee, in which the land record maintained by the department of land records is crucial for determining the "Cultivation Right". It is noteworthy that these criteria do not include the fact of "actual cultivation."

Asked about the priority among the conflicting evidences on "Cultivation Right" (Q3(b)), Tada-U Township (Mandalay Region) answered that they only accept land records maintained by the department of land records, since the township's land record booklet is updated annually and trustworthy. They emphasized that the farmland's heirs must register their recorded rights after inheriting the land from their parents.

But Nyaungshwe Township (Shan State) responded that they consider both the land records and the opinion of village tract leaders and neighbors in determining the "Cultivation Right". In this township, the land record booklet is also updated annually, and the testimonies are only used when there are gaps, errors, or ambiguity in the land record booklet (See Appendix-5 as a sample of the land records booklet). Such testimonies are taken to confirm the fact of self-cultivation for three years, on which the Township Farmland Management Body hold the final discretion. The land record office explained that the Central Farmland Management Body instructed for this 3-year adverse possession in the training held in 2013 in the capital city Naypyidaw.

Naungdon Township (Ayeyarwady Region) responded that tax receipt is the prioritized evidence. e; Nyaunglebin Township (Bago Region) answered land records and land sale contracts. Thus, except Nyaungswe Township (Shan State), all other three townships have a tendency to decide the title based on the documentary evidence, in particular the land record.

Asked about the meaning of "actual cultivation" (Q3 (e)), all Townships' officers answered that the farmer claiming his "Cultivation Right" has to cultivate by himself.

Asked about the factors to be proven by the farmers in claiming the “Cultivation Right” (Q3(g)), Nyaungdon Township (Ayeyarwady Region) responded that in addition to the cultivation for more than five years, the farmers need to show the recommendation from the village leaders, and the belief that they have “Bobapaing” rights. It is noted that Nayungdon Township reported having 54,902 acres of “Bobapaing” land, or 0.042% of the township's total farmland.

Nyaunglebin Township (Bago Region) answered that the farmers have to establish the cultivation for more than five years, which they contend as a requirement under the governmental instructions for the implementation of the 1953 Land Nationalization Act, but they did not specify official documents in this regard. Tada-U township (Mandalay Region) also answered that the farmers need to prove the cultivation for more than five years. But in Nyaungshwe Township (Shan State), the required time period for cultivation that the farmers need to establish was 3 years.

In the connection to Q3(g), the author asked about the ratio of recorded “Bobapaing” land in each Township. Only Nyaungdon Township (Ayeyarwady Region) has a small portion of recorded “Bobapaing” land as aforementioned, but the other 3 Townships almost lacked any recorded “Bobapaing” land.

The final question was asked about the status of land dispute resolution following the 2012 land reform (Q3 (h)). Nyaunglebin Township (Bago Region) has responded to more than 100 cases, and Nyaungdon Township (Ayeyarwady Region) has responded to 63 cases, while Tata-U Township (Mandalay Region) has 12 cases, and Nyaungshwe Township (Shan State) has resolved 7 cases. According to the explanation provided by Township Administrators and officers, there are two methods for resolving farmland dispute cases: traditional mediation system and governmental complaint mechanism. The majority of farmers always choose for the traditional mediation system in the villages, because it is inexpensive and less time-consuming than the government disputes resolution system, which requires the famers to travel to government offices at their own expense. Consequently, 80% of disputes have been resolved through the traditional mediation system.

The following Table 3-5 shows the summary of the finding related to the Farmland Law Implementation.

Table 3-5 – **Government Answers to Q3: Implementation of the 2012 Farmland Law (especially the issuance of Form 7)**

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
3(a)	Evidence required for claiming "Cultivation Right" (Form-7)	-Land records (Land is recorded every year)	1- Land records 2- the opinion of the village tract leaders and neighbors	1- tax receipts, 2- the opinion of the village tract leader the fact of actual 3- cultivation (more than: 5 years)	1- Land records 2- Tax receipts 3- Land sale contracts 4-the opinion of the village tract leader 5- Instruction from central committee
3(b)	Priority among the conflicting evidences	land records	Self-cultivation 3 years (instruction at the central committee meeting in 2013)	tax receipts	land records Land sales contract
3(c)	Legal Basis	2012 Farmland Law	2012 Farmland Law	2012 Farmland Law	2012 Farmland Law
3(d)	Typical case	-	-	-	-
3(e)	Facts of actual cultivation	Cultivation by himself	Cultivation by himself	Cultivation by himself	Cultivation by himself
3(f)	Typical case of actual cultivation	-	-	-	-

3(g)	Factors to be proven by the farmers in claiming a "Cultivation Right"	cultivation o for more than 5 years No "Bobapaing" land	cultivation for more than 3 years No "Bobapaing" land	1-cultivation for more than 5 years, 2-recommendation from the village leaders, 3-belief as "Bobapaing" rights **<u>"Bobapaing" land – 54.902 acres (0.042%)</u>**	cultivation for more than 5 years; Instruction under 1953 Land Nationalization Act No "Bobapaing" land
3(h)	Annual disputes	12 cases (recorded) Traditional settlement (not recorded)	7 cases (recorded) Traditional settlement (not recorded)	63 cases (recorded) Traditional settlement (not recorded)	More than 100 cases (recorded) Traditional settlement not recorded)

(Source: Compilation by the author based on Interview results from 4 Townships)

3.2.4 **Implementation of the 2012 Vacant, Fallow and Virgin Land Management Law**

The 2012 Vacant, Fallow and Virgin Land Management Law (VFVLM Law) has been considered as one of the main ways to stimulate the economic development through the government's grants for the investors to utilize the Vacant, Fallow and Virgin land for higher value-added purposes by allowing large scale agriculture or other business.[106] VFVLM Law provides the definitions of 2 different types of land categories: virgin land, fallow land, and vacant land. "Vacant land and fallow land" refer to land that has been cultivated by the tenant in the past but was later abandoned for any reason.[107] "Virgin land" refers to the wooded land where cultivation has never taken place before.[108]

[106] Boutry, M. et al., (2017) ibid. in Footnote 75 at 7.
[107] Section 2(e) of the 2012 Vacant, Fallow and Virgin Land Management Law.
[108] Ibid., Section 2(f).

The primary goal of this section is to understand the government's perspective on the time limit (or extinctive prescription) of the former land use, as of the grant of a vacant and fallow land in the resolution as well as in the dispute's resolution involving the management of vacant, fallow, and virgin land. Table 3-6 shows the result of the interviews:

Table: 3-6 **– Government Answers to Q4: Implementation of Vacant, Fallow and Virgin Land Management Law**

No		**Tada-U (Mandalay Region, Upper Myanmar)**	**Nyaungshwe (Shan State, Upper Myanmar)**	**Nyaungdon (Ayeyarwady Region, Lower Myanmar)**	**Nyaunglebin (Bago Region, Lower Myanmar)**
4(a)	Statistic number of "grants" (Section 4).	Agriculture – 15 grants Livestock - 16 Total – 83 acres Total applicants- 31	Agriculture – 2 grants Total – 157.89 acres Total applicants- 2	Agriculture – 45 grants Livestock – 51 grants Total – 1778.99 acres Total applicants – 96	Agriculture – 10 grants Total – 2185 acres, Total applicants- 10
4(b)	Ratio of Vacant and Fallow land	-	-	-	-
4(c)	Length of "abandonment" as the requirement of "Vacant Land /Fallow Land" :	4 years	4 years	not provide in Law, may be more than 1 year	4 years

4(d)	Statistic numbers of annual disputes on VFVLM Law since 2012	No	No	22 cases, 20 cases with gov and 2 cases with local business, method Third parties' negotiation	No
4(e)	Typical cases with a difficulty of resolution.	No	No	Yes	No

(Source: Compilation by the author based on Interview results from 4 Townships)

As for the total areas of vacant, fallow, and virgin land (Q4(a)), Nyaungdon Township (Ayeyarwady Region) has the largest areas of 78,158 acres compared to the other three Townships, while Nyaunglebin Township (Bago Region) has 24,947 acres, Tada-U Township (Mandalay Region) has 1183 acres, and Nyaungshwe Township (Shan State) has 44 acres. Consequently, the total number of rants in Nyaungdon Township (Ayeyarwady Region) is 96 grants for agriculture and livestock purpose, 4230.89 acres, to 51 applicants, whereas Nyaunglebin Township allowed 10 grants for agricultural purpose, 2185 acres, to 10 applicants, Tada-U township allowed 51 acres for agriculture and livestock, 83 acres, to 31 applicants, and Nyaungshwe Township allowed 2 grants for agriculture purposes tothe total 2 applicants.

The question on the ratio of vacant and fallow land (Q4(b)) was not answered.

Regarding the length of "abandonment" as a requirement of "Vacant Land or Fallow Land" (Q4(c)), Nyaungdon township (Ayeyarwady Region) responded that more than one year is an appropriate time limit, whereas the other three townships stated four years for the abandonment period. However, all townships did not provide formal instructions for determining the time limit for such abandonment period.

As for the number of disputes on the VFVLM Law (Q4(d)), Nyaungdon Township (Ayeyarwady Region) has responded to 22 cases disputes since the enactment of the 2012 Laws,

whereas the other three townships explained that they have experienced no disputes related to the VFVLM Law. The typical case of Nyaungdon Township (Ayeyarwady Region) will be described as follows (Q 4 (e)) :

Typical case on the VFVLM Law in Nyaungdon Township (Ayeyarwady Region)– This case arose between the original cultivators and the developers who obtained the grant to use the vacant land for livestock business. In the 1990s, the developer purchased the lands from the third party who claimed to be the previous owner of this land since before the land reform of 2012 by showing the document of local written contract as evidence. The original cultivator was a tenant to this previous owner by using oral contract. Since the 1953 Land Nationalization Act made it unlawful to sell land during that time period, and also due to the political climate at the time, the actual cultivators of the land were unable to voice their opposition when the land was sold to developers by its previous owner. As a result, farmers were able to submit their complaints to the government after 2012, which is the year that the constitutional government began accepting complaints regarding farmland disputes. In this particular instance, the government decided to favor the developers on the basis of the land records and the sale contract despite the cultivator farmers demanding access to the original land rather than compensation from the developer. Regardless, the developer agreed to give minimal compensation to the actual cultivators due to the fact that the company was already active in this area. This case is still on the process, and the parties involved—the government, the developer, and the farmers—are currently attempting to negotiate using the three-party negotiation method. For this above case study, Nyaungdon Township was unable to provide the documentary data required for this study, the information that has been used information obtained from Zoom interviews.

3.2.5 **Implementation of the 1894 Land Acquisition Act**

Then, the questions were asked to identify the issues of treatment of farmer's rights in the land taking for public purposes under the 1894 Land Acquisition Act.

As for the experience of land acquisition (Q5(a)), Nyaungdon Township (Ayeyarwady Region) responded that there has been no case that the Land Acquisition Act was applied since 2012, but there are certain undisclosed cases prior to 2012. Nyaunglebin Township (Bago Region)

has acquired two areas of land after 2012 (highway construction and farmland irrigation respectively) under the authority of Nyaunglebin Township Administrator. According to the government data, both cases are conducted in accordance with the provisions of the Act, and there have been no complaints from the public. Nyaungshwe Township (Shan State) has had no land acquisition cases both before or after 2012 land law reform. i

Tada-U Township (Mandalay Region) stated there have been no land acquisition cases since 2012, but there were numerous complaints alleging the unlawful land confiscation by the government outside of the procedures of the Land Acquisition Act. Also, prior to 2012, Tada-U Township experienced two big cases of land acquisition, namely, the construction of Mandalay International Airport and the construction of Yangon-Mandalay Highway. Both cases involved the acquisition of nearly 20 percent of the total land areas in Tada-U Township (Mandalay Region). The details of these two cases will be discussed in the following in light of Tada-U Township's (Mandalay Region) information.

The Mandalay International Airport and Highway projects: On August 29, 1995, in accordance with Section 39 of the Land Acquisition Act of 1894,[109] a total of 25,015 acres of land were acquired for the development of an airport. In addition, on September 11, 2009, a total of 3561 acres of land was acquired for the expansion of the airport, bringing the total land confiscated for these two projects to 28,576 acres.

According to information from Tada-U Township (Mandalay Region), the government did not precisely follow the procedure of the 1894 Land Acquisition Act, but instead applied a certain discretionary procedure for unilateral decision-making when acquiring land for these two projects in the year of 2009. The affected farmers were forcibly evicted, but unable to file complaints due to the state of politics at the time. After 2012, the public complained was raised that the land acquisition process did not adhere to the Land Acquisition Act, such as the procedures for public notice and payment of compensation, etc.

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[109] Section 39 of the 1894 Land Acquisition Act provides “However, other provisions of this Act mentioned, the President or authority appointed by the President for this particular matter, may deem necessary, any agricultural land can be summoned to use specific mean or method.”

The acquired land is being used for the project on a total area of 3,498 acres, while the number of affected farmers is 813. According to the land records booklet, the government plans to offer compensation of 2,000,000 Myanmar Currency Kyats (mmk) per acre to the affected farmers. In this area, the military camps are using a total of 561.20 acres, and considering compensating 144.68 acres out of this 516.20 acres at a rate of 5,000,000 mmk per acre.

On the other hand, the total acreage acquired for the highway project is 452,89 acres, and only 150,000 mmk were compensated to the affected farmers on August 5, 2015.

Base on the scrutiny of the Scrutinizing Committee for Confiscated Farmland and Other Land Permission in 2014, the land areas which had been taken but not yet been used for the projects was returned to the original farmers: First time in June 2014 for agriculture land 7172 acres, other lands 1838 acres, total area 9055 acres, involving 2,372 farmers; and the second time in August 2018 for agriculture land 3467.19 acres, other lands 362.8 acres, total area 3830 acres, involving 1,372 farmers were completed..

However, the affected farmers whose land was used for these project areas could not get their land back and can only receive a compensation unilaterally decided by the government, without opportunity to negotiate the relocation of the land for their livelihood. This disparity between the farmers who regained their land ande the affected farmers who lost land and unsatisfactorily compensated has been the question.

According to the evidence in this case, the government did not differentiate between farmers' rights such as “Bobapaing” rights, “Cultivation Right”, tenants' rights, and other types of land rights; instead, it relied solely on the land record booklet from the land record department.

As for the questions on the practice of the Land Acquisition Act (Q5(b-f)), no detailed answers were obtained due to the scarcity of cases of implementation. Table 3-7 summarizes the answers obtained from four townships:

Table: 3-7 – **Government Answers to the Q5, Implementation of Land Acquisition Law**

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
5(a)	Typical Case	No land acquisition after 2012 Before 2012 2 huge land acquisition cases (1) Mandalay international Airport construction (2) Yangon-Naypyidaw Highway Road Construction	No land acquisition after 2012	No land acquisition after 2012 Can not disclose information before 2012	2 land acquisitions after 2012 (1) highway construction (2) Irrigation - Both cases perform under land acquisition act and instruction from ministry of construction.
5(b)	Public Notice	-	-	-	-
5(c)	Third-Party Committee	-	-	-	-
5(d)	Compensation	-	-	-	-
5(e)	Members of third-party committee	-	-	-	-
5(f)	Statistics	-	-	-	-

(Source: Compilation by the author based on Interview results from 4 Townships)

3.2.6 **Additional Questions on the Treatment of Land Rights**

In answering to the author's additional questions on the government's implementation of land reform since 2012 all of four target Townships responded the growth of land sales following the 2012 land reform (Additional Q1). Tada-U Township (Mandalay Region) administrator answered that the sale of farmland has skyrocketed after the 2012 land law reform. The bulk of developers are continuously seeking the farmers in an effort to persuade them to sell land due to the township's proximity to the highway and airport. The bulk of farmers have sold to developers, accounting for approximately 20% of the overall farmland in Tada-U Township (Mandalay Region).

Nyaungshwe Township (Shan State) also saw the increasing land sales, about 120 cases totaling 200 acres. However, the majority of farmers still prefer to cultivate their own land, largely due to the active performance of the export of agricultural products that commands high selling prices since 2019. Nayungdon Township (Ayeyarwady Region) has seen a modest rise in land sales. However, because agriculture is their main source of income and the crop prices have been rising since 2020 due to growing export demand, the majority of farmers are unwilling to sell their farmland. Nyaunglebin Township (Bago Region) saw a sudden increase of land sales with 300 deals in 2018 when the Central Farmland Committee sent a direction to promote the property transactions.

Asked about the land use change by the developers after obtaining farmland (Additional Q2), all Township Administrators gave the same response: the developers don't run any agricultural business but keep it while the local real estate market continues to increase in value. Tada-U Township (Mandalay Region) handle such cases by issuing the notice urging the actual performance of the granted project within 4 years as provided in the land use change permit. However, there are a number of cases where the developers do not perform their obligations.

As for the question of whether the Ward and Village level Farmland Management Bodies can intervene in land sales with the guidance to let the land used for agricultural business instead of other investments (Additional Q3), the answers of all 4 townships were identically negative, due to the lack of the authority to intervene. The Farmland Administrative Bodies are only vested with the function of a witness for the sale agreement.

Asked about the possibility of using a land lease form for investments, instead of complete sales (Additional Q4), the answer is that there is no officially land lease to the outside investors after 2012 Land Reform, but the land leases between the relatives or villagers inside the community might occur whether written or oral contracts.

As for the question to the Township Administrators on their personal thoughts on the free land transfer policy under the 2012 Farmland Law (Additional Q5), Tada-U Township (Mandalay Region) responded that he is worried about the food security because the impact of free land transaction is worsening the farmland loss as the land sales price rises. The Nyaungshwe Township Administrator (Shan State) responded that a rise in land sales since 2012 is occurring mostly to operate various companies, such petrol stations and tourism-related businesses, while the land transactions between farmers are mostly done informally to avoid the land selling taxes which is so exorbitant (about 7% of the property's selling price per acre), and farmers are also reluctant to travel to the government office to change the recorded name. According to the administrator of Nyaungdon Township (Ayeyarwady Region) the majority of farmers in his community are committed to their land and farming, thus price stability for agricultural products is more crucial than the opportunity to freely transfer land. If farmers are unable to turn a profit from their operations, land sales may become more common due to the current high rate of inflation. Nyaunglebin Township (Bago Region) responded that even though the Administrator has tried to educate farmers on the risk of land sales which can result in the loss of agricultural livelihood basis, his education is not effective since the law allows for unrestricted sales, and there are numerous incentives offered by developers on a daily basis.

Lastly, to the question on the administrative coordination between the GAD (Ministry of Home Affairs) and the Department of Settlement and Land Records (Ministry of Agriculture and Irrigation) with regard to the management of land records and the issuance of land tax receipts which constitute the basis of proof of farmer’s land rights (Additional Q6), the same response is given by all Township Administrators: Township-level Department of Settlement and Land Records handles all these procedures, while the GAD only implements its decision. For instance, the Department of Settlement and Land Records determines the tax amount based on the information in the land record, and the tax receipts are prepared and filled up by this department,

which subsequently sends them to the township GAD for tax collection. As a result, the GAD lacks the knowledge on the accuracy of the information on the records.

Thus, according to the additional interview results, a nationwide similar trend has been the rapid increase of land sales since the 2012 land reform that liberalized the farmland transactions. Local Farmland Management Bodies have weakened their leading roles in farmland management[110], lacking authority to give guidance to the farmers who aim at land sales for profits. There is even a possibility that a majority of land disputes occurring under the 2012 land law reform has been the claims by those who aim at the profit from land sales. However, as far as there remain the farmers who have a strong attachment to their farmland and make living on the agriculture, the government is responsible for the implementation of law for their protection. Appendix 1, Answers 6 contains the comprehensive answers to these additional questions.

3.3 **Farmers' Questionnaire: Hypothesis and Results**

This section first presents the result of the questionnaire distributed to 120 farmers who were randomly selected among those who currently reside in the target four Townships and operate a framing business (30 farmers per township). This questionnaire has three parts: agricultural characteristics, land rights, and dispute resolution. Appendix- 2 shows the contents of farmers' side questionnaires and the summery of answers.

As for the method of survey, the author formed three-person volunteer groups in each Township for the distribution and collection of survey questionnaires as well as additional interviews. The author anticipates to identify from this empirical study the glaring differences between the government and farmers regarding the nature of land rights, their performance of land management, and the actual state of land conflicts and management in Myanmar.

[110] The Central Farmland Management Body may establish Region or State Farmland Management Bodies, District Farmland Management Bodies, Township Farmland Management Bodies, and Ward or Village Tract Farmland Management Bodies, in accordance with Section 16 of the 2012 Farmland Law.

3.3.1 **Farmers Side Questionnaire Results: Faming Characteristics**

In this section, the author will present the results of direct questionnaire distributed to 120 farmers in the target four townships (30 farmers in one township) between April and June of 2023. The questionnaire consists of three parts: farming characteristics, land rights, and dispute settlement. The results on the farming characteristics of the four townships is presented in Table 3-9.

Table: 3-8 – **Farmers' Answers to Q1: Farming Characteristics**

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
1	Farming Characteristics	Average household: Male – 2 Female – 2 Total – 4 Land size – 2/3 acres	Average household: Male – 3 Female – 2 Total – 5 Land size – 1 to 115 acres	Average household: Male – 4 Female – 2 Total – 6 Land size – 4 acres	Average household: Male – 3 Female – 2 Total – 5 Land size – 1 to 115 acres
	Name of Farmer' Land Right	All said "Bobapaing" land	All said "Bobapaing" land	Bobapaing" land Inherited land	"Bobapaing" land Inherited land
	Starting Time of Cultivation time	1980/1992	1980/1992	1986/1990/1991	1980/1992

	main crops		**Main crops**		**Main crops**		**Main crops**		**Main crops** rice
		10 *	rice	30 *	Rice	22 *	rice	16 *	other crops (peanuts,
		20 *	other crops (peanuts, vegetables and beans)	10 *	other crops (sunflowers, peanuts and beans)	8 *	other crops (peanuts, sugarcanes and beans)	14*	vegetables and beans)
	Cows/ horses and machine ry	20* 10*	**Cow/ machines** 2 cows/ 1 machinery 3 cows/ 2 machinery	30 * 30 *	**Cow/ machines** 1 to 3 cows/ 1 to 2 machineries	9 * 17* 4 *	**Cow/ machines** 2 cows/ 1 machinery 2 cows 1 cows/ 1 machinery	14* 8 * 8 *	**Cow/ machines** 2 cows/ 1machinery 1 cow/ 1 machinery 1 cow
	Irrigat-ion	28 * 2 *	**Irrigation** enough by gov Local irrigation system	30*	**Irrigation** enough by gov	21* 9 *	**Irrigation** enough by gov local irrigation system	30*	**Irrigation** enough by gov
	Family status change	30* 20 * 10 *	landed farmers no change increase	30* 24* 6 *	landed farmers no change some family members need to go abroad or urban area for business	30* 20* 10*	landed farmers no change some family members need to go abroad or urban area for business	30 * 11* 19*	landed farmers no change some family members need to go abroad or urban area for business

	Family income	25 *	enough for living	24*	enough for living	22*	enough for living	8 *	enough for living
		5 *	not enough and need to rely on the other family members' jobs	6 *	not enough and need to rely on the other family members' jobs	8 *	not enough and need to rely on the other family members' jobs	12*	not enough and need to rely on the other family members' jobs
	change	25 *	not change	24*	not change	22*	not change	8 *	not change
		5 *	change since 1990s	6 *	change since 1990s	8 *	change since 1990s	12 *	change since 1985
	Village structure	**60% landed farmers 20% tenants 10% share croppers 10% landless and other business		**50% landed farmers 15% tenants 10% share croppers 25% landless and other business		**70% landed farmers 10% tenants 10% share croppers 10% landless		**45% landed farmers 10% tenants 10% share croppers 35% landless and other business	

(Source: Compilation by author based on 120 questionnaires answers)

(*Note: The number of the answers, 30 farmers in one Township, therefore the total numbers of answers are 120 in each question. The author compiled all 120 answers in the Table by carefully checking all 120 questionaries answers **Note: The author calculated these data based on the results of farmer questionnaires and government interviews. The majority of farmers are unfamiliar with the method of calculation, so the author made three times requests on 29-4-2023, 1-5-2023, and 2-6-2023 until the farmers could provide concrete data and finally the author calculated the result after getting approval from the farmers and government side.)

According to the results of the questionnaire, all four Townships' farmers confirmed that agriculture is one of the area's primary industries; Lower Myanmar Townships primarily cultivate rice, whereas Upper Myanmar Townships cultivate both rice and other crops. The majority of

farmers continue to use cows for farming industries, while a few families use machinery. Over 80 percent of farmers rely on the government's irrigation system.

Regarding family status, all answered farmers are landed farmers, most of the farmers inherited the land during the 1980s and 1990s. But 40% of them had their family income base changed during the 1990s because the farming business was insufficient to support the entire family and some family members, and especially the younger generation had to leave the country to look for other business opportunities. Therefore, 30% of farmers must rely on income from other businesses. In the Nyaunglebin Township (Bago Region), which is not far from Yangon, the proportion of landed farmers is only 45 percent, while a percentage of landless farmers is 35 percent, the majority of whom are employed in industries other than agriculture, or. have just returned from their daily employment in other urban areas, particularly Yangon city. Some of them operate local SMEs such as restaurants, grocery stores, souvenir shops, and transportation businesses. As a result, these 35% of landless people have certain income basis. Naungshwe Township (Shan State) has shown a similar atmosphere: 50 percent of farmers are landed farmers, while 25 percent work in the hotel and tourism industries, because the region is popular for sightseeing and tourism due to its proximity to mountains and lakes.

3.3.2 Farmers' Side Questionnaire Results: Legal Nature of Land Rights

Part 2 of the questionnaire deals with the recognition of the nature of land rights as understood by the farmers as well as the actual performance of the government on the ground. Table 3-10 summarizes the results.

Table: 3-9 – **Farmers' Answers to Q2: Legal Nature of Land Rights**

No		**Tada U (Manadalay Region, Upper Myanmar)**		**Nyaungshwe (Shan State Lower Myanmar)**		**Nyaungdon (Ayeyarwady Region Lower Myanmar)**		**Nyaunglebin (Bago Region, Upper Myanmar)**	
2	Land rights Name of rights / when	30* 11* 10* 9 *	"Bobapaing" rights Since their parents 1980s 1990s	30* 22* 8*	"Bobapaing" rights since king era/parents 1980s	30 * 30 *	"Bobapaing" rights 1970 to 2012 Inherited	28* 2 * 30*	"Bobapaing" rights "Cultivation Right" 1980s to 1990s inherited
	How to get	30*	Inherited	30*	inherited	30*	Inherited	30*	Inherited
	Sale	30* 2*	Yes partially sale No permission	30* 10*	Yes partially sale No permission	30* 5 *	Yes partially sale No permission	30*	Yes No permission
	Lease	Yes No permission		Yes No permission		Yes No permission		Yes No permission	
	Mortgage	Yes No permission		Yes No permission		Yes No permission		Yes No permission	
	Purchase	Yes No permission		Yes No permission		Yes No permission		Yes No permission	
	Mortgage lands	No But unregistered mortgage is still happening in the villages		No But unregistered mortgage is still happening in the villages		No But unregistered mortgage is still happening in the villages		No But unregistered mortgage is still happening in the villages	

(Source: Compilation by author based on 120 questionnaires answers)

(*Note: The number of the answers, 30 farmers in one Township, therefore the total numbers of answers are 120 in each question. The author compiled all 120 answers in the Table by carefully checking all 120 questionaries answers.)

The results of the second part questionnaire, Question No.2, on the nature of land rights(Q2) is summarized in Table 3-10. It was found all of the farmers in the four townships believe they have the primary "Bobapaing" Rights on their lands. On the other hand, only two farmers in Nyaungdon Township (Ayarwady Region) have an awareness of the term "Cultivation Right" (*Lyae Yar Myae Loat Paing Kwint*) under the Farmland Law, while rest of the answers comingled with the term "ownership" (*Paing Sai Hmu*), which has the same sense as "Bobapaing," in explaining their understanding of the formal title.

All farmers said that they received their lands from their parents throughout the 1970s and 1980s in relation to the succession era. Additionally, they believe their parents also received a land inheritance from their grandparents, albeit they are unsure of the exact information about getting the lands of their grandparents.

Prior to the farmland reform of 2012, the sale of land was unlawful, although local land transactions were carried out within the communities in accordance with their answers. However, following the 2012 Farmland Law Promulgation, the number of land sales increased without restrictions.

Prior to the 2012 land reform, farmland leasing, mortgage, and purchase were forbidden; but now they know, after receiving the Form 7 certificate of "Cultivation Right" under 2012 Farmland Law, they may do so without any limitations. Although Section 12(c) of the Farmland Law states that only government banks or banks authorized by the government may be given a mortgage on farmland for the sole purpose of obtaining a cultivation loan, and must be registered according to the interview response, illicit mortgages inside communities continue to be made to third parties such as local money landers, or outside investor groups, rather than government banks due to the huge burden of registration fee.

3.3.3 Farmers' Side Questionnaire Results: Dispute Resolution Procedures

The third part of the questionnaire (Q3) concerns the procedures for resolving land disputes in the four townships, as summarized in Table 3-11.[111] The main goal of this investigation is to learn how the farmers understand and utilize the dispute resolution mechanism under the 2012 Farmland Law for resolving farmland disputes.

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Table 3-10- **Farmers' Answers to Q3: Land Disputes Resolution**

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)		Nyaungshwe (Shan State, Upper Myanmar)		Nyaungdon (Ayeyarwady Region, Lower Myanmar)		Nyaunglebin (Bago Region, Lower Myanmar)	
3	Land Disputes	No		Yes (4)/ No (26)		No		No	
	Resolution method	30	village traditional mediation	25 5	village traditional mediation complaints to land record and GAD	30 5	village traditional mediation complaints to land record and GAD	23 7	Village meditation complaints to land record and GAD

[111] According to online interviews conducted with officers from the general administration department and the land record department in December 2021 and March 2023, as well as the authors' own experiences serving on committees and sections related to land and disputes resolution committees as follows -
2014 to 2017: Assistant Director, Thanintharyi Region Special Lands Management Committee, GAD.
2018 to 2019: Assistant Director, Disputes and Complaints Scrutinizing Division, Minister Office, Ministry of Home Affairs.
2019 to 2021: Assistant Director, Kayin State Special Scrutinizing Committee for Farmland and other land acquisition, Kayin State Government.
Apr.-July 2021: Oat Twin Township Administrator (Mayor), Bago Region General Administration Department, Ministry of Home Affairs.
Aug.2021~present: Assistant Director, Land and Complaints Division, Bago Region General Administration, Bago Region.

	On side hearing	No experiences	7 days (village mediation) 1 month to 1 year (LR & GAD)	No experiences Some cases by hearsay (long process and have to go to the government office when he got notices)	No experiences
	Basis of proof of "Actual Cultivator"	-Cultivation by himself -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)	-Land Records -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)	-Cultivation by himself -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)	-Cultivation by himself -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)
	Result	Village mediation is ok Gov side- long process, time consuming, some places are far	Village mediation is ok Gov side- long process, time consuming, some places are far	Village mediation is ok Gov side- long process, time consuming, some places are far	Village mediation is ok Gov side- long process, time consuming, some places are far

(Source: Compilation by author based on the results of 120 questionnaires answers)

According to the third part of the questionnaire findings, the answers of farmers from three Townships reported no experience resolving land disputes with the government, but 30 farmers in Nyaungshwe Township (Shan State) stated they had some experience with government disputes resolution mechanisms.

Asked about the choice of forum for such dispute resolution, merely 17 out of 120 farmers responded that they need to submit complaints to the township general administration department

and land record department when disputes occur. The rest of 103 farmers responded that they use the village's traditional mediation system.[112] Nearly 95% of farmers answered that they relied on the tradition mediation system because it is not time consuming and also everyone can participate while the mediation is always opened for public. For the question of actual cultivation, 3 townships farmers answered that cultivation by themselves is necessary for proof of actual cultivation but the Nyaungshwe Township farmers answered that land records in necessary for proofing. All township farmers think that the suspension of period for 1 or 2 years should be counted when considering the actual cultivation proofing. All farmers responded that actual cultivation is also required to maintain possession of the "Bobapaing" right; the farmland must be cultivated and cannot be vacant for more than ten years because they are at risk of losing their lands if other people cultivate their lands for ten years when they leave their lands for ten years for no reason. They did, however, respond that abandoning farmland for specific fertilization is permitted for the possession of "Bobapaing" rights and should be considered alongside actual cultivation.

3.3.4 Summary of the Findings from Farmers Questionnaire

The following 5 findings from this survey are found based on the survey questionnaire.

The first finding is that 98.33% of the farmers who responded to the questionnaire think they have “Bobapaing” rights inherited from their parents who, in turn, had inherited it from the ancestors. On the other hand, they lack a clear understanding of the concept of formal title “Cultivation Right” (*Lyae Yar Myae Loat Paing Kwint* in Myanmar term) under the 2012 Farmland Law, while they rather referred to the word “ownership” (*Paing Sai Hmu* in Myanmar term) which has the same sense as “Bobapaing,” in explaining their understanding of the formal title. Thus, it is a remarkable finding of this survey that the overwhelming majority of the farmers maintain a strong belief that their land right is the traditional primary right “Bobapaing”.

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[112] The village traditional mediation system usually refers to a procedure led by the village chief as a mediator to settle local issues under this system, which dates back to the time of the monarch. Both conflicting parties are asked to participate in the mediation, which is conducted in front of a large audience. The majority of the locals rely on this village mediation system rather than the regular legal system, which is expensive and time-consuming, even if the enforcement mechanisms is not formally recognized by the government.

The second finding is that, despite the fact that the 2012 Farmland Law permits land sales, most farmers prefer to hold onto their land because they feel a strong attachment to it and prefer government assistance in the event of a force majeure and crop price instability.

The third finding is that the village traditional mediation system [113] is more frequently used than government dispute mechanisms under the 2012 Farmland Law for farmland-related disputes. This is applicable for all local disputes, including those involving farmland as well as other social or family disputes. The majority of the framers responded that the village mediation system is more affordable, time-efficient, and accessible for them.

3.4 **Experienced Farmers' Interview Results**

To further investigate into the reasons behind the major findings in the aforementioned farmers' questionnaire, this section presents the results from the farmers' interview consisting of 5 additional questions, asked to total 8 farmers, consisting of 2 experienced farmers from each of target 4 Townships. All interviewees have had a certain experience in land dispute resolution.[114]

To supplement the major results from the farmers' side questionnaire above, the following five questions were asked in this additional interview:

(1) What is the difference between "Bobapaing" right and "Cultivation Right"?

(2) "Actual cultivator" is a necessary element for the land right? If so, are you familiar with the land leases in the area you live and do you consider such a lease as "actual cultivator"? Before and after 2012, are there any land lease agreements with investors?

(3) How do you evaluate the advantages and disadvantages of land rights before and after the 2012 land law reform?

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[113] Village traditional mediation is an unofficial way of dispute resolution, although it works effectively across Myanmar. A public mediation is conducted under the direction of the village chief. Conflicts are resolved amicably by the mediator working with both sides. This approach is not expensive or time-consuming, and it also allows for the maintenance of harmonious relations between parties. Therefore, rather than going to a formal court, the majority of Myanmar people choose to use the traditional village mediation method.

[114] The author chose two farmers from one Township who were not only just experienced participants in land dispute settlement but also experienced in land management and related issues in their local communities for interviews. The main objective of this interview is to obtain precise information based on the five questions as well as any gaps in the survey questionnaires.

(4) Why do villagers choose traditional village mediation instead of going to the government office or court to resolve land disputes?

(5) According to the Land Acquisition Act, the government may seize your property for public purposes and compensate you. What are your views on the government performance of this acquisition and the nature of land rights in this circumstance?

The detailed answers of these additional questions obtained from 8 farmers are displayed in Appendix-3 while its essence is stated in the following sections.

3.4.1 **Legal Nature of "Bobapaing" right and "Cultivation Right"**

The first question was asked about on the legal nature of their land rights, with a particular focus on the difference between "Bobapaing" right and "Cultivation Right". The aforementioned farmers' questionnaire has already identified that the overwhelming majority of farmers hold the belief that their land right is the traditional "Bobapaing" right. If so, the author formed a hypothesis that farmers might also consider the legal nature of formal title "Cultivation Right" under the 2012 Farmland Law as equivalent to traditional "Bobapaing" right. This assumption once seemed to be supported by the answers given by 2 farmers in Tada-U Township (Mandalay Region) who told that their right is "Bobapaing" right and they applied for Form 7 certificate of "Cultivation Right" to secure their right as advised by the government. On the other hand, 2 farmers of Nyaungshwe Township (Shan State) responded that they were unsure of the distinctions between these two rights, even though they are sure that their land right is "Bobapaing" right since it was succeeded from their parents. Two farmers in Nyaungdon Township (Ayarwady Region), however, have a different perspective: one of them thinks that his "Bobapaing" right is resistible against the government taking, and in this sense, stronger than a "Cultivation Right" which could be easily taken by the government. Another farmer responded that he thinks "Bobaping" right and "Cultivation Right" are different rights, since the former is a historical right succeeded from his parents but the latter is created by the Form 7 as the land records officer told him, but he thinks Form 7 is necessary to increase the security of his "Bobaping" right. The 2 Farmers in Nyaunglebin Township (Bago Region) also responded that their land right is a "Bobapaing" right since their

parents had given it to them. However, they applied for Form 7 because the government official recommended them to secured their right to the extent of a “Cultivation Right”.

Thus, the notion of farmers on the relation between “Bobapaing” right and “Cultivation Right” varies person by person, but all of them commonly considers that their rights is “Bobapaing” right. The majority of them aware the difference between these two rights, such that the “Bobapaing” right is stronger than a mere “Cultivation Right” which is subject to the governmental revocation. But many of them applied for Form 7 certificate of “Cultivation Right” even though knowing it is a limited means of security to the extent of a revocable right. All farmers responded that in order to maintain possession of the "Bobapaing" right, the farmland must be cultivated and cannot be vacant for more than ten years because they could lose their lands if other people cultivate their lands for ten years when they leave their lands for ten years for no reason. However, they responded that abandoning farmland for specific fertilization is permissible for the possession of "Bobapaing" rights.

3.4.2 **“Actual Cultivation” and the Treatment of Lease**

The author asked about the farmers’ notion on “actual cultivation” as a necessary element for proving their land right.

As for the concept of “actual cultivation” (*Ahman Take Sight Pyo Chin),* three forth of the answers (6 farmers in 8) responded that “actual cultivation” literally means the cultivation by himself. However, all interviewed farmers considered it can include the cultivation by using tenants. They all responded that one- or two-years’ tentative suspension of cultivation for fertilization purpose should be counted for the period of “actual cultivation”.

As for the method of proof of such “actual cultivation” by himself, farmers in Nyaungshwe Township (Shan State) answered that land record is necessary for proving in the farmland disputes, but other answers favored the oral testimonies.

The author further asked about their notion of farmland lease: in the Form 7 certificate issuance for “Cultivation Right” under the 2012 Farmland Law, how they can differentiate the “actual cultivators” between the original landholder and the long-term lease. The government side interview in section 3.2 above has revealed some confusion in this practice of issuing Form 7

certificate of “Cultivation Right” to the “actual cultivators.” In this regard, according to the answer given by all of interviewed farmers from 4 target Townships, a customary system of land leasing (*Myae Nhgar Yan Chin* in Myanmar term), that is expressed either in writing or verbally in front of the community chief, is popular among villagers when they are unable to cultivate due to health problems or other family concerns.

Farmers from Nyaungdon Township (Ayarwadddy Region) stated some details of the practice of lease. Sharecropping and fixed rent tenancy are two major forms of land lease. Most landowners lease their land to their relatives. In the event of a disagreement, the local chief resolves the dispute because he is aware of this lease position as the witness of its formation. Therefore, there is no problem in the proof of rights in the Form 7 issuance to “actual cultivators”.

However, farmers from Nyaungshwe Township (Shan State) explained that land lease to investors has been a new phenomenon in some areas of Shan State, in which investors lease a vast acreage of land for the plantation of bananas and watermelons aiming at exportation to foreign counties’ market. They can't decide whether or not this is a good idea because there have been reports of social and environmental issues. But this form of investment using lease can meet with the wish of local farmers who do not want to lose their land rights.

3.4.3 **Impact of Liberalized Land Transactions**

The second question evaluates the advantages and disadvantages of the liberalization of land transfer under the 2012 land law reform. All of the interviewees have a clear awareness that they now legally have the ability to sell, mortgage, and transfer their land as a result of the 2012 land reform. But some of them expressed the negative view on its impact. Two farmers in Nyaungshwe Township (Shan State) have concerns on the present tendency that most of local farmers sell their land to developers for uses other than agriculture since the local economy increasingly depends on travel and tourism. Investors have offered special incentives to obtain land. They worry that the situation has gotten worse as a result of the 2012 land law reform.

The two farmers in Nyaungdon Township (Ayeyarwady Region) responded that local farmers value their land as agricultural base, and actually do not want to sell it for a fast monetary gain. However, due to the fluctuation of crop prices, farmers sometimes have no other choice to

mortgage their land for finance. When they are unable to pay back the debts, the mortgagee took their land away. This is one of the major causes of their community losing land. Therefore, if the economic policy is poorly managed and unable to stabilize crop prices, they concern that this liberalization policy of 2012 land law reform would result in many farmers' losing their farmland.

3.4.4 **Dispute Resolution through Traditional Mediation**

The farmers' questionnaire results above found that many farmers choose the traditional village mediation in land related disputes. The author intended to know the background reason of this choice of forum, instead of resorting to the government procedure or the litigation at the court (Q3). All interviewees of 4 target townships responded similarly that it is their custom to resolve all types of disputes by village traditional mediation at the residence of the village chief, as an open forum where anyone of the community can participate in.

The reason of this choice is because it is less expensive, and less time-consuming since it can settle the conflicts within a single day or two. Also, it was mentioned that the village mediation allows them to maintain harmony inside the community.

Asked about the difference of substantive norms applied for the resolution, the interviewed farmers believe that village traditional mediation applies the same norms as the formal law, but the fact-finding (e.g. who is the actual cultivator) is more accurate, and therefore is more trustful than the government system.

Asked about the enforcement of mediation agreement in cases of non-voluntary performance, the interviewees have no much concern since the villagers usually perform according to the results of mediation. In cases of difficulties, the parties may resort to the governmental system or the court.

3.4.5 **Reality of Land Acquisition Act**

The last additional question No.5 concerns knowledge of the 1984 Land Acquisition Act. All of the township farmers believe that their right to "Bobapaing" is strong and that the government cannot take it easily. On the other hand, they are aware that under the existing circumstances, they have little opportunity to challenge the government's plan for an arbitrary land

acquisition. They have a great attachment to their lands since they inherited them from their parents, therefore the compensation for the land taken cannot satisfy their minds. They therefore valued their land and did not want to lose it easily as a result of government land acquisition that was done without their consent.

3.4.6 **Summary of the Findings from Farmers Interviews**

According to the result of interviews with experienced farmers from 4 target townships, it is confirmed that local farmers hold a strong belief that their land right is the supreme "Babapaing" right, equivalent to the ownership concept (*Paing Sai Hmu*). It is further identified that they have an awareness on the difference between their "Babapaing" right and the "Cultivation Right" (*Lyae Yar Myae Loat Paing Kwint*) under the 2012 Farmland Law which is subject to the revocation by the government. The majority of farmers registered their land to obtain Form 7 because they wished to take advantage on the burden of proof when land disputes came up, as well as to obtain the land transaction rights outlined by the land record department.

Regarding the proof elements of "actual cultivation," the farmers' consensus is that it literally means the cultivation by himself, but can include the cultivating by tenants, both sharecropping and fixed rent, mostly for family members. In the event of a dispute, the local authority is aware of this lease situation, and always the original landowner is found as the "actual cultivator" in the proof of formal rights.

Local farmers have concerns on the impact of the 2012 land law reform that liberalized the free transaction of land. Despite the law's promotion of land sales, farmers have a strong attachment to their land, and won't release it as long as the price of crops can go stable, and they are free from mortgage foreclosures.

In regard to the choice of forum of dispute resolution, all farmers shared the view that traditional village mediation is the custom of resolving all disputes at the home of the village chief. Due to the lengthy, costly, and cumbersome procedures involved, the majority of farmers avoid government offices and courts. In addition, the majority of farmers comply with the result of village mediation, because they trust the normative choice and the procedure in this system.

The finding for the final question relates to the land acquisition, even though the majority of farmers do not have sufficient knowledge and experiences regarding the land acquisition matter, they were firm that they do not want to lose their land even if the government compensates them for public purposes projects.

3.5 Overall Summery of Findings of Survey: Perception Gaps between Government and Farmers

Overall findings from the empirical survey (consisting of the government side interviews, farmers' questionnaire and the experienced farmer' interviews) in this Chapter III will be summarized as follows.

As for the legal nature of farmers' land rights, an obvious perception gap between the government side and the farmers' side was identified by this survey. The government side has a strong formalist notion that the famers are bested with the "Cultivation Right" by the simultaneous land title issuance by the government under the 2012 Farmland Law; Therefore, if a farmer lack the title certificate Form 7, they lack any right; To issue Form 7 certificate, the proof requirement of "actual cultivation" is necessary, which is done basically on documentary basis; once Form 7 of "Cultivation Right" is issued, it can still be revoked by the government when farmer fails to meet with the conditions, such as the failure to perform continuous cultivation; The legal basis of this revocation is Section 37(a) of the Union of Myanmar's 2008 Constitution which declares that the Union is the ultimate owner of all land and natural resources. It is a natural consequence of the government officers' understanding that "Cultivation Right" is a "tenant" right of the state-owned land, and subject to the revocation by the state as the sole landowner.

But the farmers' side has a strong and common notion beyond the regional or historical difference, that their rights are "Bobapaing" right, a supreme land ownership succeeded from their ancestors; their rights have strong and absolute nature and also, they have strong attachment on their lands. A majority of them believe that such "Bobapaing" right exists without any formal evidence such as the land record, and can continue to exist even when during cultivation recess, while a notion on the period of extinctive prescription was not clearly confirmed ; Experienced farmers think "Bobapaing" right and "Cultivation Right" are different, and the former continues

to exist even when the latter is revoked by the government due to any reasons such as the failure to register at land record, or ceasing of cultivation, while many ordinary farmers even lack the accurate awareness of "Cultivation Right"; Many of them consider that "actual cultivation" can include the cultivation by using tenants; They also consider that "actual cultivation" can continue even during the cultivation recess for certain years for the purpose of fertilization; Even they fail to meet with the proof of "actual cultivation" as a formal requirement of "Cultivation Right", farmers believe their original "Bobapaing" right continues.

Thus, the legal cause of this significant perception gap between the government and the farmer side is said to be the formalist stance of the government side ignoring the firm common belief of nationwide farmers on their "Bobapaing" rights succeeded from the ancestors. In other words, this is the gap created by the legal formalism of the 2012 land law reform, which brought in a set of law reform models without trying to narrow the gap with the existing local system.

Land disputes would not cease unless the government's legal formalism seeks for a compromise with the existing land order deeply rooted in the Myanmar society. Then, what should be done for the future compromise for the government legal formalism within the bound of rule of law? The author will intend to explore two issues in this regard in the following Chapter 4 from a comparative perspective in the context of post-colonial independence law-making in several states in India:

First, the question of constitutional interpretation on the limit of the land law reform which deprives the existing private property rights, with the sub-question whether this conclusion differs between the cases of the nationalization of absentee landlords' land beyond-ceiling, and the deprivation of subsistent farmers of their cultivating land. The current 2008 Constitution of the Union of Myanmar (Section 37) provides for the status of the government as ultimate land owner, and based on which, the government side interviews justified the government discretion to issue Form 7 certificate for "Cultivation Right" in exchange for the denial of the existing rights, and the government's revocation of such once given "Cultivation Right" upon the failure of conditions, as well as the taking of land for public purposes upon the compensation under the 1894 Land Acquisition Act. Such a status of the government as the ultimate land owner has been strengthen by the "finality" clause in the Farmland Law (Section 25(c)) declaring the exclusion of judicial

review over the state discretion on land issues. However, the government is not always absolutely excluded from judicial review, and at least it could be tested for the unconstitutionality of discretion by the Constitutional Tribunal or the Mandamus writ at the Supreme Court, if the objective-based constitutional interpretation is applied (instead of a literal interpretation) in light of the ultimate goal of land management declared by the constitution (as discussed in Chapter 2 such goals differed between the 1947 Constitution that guided the post-independence land reform, 1974 Socialist Constitution aiming at the state control, and the current 2008 Constitution).This is an argument explored in the comparative view with the post-independence land law reform in India in Chapter 4.

Second, the design choice of a new property right to meet with the balanced policy of promotion of efficient use of land and protection of small-scale farmers who have attachment to the ancestry land. As the author's survey identified the gap between the present "Cultivation Right" designed for the liberalization of economic transactions, and the farmers' strong expectation for the protection of their status as "Bobapaing" right, a further reform to establish a new property right is inevitable to fill this gap. The related question is the treatment of "actual cultivator" requirement which reflects the "owner-cultivator policy" succeeded from the post-independence 1953 Land Nationalization Act. It is ironic that the current "Cultivation Right" requires this proof of "actual cultivator" ((*Ahma Take Sight Pyo Chin* in Myanmar term) only to block the farmer's claim (Section 6 of Farmland Law), while exempting capitalist land purchasers from making this proof (Section 8). A new property right should aim at an equal treatment as a compromise between two goals of promotion of economic transactions and protection of those who claims farmland security. Therefore, next Chapter 4 will study the Indian land law reform closely into the States' level in order to learn from various attempts of law-makers toward the establishment of a new property regime that realize the needs of economic growth set as a federal goal and the local call for farmland security.

Chapter IV

A Comparative Analysis: Lessons Learned from India Land Law Reforms

4.1 Background of Focusing on India

Land reform was one of India's top priorities after achieving its independence from British colonial reign in 1947, similar to Burma, in order to concurrently promote economic growth and social justice by modifying the land tenure system and granting social justice to the true cultivators of soil. In the legal sense, however, India land reform has faced with constitutional questions due to its inherently compulsory nature to deprive the existing landed elites of their private properties by the state power.: namely, the reform was centered on the abolition of intermediary classes and the establishment of a direct relationship between cultivators and states by granting security of tenure to cultivators.[115]

Even though the overall results of post-independence land reform in India have mostly been evaluated negatively by researchers (e.g. Appu, (1996); Hamstad et al., (2009); Holden et al., (2003)), there is still a need to investigate the details of legal designs given the diversity of performance among the states. Due to Schedule VII of the India Constitution which provides the federal-state demarcation of administrative works under the federation system, land reform is conferred as the jurisdiction of each State, and, therefore, State-level chose their own legal design on land reform, and used its discretion in the implementation. The federal government had only been able to guide the land reform process through occasionally publicized policies and guidelines, including the five-year national development plans. Consequently, each Indian state has had distinct land reform legislations.

Regarding the nature of farmers' rights, there are variations between States' laws: Some states strengthen the farmers' tenancy rights over ownership rights, while some states amid at the abolishment of the tenancy rights and instead established a new right as the direct tenants of the state land, while other states aimed at establishing a new right as farmer's absolute ownership right. Due to these dispersed results in each state, both failure and success followed after land reform in both terms of economic efficiency and social justice. In light of these diversity of circumstances,

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[115] Saxena, A. (2019). *Land Law in India*. Routledge at 69.

the author selected four Indian states to examine the difference of legal design choices and their performance of land reform.

There will be two focus on the comparative investigation on India land law reform: (i) the objective of land reform (or its periodical changes) pursued in the federal 5 year plans and the state-level legislations, from the view point of the basis of constitutional review, which is relevant for Myanmar in regard to an objective-based constitutional review on the government discretion under the 2012 land law reform, despite the "finality" clause excluding judicial review; and (ii) the design choice of a new property right explored in each state level, to meet with the balanced policy of promotion of efficient use of land and protection of small-scale farmers, which is relevant to consider Myanmar's future land reform to overcome the present "Cultivation Right" which is designed for the liberalization of economic transactions of land, and expanding a gap in regard to the farmers' strong expectation for their farmland security as "Bobapaing" right.

For these purposes, this section first provides a brief historical overview of land administration in the pre-colonial, colonial, and post-independence eras, and followed by an in-depth analysis on the selected four Indian states.

4.2 **Historical Overview of Indian Land Law and Administration**

4.2.1 **Traditional Land Regime in India**

According to the ancient legal texts such as Manusmriti,[116] Kautliya's Artha Shastra,[117] and the Buddhist Jatakas,[118] the tenure system of ancient India was based on the system of Raiyatwari, or individual landownership, which did not depend on the landlord type since the fifth century

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[116] The Manusmiti, also known as the Mnava-Dharmastra or the Laws of Manu, is one of the numerous legal texts and constitutions of Hinduism's Dharmastras. (Sacred Texts of the East: The Laws of Manus, volume twenty-five. 1886, Oxford: Clarendon Press; translated by Bühler, G.)

[117] The Kautliya's Artha Shastra is an ancient Sanskrit Indian treatise on statecraft, political science, economics, and military strategy. (Olivelle, P. (2013). *King, Governance, and Law in Ancient India: Kautilya's Arthashastra*. Oxford University Press. ISBN 978-0199891880. Retrieved February 20, 2016.)

[118] The Jataka is the tenth book of the fifteen texts written in the ancient Indic language of Pali and contains more than five hundred stories (https://www.khanacademy.org/humanities/art-asia/beginners-guide-asian-culture/buddhist-art-culture/a/jatakas-the-many-lives-of-buddha-as-bodhisattva).

A.D.[119] The first jungle cleaner was allowed to cultivate and reside on the land, whereas the king had no absolute ownership rights to all land. According to the Menusmriti, “the land belongs to the first person to clear it, just as it belongs to the first hunter to shoot a deer.”[120] However, as a result of his citizens' protection, the king was able to obtain a portion of agricultural products.

Therefore, it is considered that ancient India's land management system did not acknowledge the role of intermediaries between the king and the cultivator; where a person could own the land to cultivate it after clearing the jungle, but was required to pay a portion of the harvest to the king in exchange for protection. Even though the learners, ministers, and men who were the king's servants were permitted to use the land under the system of land grants, the king could only grant his own lands and wastelands to such individuals.[121]

During the eras of Muslim dynasties in the 12th through 15th centuries, according to historians, Muslim rulers did not alter the land management system during the medieval era: the right to property remained with the inhabitants. But the system for collecting land revenue was changed from the Hindu period of rule: During the Hindu era, the state claimed one-sixth of agricultural production as land revenue, provided that this percentage could change to one-fourth or one-third in the event of emergence. During the Muslim period, depending on the production situation, the state claimed half or a third of the total harvest.[122]

Sher Shah (1486-1545) was the first Muslim ruler who attempted to reform the land administration system by classifying and measuring land, in which individual land ownership was recognized, village-by-village land records were compiled, “pattas”, a sort of land title granted by the government to an individual or group, were issued, land revenue was assessed and fixed, and land was thus permanently entitled to farmers. For determining the average yield of each class of land and for converting grain rates to money rates, elaborate procedures were developed. During the succeeding Muslim rule, the same system was basically maintained and enhanced.[123]

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[119] Appu. (1996*). Land Reform in India*. Vikas Publishing House at 1.
[120] Ibid.
[121] Ibid., at 3.
[122] Ibid., at 3 to 4.
[123] Das, C. R. (n.d.). Notes. Former Member, *West Bengal Land Reforms and Tenancy Tribunal*, West Bengal Government, India.

After the establishment of the Mughal Empire in the 16th century, Akbar the Great increased the sophistication and effectiveness of the Sher Shah model of land taxation administration, covering also the crown land or Khas Mahal during Akbar's reign.[124]

After Akbar's death, the direct collection of land revenue ceased, even on crown land, and was replaced by village assessments made with the village headman or farmers, as circumstances permitted. Instead of paying courtiers and various civil and military functionaries directly from the state treasury, Mughal emperors frequently resorted to the practice of assigning the village headmen? the land revenue based on the number of parcels in each village territory. The assignment was referred to as a "Jagir", and the recipient of the jagir became recognized as a "Jagirdar".[125]

Thus, before the fall of the Mughal dynasty, land revenue was no longer collected by salaried government officials but by an assortment of intermediaries, including ruling chiefs, jagirdars, village headmen, and revenue farmers. Later in the British colonial time, all of these people eventually became known as Zamindars (which literally meant "landowners") as discussed in below.[126], but their role was limited to the collection of taxes for the ruling governments. They were the tax collectors such as government servants, village leaders, and other representatives of the Mughal emperor.

4.2.2 **British Colonial Land Regime in India**

In the 17th century, when the British East India Company arrived in India, the agrarian structure underwent a dramatic transformation. The East India Company was granted permission to acquire Zamindari rights in a number of Bihar villages. In 1965, the East India Company paid Rs.26 lakhs to become Shah Alam's representative and obtain the right to collect taxes from certain provinces.[127]

The East India Company initially acquired the right to receive the collected land revenue, and subsequently, under the “Permanent Settlement” system which was agreement between the

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[124] Appu (1996) ibid. in Footnote 117 at 6.
[125] Ibid., at 7.
[126] Ibid., at 117 at 8.
[127] Ibid., at 9 to 10.

East India Company and landowners to fix the amount of revenue to be produced from land had a significant impact on both agricultural practices and output throughout the British Empire as well as the political landscape of rural India, introduced in 1793, proclaimed Zamindars as landowners in exchange for the payment of a fixed land revenue. Typically, Zamindars and those to whom they sold their proprietary rights delegated revenue collection to a series of subordinate intermediaries.[128]

The Permanent Settlement acknowledged that the East India Company, in its capacity as a sovereign power, and the Zamindars or farmers through whom the state's revenue had been collected, shared an interest in the state's share of the produce from each acre of land. The Zamindars were allowed to gain from any future rise in the value of the state's share resulting from the expansion of cultivation or other factors. Furthermore, the Zamindars were declared as the landowners who were given a full property right that could not be infringed by any subordinate rights of the intermediaries, and accordingly, all existing statutory or customary land rights were placed in the status of the tenancies of Zamindars.[129]

4.2.3 **Post-Independence Land Reforms in India by the States' Jurisdiction**

After the colonial independence in 1945, because of the rent-seeking behaviors of the intermediaries, the agricultural sector in India was put in a state of crisis. Due to the great inequality carried over from the colonial land ownership regime, all structural problems such as the inherent high proportion of smallholder farmers, a high prevalence of tenant farmers, as well as the concentration of agricultural land in the hands of the upper class intermediaries who attempted to evict the original tillers and despise the agricultural laborers to take the personal interest in land for agriculture business, which caused widespread insecurity of the status of tenancies, all invited the decline of the agricultural sector in India after independence.[130]

To tackle with these problems of post-independence India's agricultural sector, under the Entry No. 18 of the State's jurisdiction List II in the Seventh Schedule to the Indian Constitution

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[128] Bhaumik, S. K. (1993). *Tenancy Relations and Agrarian Development: A Study of West Bengal.* Sage Publication, New Delhi, India at 24-25.
[129] Appu (1996) ibid. in Footnote 117 at 13.
[130] Ibid., at xv to xvi.

of 1950 which closed a federal system ,[131] the land reform was delegated to the jurisdiction of the State level[132], while the federal government could only provide directives and suggestions under the Entry 20 of the concurrent jurisdiction List III of the Seventh Schedule of the Constitution, which addresses "social and economic planning". Based on this Entry 20, the federal government established the Planning Commission[133] to provide the State with land reform directives.

Thus, it is noteworthy that, in accordance with the limitations imposed by the constitutional provisions, the primary mission of the Planning Commission of India was limited to provide general policies and guidelines for the land reform to be planed and implemented by each State, and it was the States to take on a significant role in the implementation of the land reform, which resulted in a large varieties among 28 States in India in terms of the policy choices and legal frameworks of land reform.

In 1951, with the intention to pursuit the country's economic development by focusing on the agriculture sector the Planning Commission began to lay out the first phase of the first Economic Planning in India Five-Year Plan (1951-1956). The concepts of land reform were indicated in this first five-year plan in two primary purposes: the first was to eliminate the disturbance of the agricultural sector, and the second was to remove the exploitation by the intermediaries. In the land reform policy under this First Five-Year Plan, the ideology of land reform was identified as three primary goals: the removal of intermediaries, the reform of tenant rights, and the establishment of agricultural land holding ceiling. The First Plan, however, could not see meaning progress in offering a permanent and inheritable right to the tillers (cultivators), since it was a result of compromise with the landlord class, such as allowing the continuation of tenancy up to 20% of the absentee ownership, and permitting the retaining of land for "personal use", which was never explicitly defined, and resulted in allowing large landowners to select

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[131] Article 246 of the Indian Constitution includes the Seventh Schedule, which provides for the separation of jurisdictions between the Union and the States by three lists, namely the Union list, the States list, and the concurrent list.

[132] "Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization" (List 2 of the Constitution's Seventh Schedule for the State List).

[133] The India government formed the Planning Commission in 1950 to manage the country's economic and social growth, primarily via the preparation of five-year plans.

profitable agricultural land according to their preferences by evicting former tenants and using agricultural laborers.[134]

The first five-year plan was finished in 1956, and the second five-year plan was initiated in the same year. The purpose of the second five-year plan was to provide more security for the cultivators as the majority of lower-level tenants, including especially the tillers in the bottom of the layered tenancy relation, had been evicted by landowners during the first five-year plan due to the landowners' resumption of their tenanted lands. Among all issues, the term "personal cultivation" was thought to require a more stringent definition. In addition, the Second Plan proposed a series of tenancy protection measures, such as lowering the rent, as well as the promotion of redistribution of land to the tillers by purchase of the land that had not been reclaimed by the landowners.[135]

Due to the massive reclaiming of land by landowners during the policy implementation of the second five-year plan, which came to an end in 1960, the federal government initiated the Third Five-Year Plan in 1961 with the intention of more strict control of the definition of “personal cultivation,” and also a more progress in providing ownership rights to the tillers by way of the land purchase. Before the conclusion of the third five-year plan, a special recommendation was carried out by the Federal Committee to the State governments to confer ownership rights to the tillers by giving the option of making land purchase payments in installments and the state should take on a role of direct connections to tenants which means the state and tenants should perform land related matter directly without intervening the intermediaries.[136]

The fourth five-year plan (1969–1974) aimed at a primary ideology for enhancing the level of safety and protection for the “sharecroppers” (or lower-class tenants who are subject to short term contract assuming the obligation of paying rent by share of production not for cash payment) through the legislation for tenancy reform. The plan advocated for the declaration of the tenancy as a permanent tenure for tenants, the control of evictions carried out by landlords, the establishment of regulations regarding voluntary surrender in order to prevent landowners from

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[134] Appu (1996) ibid. in Footnote 117 at 87.
[135] Ibid., at 88-91.
[136] Ibid., at 92-94.

taking possession of tenanted cultivated lands, the provision of homestead land security, and the provision of penalties for wrongful evictions.[137]

There were no meaningful changes made to the fifth and subsequent five-year plans, except for certain additional guidelines for the tenancy protection such as the fixing of rent not to exceed one fifth to one fourth; giving permeant right to the tenants; and offering rights of ownership to tenants. It was understood that the problem of land reform was no more in the goal setting by the federal government but rather in the short comings in the laws and the weak implementation of the States.[138]

From the first five years of the plan to the eighth five years of its implementation, Indian land reforms have included fundamental challenges to constitutional principles. Numerous constitutional amendments that particularly address land reform issues have resulted from these concerns. This brings up Section 31 of the Constitution, which deals with forcible property acquisition. In the Constitution's Part III on fundamental rights, this was one of the most controversial sections. The landlord classes petitioned the Supreme Court to decide if the fundamental rights guaranteed by the constitution were breached by the land reform. During the land reform process, the Supreme Court of India rendered certain judgements,[139] and some constitutional modifications were made in response to the judgments in order to carry out land reform in accordance with the provisions of the constitution.

4.3 **Comparison of Legal Frameworks of Land Reform in 4 Indian States**

Then, what was the substance of land law to realize its objectives, and the reality of its implementation in the State's level which was bested with the primary jurisdiction to perform the land reform under the 1950 Indian Constitution's Seventh Schedule. This study will focus on the

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[137] Appu (1996) ibid. in Footnote 117 at 94-95.
[138] Ibid., at 95-96.
[139] See certain cases, Kameshwar Singh v. State of Bihar; I.L.R. (1951) Pat. 454 (F. B), State of Bihar v. Kameshwar Singh (1952) S.C.R. 889; Zamindar of Ettayapuram v. State of Madras (1954) S.C.R. 761; West Bengal v. Bela Banerjee (1954) S.C.R. 558; State of West Bengal v. Subodh Gopal Bose (1954) S.C.R. 587; Dwarkadas Srinivas v. Sholapur Spinning and Weaving Co. Ltd. (1954) S.C.R. 674; Saghir Ahmad v. State of Uttar Pradesh (1955) 1 S.C. R 707; Karimbil Kunhikoman v. State of Kerala (1962) Supp. I S.C.R. 829; Golak Nath v. State of Punjab (1967) 2 S.C.R. 762 and Rustom Cavasjee Cooper v. Union of India (commonly known as the "Bank Nationalisation Case ") (1970) 3 S.C.R. 530.

land reform laws in the States of West Bengal, Uttar Pradesh, Jammu and Kashmir, and Kerala. Although the same objective was imposed by the federal constitution and the periodical federal five-year plans, these four States reveal the diversity of their legal structures and implementation. All of the following States began post-war land reform legislation at the same time in the 1950s, but obvious difference of legal designs among the target States will be detected in the following, due to the different social structure and status of farmers in each State, particularly in terms of the target categories of farmers for land security (fixed rent tenants, sharecroppers, and landless farmers).

4.3.1 **West Bengal Land Reform**

The State of West Bengal is one of India's 28 States and 8 Union Territories, which is densely populated with a total population of 61,538,281 within an area of 34,267 square miles as of today.[140]

The pre-colonial history of West Bengal was marked by the landed peasant-based agriculture. The cultivators unquestionably owned the farmland, and the issue of formal property rights rarely arose. Prior to the British invasion, the land taxation or revenue system was modified during the Moghal era. Peasants retained rights over occupied land and could not be evicted unless they failed to pay the required land revenue to the government. Agents later known as Zamindars were responsible for collecting land taxes, but they did not have an absolute right to manage the cultivators' land; they could only collect land revenue in place of the ruling government.[141]

However, during the British occupation, the British government established the system of "Permanent Settlement" which granted the absolute rights to the Zamindars by concentrating the power of collection of additional taxes and abolishing all of the cultivators' existing land rights. Tax collection was typically delegated to a series of intermediaries under Zamindars as a result of the British revenue-focused land management system. Therefore, the layers of intermediaries gradually increased, causing a prominent increase of rent extracted from the farmers; failure to pay

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[140] See West Bangel State Government Webpage at (https://wb.gov.in/about-west-bengal-facts-figures.aspx.)
[141] Hanstad, T., & Brown, J. (2005). Reform Law and Implementation in West Bengal: Lessons and Recommendations. *Rural Development Institute Report*. at 12.

such rent led to widespread evictions, triggered widespread unrests, and a decline in the agricultural production.[142]

The British government initially attempted at a tenancy reform through the Bengal Rent Act of 1859, which limited landlords' ability to increase rent or evict tenants, in an effort to control the country's unrest and maintain stability. However, this law was only concerned with protecting the rights of fixed rent tenants, with no regard for "Bargadars" (sharecroppers).[143] In addition to placing restrictions on rent increases and evictions, the same Act had a provision to grant formal tenancy rights to the tenants who had owned the land property for 12 years,[144] either directly or through inheritance. As a result of this provision, however, the eviction of tenants, even including fixed-rate tenants, was triggered, since many of them were unable to prove their 12 years of cultivation due to the lacking of documentary evidence such as land records. The advantages were held by the Zamindars, who evicted the tenants in order to prevent fixed-rate tenants from possessing lands. Then, the 1885 Bengal Tenancy Act was enacted and also aimed to safeguard long-term tenancies, but the situation was similar to that of the 1859 Bengal Rent Act.[145]

After India achieving of the independence, West Bengal began implementing the land reform in accordance with federal government policies. The Bengal agrarian-land hierarchy at the time of independence was characterized by the predominance of "Bargardars" (sharecroppers) as cultivating tenants. The intermediaries who performed limited land rights and claimed a portion of the land rent between the "Zaminder" and "Bargadars" did exist, known as "Jotedar" or also known as "Rayta",[146] as the highest occupant intermediary, while the zamindars were predominantly

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[142] Hanstad, T., & Brown, J. (2005). ibid. in Footnote 139 at 12.

[143] The word "Bargardar" is a general term covering all types of sharecroppers in the State of West Bengal. Their regional names often varied, including agiars, bhagidars, and bhagchasis.

[144] Section 6 of the 1959 Bangel Rent Act provided "Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khomar, neejjote, or seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a riyot having a right of occupancy. The holding of the father, or other person from whom a riyot inherits, shall be deemed to be the holding of the riyot within the meaning of this Section."

[145] Hanstad, T., & Brown, J. (2005). ibid. in Footnote 139, Appu (1996) ibid. in Footnote 139 at 12.

[146] The "Jotedars" were a rich class of peasants who recovered and controlled extensive swaths of uncultivated forest and marshes outside of the realm administered by the Permanent Settlement. "Jotedars" farmed a portion of this land under his direct control of hired workers or servants. However, "Bargadars" cultivated the vast majority of "Jotedars' land. See: https://upscwithnikhil.com/article/history/land-reforms-an-introduction

absentee. According to a 1951 census, this lowest class of “Bargardars” in Bengal was responsible for cultivating nearly 20.3 percent of all land. The Bargardars Act of 1950, the West Bengal Estates Acquisition Act of 1953, and the West Bengal Land Reforms Act of 1955 were enacted in order to eliminate intermediary layers and provide the lowest cultivators “Bargarders” with the right of “raiyat” or ownership over their land (Section 4 of West Bengal Land Reforms Act).[147]

The Bargardars Act of 1950 promulgated to extend the protection to “Bargadars” and for the establishment of Bhag Chas Conciliation Boards for the resolution of disputes between “Bargadars” and landowners. But the owner retained the power to unilaterally terminate the “Bargardars' Cultivation Right” under Section 5 of this Act, if he wished to cultivate the land by himself or by members of his family or by servants or laborers, or if the “Bargadar” misused the land or willfully neglected to cultivate it properly, or if the “Bargardar” failed to deliver the shared crops to the owner, or if the “Bargardar” failed to comply with any award of the appellate court after resolving disputes between the owner and “Bargardar”.[148]

The Estate Acquisition Act of 1953 (hereinafter EAA) aimed to abolish the interests of zamindars and “Jotedars” on all land except that which they "self-cultivated" known as “Khas” land,[149] but such self-cultivation included the use of hired agricultural laborers. Also, the intermediaries were permitted to retain 25 acres of farmland and 20 acres of non-agricultural and homestead land from this "self-cultivated" land, known as “Khas” land.[150] Under the EAA, fixed-rent tenants who had been cultivating the remaining land owned by the intermediaries would be brought into a direct relationship with the State government, while the intermediaries lost interest in this land. In general, the EAA's abolition of intermediaries was successful, but still numerous loopholes and poor implementation allowed intermediaries to retain control over large tracts of land despite losing the right to collect revenue,[151] which necessitated the further law amendment in 1981 which changed the ceiling of maximum amount of land that could be owned to 2.5 standard hectors for unmarried, sole “Raiyots”, 5 standard hectors for families with two or more

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[147] Saxena, A. (2019). ibid. in Footnote 113 at 47.
[148] Section 5 of the 1950 Bargardars Act.
[149] Section 6 of the Estate Acquisition Act of 1953.
[150] Ibid.
[151] Hanstad, T., & Brown, J. (2005). ibid. in Footnote 139 at 13.

members, and 5 standard hectors for families with five or more members, who could secure an additional 0.5 hector for each additional family member up to a maximum of 7 standard hectors.[152] In 2005, 1.04 million acres of ceiling surplus land in West Bengal were distributed to 2.54 million landless households.[153]

In order to effectively implement the overall land reform, the West Bengal Land Reform Act (hereinafter referred to as WBLR Act) was enacted in 1955.[154] This Act defines the rights and responsibilities of landowners and "Bargadars", forbids fixed-rent leasing of land, places a maximum limit on the size of landholdings, defines the distribution of the land by government; and restricts the transferability of land held by Scheduled Tribe members.[155] Among them, two primary goals were the treatment of absentee landowners and the protection of "Bargarders"

As for the absentee landowners, however, the 1955 Act's compromising policy stance is evident in its definition of "personal cultivation" under Section 2(8) of the WBLR 1955 Act, which reads as follows:

Personal cultivation means cultivation by a person of his own land on his own account -

(1) by him own labour, or

(2) by the labour of any member of his family, or

(3) by servants or labourers on wages payably in cash or in kind or both:

Thus, the 1955 Act recognized "personal cultivation" not only for the cultivator but also for the cultivation using the labor, servants, as well as family members, which was a compromise with the absentee landowners. However, the 1972 Amendment (Section 2 (8)) to the 1955 Act narrowed the definition of "personal cultivation" in such a way that sharecroppers were not permitted as a means of the landowner's "personal cultivation." Additionally, the landowner or a member of the landowner's family was required to reside for the majority of the year in the area where the land was located, and the land's production was required to be the landowner's primary

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[152] Section 14 M of the 1981 Amendment Act.
[153] Binswanger-Mkhize, H. P., Bourguignon, C., & van den Brink, R. (2009). *Agricultural Land Redistribution: Toward Greater Consensus*. in Government of India, Ministry of Rural Development (2006), annex XXXVII. at 246.
[154] Preamble of the West Bengal Land Reform Act 1955.
[155] Hanstad, T., & Brown, J. (2005). ibid. in Footnote 139 at 16.

source of income, in order to meet the definition of "personal cultivation."[156] In addition, Landowners were required to maintain and preserve their land so that it was not degraded, its character was not altered, and it was not converted to any use other than that for which it was originally settled or previously held, unless the Collector granted written permission.[157]

Another feature of the WBLR 1955 Act was the granting of ownership rights to those who are landless and poor, subject to certain restrictions, such that a distributed land holder is not permitted to sell or transfer their land to others, with the exception of inheritance rights, mortgages for agricultural loans, and dwelling houses for agricultural production.[158] But its implementation was limited to landless poor, not applicable to "Bargardars "in general.

The second stage of West Bengal land reform was the "Operation Barga" led by a left-wing administration started in the beginning of 1979, which featured to track down 'Bargardars" and record their names in the record of rights. According to this program, tenants who sharecropped land would have the right to a perpetual and inheritable tenure as sharecropper as long as they paid the landlord at least 25% of the crop's value in rent and registered with the Department of Land Revenue.[159] A rigorous implementation was made by the teams of revenue officers dispatched into villages and held camps in the presence of the villagers, with immediate inquiries made and the names of "Bargardars" noted. By June 1985, the campaign had led to the recording of 1,325,167 "Bargardars' names.[160] More than 1.4 million sharecroppers, or over 65% of an estimated 2.3 million sharecroppers had registered under the "Operation Barga" program by 1993.[161]

However, it should be noted that, even though the sharecroppers in West Bengal have benefited from improved secure tenure and low agricultural share payments, almost all of them would prefer to have land ownership.[162] Under Section 15 of the WBLR Act 1955, however, the

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[156] Section 2(8) of the 1977 Amendment Act.
[157] Section 4B was inserted for the first time by section 2 of the West Bengal Land Reforms (Amendment) Act of 1974.
[158] Section 49(1A) of the 1955 Act.
[159] Banerjee, A., Gertler, P. J., & Ghatak, M. (2002). Empowerment and Efficiency: Tenancy Reform in West Bengal. *Journal of Political Economy, 110(2).* at 240. (https://www.jstor.org/stable/pdf/10.1086/338744.pdf?refreqid=excelsior%3A0e749c2298d212c7bdb4c0c2b5f2e596&ab_segments=&origin=&initiator=&acceptTC=1.)
[160] Appu (1996) ibid. in Footnote 117 at 117-118.
[161] Ibid., at 242.
[162] Binswanger-Mkhize, H.P et al., (2009) ibid. in Footnote 151 at 254-255.

"Bargardars" are only permitted to inherit land rights; they are not permitted to sell or otherwise dispose of the lands; and they are only permitted to receive "Cultivation Right" as opposed to ownership rights. According to this statutory provision, the larger rights may be terminated in the following circumstances: (a) the "Bargadar" has failed to cultivate the land without a justifiable excuse, or has used it for any purpose other than agriculture; (b) the "Bargadar" does not personally cultivate the land; and (c) the "Bargadar" has failed to fully deposit the share of the produce; (d) The owners of the land decides to cultivate it for themselves; in this case, "Bargardars' cultivation right" will be terminated.[163]

Besides, the Bargadar's record rights will be terminated due to the certain circumstances stipulated in Section 17 of the WBLR1955 Act. According to the provisions of this Act, the "Bargadar" is required to cultivate the land and cannot fail the cultivation without sufficient ground. The person's cultivation is a necessary component, and the "Bargadar" is required to tender or deposit their full share of the produce. The maximum amount of land that they are permitted to cultivate is 4.00 hectares.[164]

Although, as aforementioned, the first stage land reform under the WBLR 1955 Act aimed at the granting of ownership rights to those who are landless and poor, the second stage reform under "Operation Barga" was a compromise in the sense that it did not aim at such a land distribution, but rather concentrated on the security of remaining "Bargardars".

The last stage of land reform in West Bengal is guided by the new land policy under new economic policies,[165] since the 1990s based on the market economy. Economic data indicate that West Bengal's agricultural output more than doubled following the implementation of "Operational Barga" from 5.2 million tons in 1995/1996 to 11.0 million tons in 1999/2000.[166] But

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[163] Section 17 of the 1955 Act.
[164] Section 17 of the 1955 Act and 1972, 1977 and 1981 Amendments.
[165] "New Economic Policies" were implemented in 1991 in response to IMF and World Bank directives. The Central government's neoliberal "economic reforms" abandoned the prior focus on public sector investment, adopted a policy of liberalizing and deregulating the economy, and emphasized private capital, both local and international, as the primary driver of growth in the economy. (https://www.cpim.org/content/thirty-years-left-front-government-west-bengal)
[166] Hanstad, T., & Brown, J. (2005). ibid. in Footnote 139 at 10.

during this period, the ratio of landed farmers has been decreased from 53.9% to 43.4%, while the number of agricultural laborers increased from 46.1% to 56.6%.[167]

In West Bengal, there are three types of land rights. The first is the "Raiyat right" under Section 4 of the 1955 Act. According to this Act, the "Raiyat right" holders are heritable and transferable, however they can only own land up to the maximum limit set out in Section 14(M) of the 1955 Act, which is 2.5 standard hectors for single family member. 5 standard hectors for a family of two or more members, and 7 standard hectors for a family of more than five members. The second type of right is the "Bargadar right" (Sharecropper), which is heritable but not transferrable under Section 15(2) of the 1955 Act, and the last type of right is the "Patta rights" (distributed land right), which is heritable but not transferrable under Section 49(1) of the 1955 Act.

The West Bengal Premises Tenancy Act 1997, which pertains to the tenancy protection sector, is intended for all tenants residing in West Bengal. Section 6 of the Act prohibits the eviction of tenants. The tenant is limited to the land use right and is not granted a transferable right. In order to provide protection, section 17 of the law fixes the rent, and section 6 of the Act forbids eviction of tenants. Currently, land rights must be registered, and land holders are able to get records of their rights in accordance with the relevant laws. Within the ceiling limitations, only Raiyat rights holders are permitted to transfer land, and the property may only be utilized for agricultural reasons. Land leasing is also permissible without any limitations. All forms of land utilized for public purposes are subject to the 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act (hereinafter referred to as RFCTLARR Act)

Thus, even though West Bengal has been frequently cited as one of the most successful States in land reform[168], its success was only limited, from the legal viewpoint, to the continuation of the status of both "Bargardars" (sharecroppers) and "Pattas rights" through registration instead of giving absolute ownership rights, which are the lowest category of private rights to land, while

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[167] Chatterjee, J., & Basu, S. (2020). *Left Front and After: Understanding the Dynamics of Poriborton in West Bengal*. Sage Publication, New Delhi, India at 50.
[168] Saxena, A. (2019), Appu (1996), Majumdar, M. (2003). and Bandyopadhyay, D. (2003).

the ultimate goal of "land to tillers" was abandoned in certain stage of its reform path. After a half century from the start of land reform in West Bengal, number of populations under the category of "Bargardars" (sharecroppers) remains as high as 675,000.[169] In this sense, West Bengal can be said as a typical State which followed the compromised stance of guidance for the land reform headed at the federal level's Five-Year Plans.

4.3.2 **Uttar Pradesh Land Reform**

India's Uttar Pradesh State, located in the north-central region, shares an international border with Nepal and a domestic border with Uttarakhand State to the north, Bihar State to the east, Jharkhand and Chhattisgarh States to the southeast, Madhya Pradesh State to the south, Rajasthan and Haryana States to the west, and the national capital territory of Delhi to the northwest. The population of Uttar Pradesh at 241,360,000 in 2023 makes it the most populous State in India, and its total area of 93,933 square miles (243,286 square kilometers) is the fourth largest. According to the data disclosed by the Ministry of Agriculture of India, Uttar Pradesh has a total cultivable area of 24,170,403 hectares, while the forest area is 1,657,023 hectares; The net irrigated cultivated area is 80.3% of the total of 19,218,000 hectares of gross irrigated land; The structure of agricultural sector consists of 78.0% of the total landholdings held by landed farmers, 13.8%by small farmers, and 8.22% by farmers who have land larger than 2 hectares.[170]

The land management system in Uttar Pradesh during the pre-colonial period was predominately based on the system of self-sufficient villages, in which the villagers shared in the cultivation products to the king and rulers who were responsible for law and order, as was the case throughout India.[171] Prior to the British occupation, Uttar Pradesh was traditionally one of the most prosperous states in India and its land reform performances was a model for other states in India.[172]

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[169] Chaudhary, P. K. (2002). *Operation Barga Ends in a Whimper*. Times of India, 14 September 2002. Retrieved from https://timesofindia.indiatimes.com/city/patna/operation-barga-ends-in-a-whimper/articleshow/22105421.cms]
[170] Government of India, Ministry of Agriculture' Webpage at https://farmech.dac.gov.in/FarmerGuide/UP/index1.html, retrieved as of September 2023.
[171] Neale, W. C. (1956). Land Reform in Uttar Pradesh. *The Economic Weekly, 8(30)*.at 888.
[172] Malaviya, H. D. (1954). *Land Reforms in India*. Economic and Political Research Department, All India Congress Committee, New Delhi, India at 96.

During the British era, the average size of a cultivable parcel decreased as a result of the inequitable land system and rising population pressure. It is said that due to the application of new laws regarding the division of land in inheritance and the liberalization of land transfer to non-agricultural classes, especially moneylenders, the average size of land holdings declined in Uttar Pradesh during the British reign.[173]

In addition, the performance of the British land tax collection system was a primary burden for cultivators during the colonial period, for instance, 53.7% in 1932-22, 54.3% in 1925-26, 52.7% in 1929-30, 49.6% in 1933-34 and 40% in 1936-37. [174] This especially harmed the majority of poor peasants as the British did not adjust their tax collection system to the economic capacity of the peasants. As a result of a lack of resources, the majority of peasants were required to hand over their land to the "Zamindars".[175]

It is reported that, at the start of post-independence reform, 82% of Uttar Pradesh's agricultural land belonged to the absentee landlord Zamindars, and was cultivated by the tenants or agricultural laborers, while merely 18% of total land area was owned by cultivating proprietors,.[176] Therefore, the initiative of land reform in Uttar Pradesh was started with the 1950 Uttar Pradesh Zemindari Abolition and Land Reform Act (hereinafter referred to as UPZALR Act), in accordance with the directives and policies of the federal government, with a focus on the abolition of landlords and intermediaries, for the purpose of distributing land to tenants.

In accordance with the provisions of Section 4 of the Act, the State government of Uttar Pradesh was obligated to acquire possession of any and all estates that were physically located within its borders. Furthermore, starting from the beginning of the specified date for vesting, such estates were required to be transferred to and vested in the State.[177] After the enactment of the Act, "Zamindars" were only allowed to retain the right to possession of land that was under their own cultivation, while anyone who lived in the villages, whether they were "Zamindars", tenants, or landless people, were allowed to enjoy the possession of their homes and house-sides.[178]

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[173] Appu (1996) ibid. in Footnote 117 at 36.
[174] Malaviya, H. D. (1954) ibid. in Footnote 170 at 102.
[175] Ibid., at 101-103.
[176] Ibid., at 108.
[177] Section 4 of the 1950 Act.
[178] Malaviya, H. D. (1954). ibid. in Footnote 170 at 109.

A unique characteristic of the 1950 UPZALR Act was in its categorization of tenants. While it is said there used to be 46 different types of tenants in Utter Pradesh during the colonial period, [179] the 1950 Act specified only four types of tenants: "Bhumidars", "Sirdars", "Asamis", and "Adhivasis".

Among them, "Bhumidars" was a product of the Agricultural Tenants (Acquisition and Privileges) Act in 1949, which was passed as a compromise with the opposition of Zamindar class against the promulgation of the 1950 UPZALR Act Namely, this 1949 Agricultural Tenants (Acquisition and Privileges) Act allowed a purchase of land by certain categories of tenants (expropriatory tenants, occupancy and hereditary tenants, as well as certain other types of tenants, possessed the same rights as hereditary tenants) if they deposited 10 times of their monthly rent into the government's "Zarmindar" abolition fund. After the 1950 UPZALR Act was enacted, these purchased rights became known as "Bhumindar's rights".[180]

While the Bhumidars" were permanent and inheritance rights of usage and transfer of land, the Sirdars were also granted permanent and inheritance user rights and not allowed a right to transfer. Under the terms of the 1950 Act, all of the different types of tenants that had been already existed in Uttar Pradesh (including fixed rate tenants, tenants holding on special terms of Avadh, proprietary tenants, and hereditary tenants) were put into this category of "Sirdari rights". The use of Sirdar rights was restricted to agriculture, horticulture, and animal husbandry; it was not possible to use Sirdar rights for any other purpose.[181]

Two remaining groups, "Asamis" and "Adhivasis" were the tenancy category of limited term for five years and also not getting a transferable right by fixing 5 years term. As of the passing of this Act, large groups of people were landless poor but they became automatically eligible to receive these rights to continue cultivating their lands for a period of five years. Namely, "Asami" was a minor form of land tenure that was neither permanent nor transferable, but could be passed

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[179] Singh, C. (1986*). Land Reforms in U.P. and the Kulaks.* Vikas Publishing House Pvt Ltd. at Summary at 7.
[180] Malaviya, H. D. (1954). ibid. in Footnote 170 at 115.
[181] Ibid., at 112.

down through generations.[182] According to Section 133 of the UPZALR Act, there were four classes of Asami as follows:

(1) Everyone who became an "Asami" as a result of the abolition of the Zamindari system.

(2) Everyone who is admitted as a land lessee by a "Bhumidhar's Land Management Committee".

(3) Everyone admitted as a lessee of land described in Section 132 by the Land Management Committee or the person entitled.

(4) Everyone who acquires the rights of an "Asami" pursuant to UPZALR Act or any other law.

These groups had the potential to become Adivasis as a result of the Act and had a chance to continue to obtain the right of "Bhumidar's rights" following the expiration of the allotted time for cultivation of five years after making 15 times the required monetary payment.[183] "Sirdars", who made contributions to the government equal to ten times their typical rent as part of the "Zamindari Abolition Fund", were considered for promotion to the position of "Bhumidar" on the agricultural lands that they operated.[184]

The "Adhivasi" tenure was lower in the social hierarchy than the Sirder, but higher than the "Asami". It was a sort of transitional type of land tenure that was scheduled to be eliminated from the realm of land laws after the passage of five years from the date that UPZALR Act was first implemented. The Uttar Pradesh Land Reforms (Amendment) Act 1954 provided "Adivasis" with the rights of Sirdar despite the fact that they had not yet reached adulthood at the time of the act's passage.

Such a gradual elevation system of tenancy (instead of an immediate compulsory change to a full right) has attained a successful result in the achievement of land reform. Namely, it was reported that as of 30th of October in 1954, there were only three types of tenures left in the Land

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[182] Kishor, N. (2020). *Classes of Tenure-Holders.* Associate Professor. University of Lucknow. Lecture notes for higher education, India. Retrieved from https://udrc.lkouniv.ac.in//Content/DepartmentContent/SM_ce0a29d6-593a-4db3-b7a4-9586e4fa683a_30.pdf at 7.
[183] Malaviya, H. D. (1954). ibid. in Footnote 170 at 113.
[184] Ibid., at 109.

Law, which meant that all "Adhivasis "were elevated to the position of Sirdar by this stage. In 1958, the UPZALR Act, Section 133-A was enacted[185] as an amendment brought about by the Uttar Pradesh Land Reforms (amendment) Act. This allowed for the inclusion of a new category known as the government lessee,[186] which means that no more short-term lease is allowed in the private contracts, but only allowed as a direct contract with the government. The "Government lessee" was the entity to whom the State government had leased land, and could not be evicted unless the lessee infringed the terms and conditions of the lease.[187]

Further, as a direct consequence of the UPZALR Amendment Act of 1977, the "Bhumidars" were subdivided into two distinct classes: "Bhumidhari", who held rights that could be transferred, and "Bhumihar", who held rights that could not be transferred. In accordance with the provisions of Section 129 of the Act, the following group of people were considered tenure holders:

(1) "Bhumidhari" were eligible to be moved to another position

(2) "Bhumidhari" possessed rights that could not be transferred to another person.

(3) "Asami"

4) Government Lessee.

Thus, in contrast to the UPZALR 1950 Act (Section 130) which provided all "Bhumidhars" as transferable land rights, this UPZALR Amendment 1977 Act added a new category of "Bhumidhars" with non-transferable rights". According to the UPZALR 1950 Act, the highest type of tenure holder was "Bhumidhars" with transferable rights. His interest was perpetually transferable and inheritable. but his interest in the holding could not be transferred to another party. The following people were classified as "Bhumidhars" with non-transferable rights according to Sections 131 and 131-A of the UPZALR 1950 Act amended in 1977:

(1) Every person admitted as a sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a

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[185] Section 133-A. "Every person to whom land has been let out by the State Government shall be called a Government lessee in respect of such land and shall, notwithstanding anything to the contrary contained in this Act, be entitled to hold the same in accordance with the terms and conditions of the lease relating thereto."
[186] Kishor, N. (2020). ibid. in Footnote 180 at 4.
[187] Ibid., at 9.

"Bhumidhar" with non-transferable rights under the said section on or after the said date;

(2) Every person who in any other manner acquires on or after the said date, the rights of such "Bhumidhar" under or in accordance with the provisions of this Act;

(3) Every person who is, or has been allotted any land under the provision of the Uttar Pradesh Bhoodan Yagna Act, 1952.

(4) with effect from July 1, 1981 every person with whom surplus land is or has been settled under Section 26-A or sub-section (3) of Section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.

Section 131-A and a new Section 131-B were added to the UPZALR Amendment Act 1977. As a result of this amendment, every "Bhumidhars" with non-transferable rights who had lived for ten years or more from the date of distribution of land would receive a transferable right in the land, and the remaining persons who had obtained possession of land later would obtain the "Bhumidhars" and Transferable right after their completion of a time frame of ten years. The intension of this amendment may be understood to avoid a speculative transaction of "Bhumindars", while besting a full transferrable right only to a long-term holder of land.

Thus, from the legal viewpoint, the land reform in Uttar Pradesh is found to be a success through a realistic approach, for one hand, by successfully inducing the cooperation of "Zamindars "and intermediary class by establishing the Zamindar Abolition Fund which realized a compensation at the level acceptable for the conservative court, and on the other hand, providing a realistic step for various tenant classes to gradually elevate to the ultimate full right of "Bhumidhar" with transferable rights" under the sole ownership of the State government. At the beginning of the land reform, the total area of land that was held by the Zamindars was 41,300,000 acres., and after 4 years of implementation of the Act, 39,000,000 acres of land (94%) were acquired by the State government by paying compensation to Zamindars in the amount of Rs. 160.13 crores, [188] while 82%[189] of former tenants or landless farmers obtained the access to land.

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[188] By the 31st of October in 1953, the total amount, which was Rs. 23,768,487, had been paid to the appropriate intermediaries. See Malaviya, H. D. (1954). ibid. in Footnote 170 at 108 and 112 to 116.

[189] Ibid., at 108.

In summary, section 18 of the 1950 Zamindari Abolition & Land Reforms Act targets sir (in-village zamindari), “Khudkasht” (proprietor), occupation tenants, and hereditary tenants for land reform. The “Bhumindars” with transferrable rights (former owners within ceiling limit) and “Bhumindars” with transferrable rights (distributed land holders) are given under Section 129of the Act . The registration mechanism is utilized to get “Bhumindar” privileges. Section 5 of the Uttar Pradesh Imposition of Ceiling on Land Holding Act 1960 is utilized for ceiling limitations. A family of more than 5 people can keep 7.5 hectors, and adult sons can keep 2 hectors. Under the Section 195 of the 1950 Act, landless persons can receive no more than 3.125 acres of land distribution with the right of “Bhumindar” with no transferrable right.

For tenancy protection, the Utter Pradesh Tenancy Act 1939 was enacted, and section 21 of the Act specifies the tenancy classification. Sections 8 and 9 of the Act prohibit the transfer right, whereas section 8 grants tenants by giving Sir right. Section 157 of the Act provides protection against eviction for the landholder. Landholders can currently get records of their rights in compliance with applicable legislation, and land rights are required to be registered. Only “Bhumindar” with transferable rights holders are allowed to transfer land within the ceiling limits, and the land can only be used for agricultural purposes. Leasing land is likewise allowed without any restrictions. All forms of land utilized for public purposes are subject to the 2013 RFCTLARR Act.

4.3.3 **Jammu & Kashmir Land Reform**

The India territory of Jammu and Kashmir is located in the northern part of the Indian subcontinent. Since October 31, 2019, Jammu and Kashmir has functioned as a State. The Kashmir region incorporates the union territory as its primary location. The Indian region of Jammu and Kashmir, which was formerly one of the largest princely states in India, is bounded to the east by the Indian union territory of Ladakh, to the south by the Indian states of Himachal Pradesh and Punjab, to the southwest by Pakistan, and to the northwestern side by the portion of Kashmir that is administered by Pakistan. The total land area was 16,309 square miles (101,390 square kilometers) in 2011, and the population was 12,367,013 at that time.

Jammu and Kashmir has been known for the radical land reforms, such as the abolition of landlordism, land for the tillers (cultivator), and promotion of cooperative associations, based on Section 370 of the Indian Constitution. By enacting significant land reforms, such as the cancellation of land revenue on smallholdings, Jammu and Kashmir has set itself apart from other Indian states. These reforms later became the most widely publicized in the whole country.[190]

Historically, the agricultural system in the state was essentially feudal in nature; as a result, cultivators endured a great deal of hardship as a result of the high levels of taxes and levies in kind. Land privately owned in the form of "Jagirs" or "Muafis" was given out as a reward only to those people who received the favor of the kings. Each "Jagirdar" was given a certain number of villages as a "Jagir". The income that he obtained directly from the "Jagir" lands in the past. The tenants, rather than contributing the land revenue to the State treasury, would traditionally pay it directly to the grantee or his representative. As a result, the "Jagirdar" would line his own pockets with the money, rather than the State treasury. There were times when receipts for this sum were issued, and other times when they were not. [191] According to Mirza Mohammar Afzal Beg (1951), the J"agridars" and the "Muafidars" had numerous privileges, such as receiving taxes from the tenants, choosing the head of village leaders, receiving rents from the state land, possessing prior rights to reclaim lands for cultivation, and so on. Other privileges included the ability to receive rents from the state land. They used to keep all of the profits made from the produce grown on their allotted lands and did not contribute any funds to the state in the form of land revenue. [192]

This system prevailed during the Mughal period and continued until the start of Sikh period. However, during the Sikh period, the rulers aimed at the establishment of the royal land "Hak Malikana", which literally means "proprietorship of land." As a direct consequence of this, "Jagirdars"[193] were deprived of their ownership rights. In addition to this, a portion of land was set aside as a reserve for the royal family and was referred to as "Khali". Over the course of time, this

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[190] Prasad, A. K. (2014). Sheikh Abdullah and Land Reforms in Jammu and Kashmir. *Economic and Political Weekly, 49,* pp.130-137 at 130.
[191] Beg, M. M. A. (1951). *Agricultural Reforms in Kashmir*, Revenue Officer, Government of Jammu and Kashmir. Jammu and Kashmir Government Press, India at 7.
[192] Ibid., at 15 to 18.
[193] Jagirdars, who had land assignments in the Mughal Empire, were those who were appointed to do tasks for the empire rather than their own, such as serving in the police or court.

land became “Khalsa” land. Later on, some trusted officials of the administration also received some land on privileged terms; these individuals became known as “Chakdars”. [194]

In the colonial period, the years between 1885 and 1953 are extremely important in terms of Jammu and Kashmir's history. It was a pivotal time in history because agriculture, the foundational industry of the economy and the primary source of income for the majority of the people, the peasants, underwent dramatic institutional transformations.[195]

The historical period may be roughly split into three periods from the perspective of change that occasionally happened in agrarian relations: 1846–1894, 1895–1933, and 1934–1953. The "feudal" agricultural system was subjected to unparalleled authoritative supervision during the first phase (1846–1894), which helped the State's exploitative agrarian policy achieve its pinnacle. All private land rights were seized by Maharaja Gulab Singh, who then claimed ownership of the whole Valley. The peasants even lost the right to occupy. During this time (1862), when Maharaja Ranbir Singh began a policy of giving his favorites large portions of waste land (chaks), a new landlord class known as the “Chakdars” developed. During this stage, the agricultural system exhibits certain essential elements of "feudal" construction. A class of landowners, with the Maharaja at the head, first controlled it. On the grounds that they were the land's lords, they demanded the highest profits possible. For the benefit of the Maharaja and his allies, the peasantry was compelled to give up a large portion of its harvest as well as do other labor tasks for free.[196]

The second phase of Kashmir's agricultural structure (1895–1933) saw a lot of changes. The “Assami rights”, or the ability to inhabit the land as long as one paid the assessed tax, were granted to the peasants in 1895 and 1896. They were not, however, permitted to sell or mortgage the land. The better utilization of their land became their main focus as a result. It also caused the peasants to lead settled lives, which resulted in the development of communal awareness. In this stage, revenue was also collected in cash rather than in kind, and the rates of tax were correctly set.

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[194] Aslam, M. (1977). Land Reforms in Jammu and Kashmir. *Social Scientist, 6(4),* pp.59-64. at 50.
[195] Mohsin. (2022). Kashmir Towards Golden Harvests: A Study of Land Reforms in Kashmir (c. 1885-1953). *Journal of University of Kashmir*, pp.105-117.at 105.
[196] Ibid., at 108-111.

Unquestionably, the renowned Tenancy Act of 1923, which protected renters from eviction and represented a significant improvement for tenants, was a big development at the second phase. [197]

The third phase (1934–1953) witnessed unprecedented levels of pressure placed on the Maharaja to improve the lot of the peasantry. The Kashmiri peasantry's grievances were voiced and an immediate resolution to them was demanded by the All India Congress, Muslim League, and most significantly the Jammu and Kashmir Muslim Conference (established in 1932 and renamed the Jammu and Kashmir National Conference in 1939). The Maharaja's edict from 1933, which granted the peasantry proprietary rights over land, was the first action taken in this regard. The 1933 Land Alienation Act was passed, which was yet another significant move in favor of the rural population. This Act restricted the owners from selling more than one-fourth (25%) of their ownership for the first ten years. This third phase saw a number of important developments, including the elimination of various levies and the emergence of organizations for the benefit of the peasants. Nevertheless, despite all of these improvements, certain defining characteristics of the outdated agricultural system lingered up to the end of 1947. The practice of landlordism persisted, and the peasants who worked on the fields of the Jagirdars, Chakdars, and Muafidars did not witness any improvement.[198]

In March of 1948, the National Congress Government in India, almost immediately after taking office, announced that the privileges of all intermediaries group including “Jagridars”, “Muafidars” and “Mukkarraree-khwars” (people who receive cash grants) would be eliminated. Furthermore, it gave priority to the reorganization of the agricultural sector toward a modern and rational foundation, which included the abolition of landlordism, ensuring the security of agricultural land to the tiller, and the establishment of cooperative associations. In Jammu and Kashmir, this attempt was carried out in the context of relieving peasants of the burden imposed on them by the harmful “Jagirdas” and “Kardars”.[199] In addition, uncultivated lands were made available to tillers for cultivation, a moratorium was enacted on the collection of non-commercial loans, and the eviction process for tenants was put on hold for a period of one year. At the end of

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[197] Mohsin. (2022). at 111-114.
[198] Ibid. in Footnote 192 at 114-116.
[199] Aslam, M. (1977). ibid. in Footnote 192 at 61.

the year 1949, the State government established a land reform committee with the charge of developing an exhaustive strategy for the reorganization of agriculture within the State.[200]

On July 13, 1950, the State government made the momentous decision to transfer the land to the tiller, and on October 17, 1950, the Constituent Assembly passed the Jammu and Kashmir Big Estates Abolition Act 1950 (hereinafter referred to as J&KBEA Act). This J&KBEA Act was characterized by, on one hand, a rigorous land nationalization beyond the ceiling of landholding, meant for the elimination of old land regime: namely, a proprietor was only permitted to retain a maximum of 22.75 acres (182 Kanals) of land, with the exception of orchards, grass farms, and fuel service facilities;[201] and on the other, granting such forfeited land to the "tiller" (Section 5 of the J&KBEA Act), who is defined as a person who tills his own hand in cultivating possession in the land (section 2(d)), and secure his land right as the "ownership" (Section 4). In addition, the law made it unlawful to sell or transfer land that was not under the jurisdiction of a state. It was an attempt of a radical land redistribution since land was taken away without any payment of compensation, provided that the J&KBEA Act stipulated that the legislative branch of the State could settle the most significant issue of compensation at a later date in accordance with the J&KBEA Act.

As a result, approximately 9,000 landowners had their properties taken away because their holdings exceeded the limit set by the ceiling. The land that was expropriated totaled 4.5 million acres, but only 2.3 millions of those acres were returned to the cultivators with full ownership rights and without any encumbrances. The remaining 1.8 million acres were returned to the State.[202] According to H.D. Malaviya (1954), J&KBEA Act affected an estimated total of 8,989 intermediaries, including a total of 6 land acres in the abolition scheme, and benefited a total of 125,000 peasants.[203]

In 1952, in order to investigate how effectively the Land Reforms in the state were being implemented, the state government established Wazir Committee by appointing Justice Wazir as chairman. The Committee presented its report with certain recommendations, including, the

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[200] Aslam, M. (1977). ibid. in Footnote 192 at 61.
[201] Section 4 of the 1950 Big States Abolition Act.
[202] Government of India, Planning Commission, *progress of land reforms*, New Delhi, 1963.
[203] Malaviya, H. D. (1954). ibid. in Footnote 170 at 423.

upward change of maximum unit for a proprietor (in Kashmir from 22.75 acres to 28 acres and in Jammu to 34 acres). Following this, a series of legislation was passed to rectify the deficiencies in the preceding legislation. After the expropriation of landlords, large tracts of cultivated land were transferred to the State government through the imposition of these laws, and distributed among landless agricultural laborers and people who had been displaced from their homes on a periodic basis.[204]

The State government then established a Land Commission in March 1963., whose mandate included looking into any legal gaps of land reform. In 1968, the Commission turned in its final report, and one of the Committee's key recommendations was to promote the peasant land ownership effectively in place of the landlord-tenant relationship system which was also the aim of the J&KBEA 1950 Act, in place in the State's agrarian economy.[205] The Jammu and Kashmir Agrarian Reforms Act 1972 (hereinafter referred to as J&KAR Act) was enacted based on the recommendations provided by the Commission, which gave influence to the nationwide agrarian reforms in other States. This valiant J&KAR Act 1972 aimed to transfer ownership rights in land to the tiller thereof, to fix a ceiling on land, to ensure that, with a few exceptions in the general public interest and to provide rehabilitation services for parties confiscated from land by allowing resumption in certain circumstances. This J J&KAR Act decreased the maximum amount of land to 12.5 standard acres and removed the rights of persons who never directly cultivated the land. The old design of the landlord-tenant relationship was abolished with the passage of this J&KAR Act.[206]

As a result of this J&KAR Act, the maximum allowable ceiling was lowered to 12.5 standard acres for category 1, 110 canals for category II, 140 canals for category III, and 172 canals for category VI. When interpreting the definition of the ceiling area, it is important to keep in mind the definition of "Standard Acre" that was provided in clause 16 of section 2, which read as s “a measure of an area convertible into an ordinary acre of land in accordance with the provisions of

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[204] Aslam, M. (1977). ibid. in Footnote 192 at 62-63.
[205] Government of Jammu and Kashmir, Ministry of Revenue and Information, *Report of the Land Commission*, 1968, at 19.
[206] Prasad, A. K. (2014). ibid. in Footnote 188 at 135.

Schedule I". As stated in Schedule I of the J&KAR Act, the price of one rupee was equivalent to one standard acre.

One of the main purposes of the 1972 Act was to ensure that no individual held land in excess of the ceiling area, even if they personally cultivated the land. This purpose of eradicating absentee landlordism was addressed in subsection (1) of section 4 of the J&KAR Act, making it one of the act's most important provisions. Section 4(1) J&KAR Act states that

> Notwithstanding anything contained in any law for the lime being in force, but subject to the provisions of this Chapter, all rights, title and interest in land of any person, cultivating it personally in Kharif, 1971, shall be deemed to have extinguished and vested in the State, free from all encumbrances, with effect from the first day of May, 1973." The section extinguished all of the rights and interests of such landowners who were not "personally cultivating" the land, and as a result of this section, these landowners had no claim, interest, or title to the land after the Act's enactment.

Accordingly, section 5 (1) of the J&KAR Act specifies that any land held by a parson in excess of the ceiling area was transferred to the State. Section 5 (1) stipulates as follows:

> Notwithstanding anything contained in any law for the time being in force but subjected to the provisions of this chapter-
>
> (a) Where any land, held by an individual in personal cultivation whether as owner or as tenant or otherwise, was in excess of the ceiling area on the 1st day of September 1971, the rights, title and interests of such individual in the excess land shall be deemed to have vested in the state, free from all encumbrances on the 1st day of May 1973.
>
> (b) Where aggregate land held in personal cultivation by the members of a family, whether jointly or severally, as owners or as tenants or otherwise, was in excess of the ceiling area on the 1st day of September 1971, the rights, titles and interests of such members in the excess land shall be deemed to have vested in the state, free from all encumbrances, on the 1st day of May 1973.

According to subsection 2 of section 5, the owners or the tenants who were personally cultivating the land that was in excess of the ceiling area had the option of selecting the land that they desired to retain for themselves or families within the ceiling area, subject to such conditions

as were prescribed. This option was only available to the person who was personally cultivating the land that was in excess of the ceiling area.

According to Section 15 of the J&KAR Act, the state distributed the land that became its property as a result of the application of various Act provisions among the qualified individuals. According to Section 17 of the J&KAR Act, which restricted the sale or transfer of land to non-state permanent residents while also ensuring the welfare of tillers who arrived from Pakistan in 1947–1948 but were not state permanent residents and had owned the land since any date before the first of September 1950.

The J&KAR Act 1972, however, led to numerous litigation and hardship for both landlords and tenants as a result of some drafting errors. In 1975, the National Congress seized back the State's power, and introduced of the J&KAR (Amendment) Act on July 13, 1978, which turned down an aggressive progress of land nationalization for the distribution to tillers, but still, an estimated 40,000 acres of land was availed for allocation to landless cultivators. [207]

Thus, the land reform law of Jammu and Kashimr is characterized by an aggressive change from the old feudal land order to the modern "ownership" bested with the "tillers" with the restriction of transfer for their security. Land nationalization by the government, and the strict restriction of "personal cultivation" as an excuse for avoiding such nationalization.

In summary, the primary legislation pertaining to land reform following independence is the 1950 J&KBEA Act, with section 5 of the Act specifically targeting tillers. According to section 4 of the J&KAR Act, there is a ceiling restriction of 182 Kanals and Section 20 of the J&KAR Act grants a transferable ownership right. The Ceiling limit is expressly mentioned in Section 2 of the 1976 J&KAR Act. In the land distribution situation, personal cultivation is required under section 5 of the J&KAR Act. Sections 15 and 17 of the J&KAR Act grant ownership rights, however also restrict the transfer right of distributed land holders.

The Jammu and Kashmir Tenancy Act 1923 is fundamental tenancy law that targets occupancy tenants under Section 3 and protected tenants under Section 6 of the Act. The tenants can get occupancy rights under Section 6, transfer these rights under Section 64, and

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[207] The Times of India, New Delhi, 16 May 1978.

succession rights under Section 67. Section 11 of the Act prohibits unlawful evictions of tenant illegal. Landholders can now get records of their rights in accordance with applicable legislation, and land rights must be registered. The ownership rights holder can transfer the lands within the ceiling limits but the distributed land ownership rights holders are prohibited for land transfer. The 2013 RFCTLARR Act applies to all types of land used for public purposes. for land acquisition.

4.3.4 **Kerela Land Reform**

Following India's attainment of independence, the former kingdoms of Travancore and Zamorin, as well as the princely territory of Cochin, merged to form the present State of Kerala. One of the southernmost states of India, Kerala is situated on the Malabar coast. The Malayalam-speaking regions of the former regions of Cochin, Malabar, South Canara, and Travancore were combined to form the State of Kerala on November 1, 1956, after the State Reorganization Act was passed into law. Kerala is the twenty-first largest state in India. It shares borders with the states of Karnataka and Tamil Nadu, as well as the Lakshadweep Sea. The rate at which the population of Kerala is expanding is the slowest of any state in India. The fishing industry, which is important to Kerala's economy, is dependent on the state's 595 kilometers of coastline.

Before the State of Kerala was established in 1956, it was composed of three distinct regions: Malabar, which is located in the state's northernmost part, Cochin, which is located in the state's center, and Travancore, which is located in the state's southernmost part. These areas featured a variety of land tenures, and tenant conditions. When Kerala was established as a State, the majority of the land was owned by a small number of people, and tenants were often forcibly removed from their homes.[208] As a result, the land management systems in Malabar, Travancore, and Cochin were distinct from one another prior to the implementation of land reform in Kerala in 1956.

The British established a feudal class with the primary objective of maximizing their revenue from land sales. It caused disruptions to Malabar's traditional land relations. The “Jenmis”,

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[208] Ajayan, T. (2022). *Land Tenure in Kerala and the Communist Agrarian Reform of 1958*. Retrieved from https://dialnet.unirioja.es/descarga/articulo/8521004.pdf at 192.

also known as customary landowners, including temple management, “Namboodiri Brahmins”, and “Naduvazhis”, were declared the sole landowners, but were required to pay taxes to the government. Under the new land relations, those with “Kanam” tenure, also known as an inferior tenant, and those with “Verupattam” tenure, also known as a superior tenant, were both classified as ordinary tenants, or “Kudians”. Since “Kanam” tenure was only granted for a temporary period of twelve years subject to annual reneweal, “Kanam” tenants leased land from “Jenmis” or landlords in exchange for a lump sum annual rent payment.[209]

Prior to the land reform, there were four types of owning a free estate in Kerala, especially in the Travancore area: “Poonjar”, “Vanjipuzha”, “Kilimanoor”, and “Edappalli”(names of land titles based on the ruling governments.) according to the registry of government lands that looked like “Zamindaris” in other parts of India. The title land holding under these classes totaled 104,925 acres, while the total area of land was 3026,285 acres. When a person obtained a government registry and paid a nominal tax to the government, he or she was granted absolute ownership over the land. This practice was introduced in 1946.[210]

In addition, there was a category of landholders known as “Kauthagapattom” lessees who were granted government lands on lease for a limited period of time or sometimes without time restriction. This category of landholder could be evicted at any time for violation of any lease terms with a notice period of three months if the land was required for public use without compensation. “Jenmies”, another kind of landowner at the time, had the opportunity to lease their land to tenants under the Kanas tenure. By paying the Jennies due, this type of Kanas tenancy could obtain full ownership rights, whereas other types of tenants under “Jenmies” could not obtain ownership rights and were subject to eviction at the discretion of “Jenmies”.[211]

Residents of the Cochin area had the opportunity to acquire absolute ownership rights over their land if they registered it with the government. The two distinct types of land that could be found in the Cochin region were referred to as “Pandarvaka” and “Puravaka”. On an equal footing, the “Pandarvaka” lands were held in common possession by the “Riyots”, who were directly

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[209] Ajayan, T. (2022). ibid. in Footnote 206 at 194.
[210] Malaviya, H.D. (1954). ibid. in Footnote 160 at 325 to 327.
[211] Ibid., 328 to 329.

subordinate to the government. On the other hand, the lands known as "Puravaka" were owned by the tenants who were subordinate to the Jennies. The rights of the tenants who were subordinate to the "Jenmies" could be divided into four distinct categories: "Verumpattom", "Kanon", "Panama", and "Anubhogam". Both the "Pandarvaka" and the "Puravaka" tenures had elements of the Ryotwari nature. The right to occupy the land that had been granted to the "Kanon" tenants for a period of 12 years could be renewed after that period of time provided that the tenants paid the necessary fees. In contrast, the "Verumpattom" tenants were only given a tenant at will and were granted fixity of tenure. These tenants, on the other hand, were able to enjoy the benefits of fixity of tenure.[212]

Following India's independence, the three main Kerala regions were merged to form the state of Kerala on November 1, 1956. As a result, during the British era, the three areas of Malabar, Travancore, and Cochin had to be recognized for the purposes of the land management system in Kerela. In order to maximize land revenue and create a feudal class of agents, the British used this tactic when colonial rule over Malabar was formed in 1792. tenants were compensated for improvements they made under the Malabar Compensation for Tenant Improvement Act of 1887 that might be Kerala's initial foray towards land reform. During the British rule of Travancore, by 1850, the sirkar controlled roughly 80% of the cultivated land. The Pattom Proclamation of 1865, which granted full ownership rights to tenant farmers on sirkar property and abolished all transfer rights restrictions, was a significant turning point in the history of land tenures in Travancore. The Janmi-Kudian Amendment Act of 1932, which granted the "Kudian" (tenant- cultivator) entire proprietorship rights with the need of yearly payment of "Janmi" dues, was the most significant tenancy legislation introduced during the first half of the 20th century in Travancore area. During the colonial era, there was a policy of not meddling in the affairs of landlords and tenants in the Cochin region. Cultivators of "Pandaravaka "were given ownership rights in 1905. By following Acts passed in 1914 and 1938, Kanam tenants, or "Janmis", received fixity as well as compensation

[212] Malaviya, H.D. (1954). ibid. in Footnote 160 at 329 to 331.

for any agricultural improvements they performed. Tenants in "Verumpattom" were granted permanent possession rights in 1943.[213]

After the independence, between 1956 and 1969, a number of laws pertaining to land reform were passed by the state legislature and put into effect in Kerala. The 1957 Agrarian Relations Bill, the 1958 Jenmikaram Abolition Act, the 1960 Agrarian relations Act, the 1963 Land reforms Act, the 1967 Kerala prevention of eviction proceedings Act, and the 1969 Reforms amendment Act were the most significant pieces of legislation that were passed during this time period.

In the context of the land reform laws that have been discussed up until this point, there were three pieces of legislation that stand out as particularly noteworthy: the 1957 Agrarian Relations Bill, the Kerala compensation for tenant's improvement Act of 1963, and the Kerala Land Reforms Amendment Act of 1969. In Kerala, the overthrow of feudalism and the introduction of land reform were the primary focuses of each of these legislative initiatives. As a result, these land legislations were instrumental in paving the way for the society of Kerala to make the transition from the time of feudalism to the modern age.[214]

The Kerala agrarian relation bill of 1957 was one of the most contentious pieces of legislation in Kerala and across the country. The purpose of the Agrarian Relation Bill was to create a significant number of economically confident peasant proprietors and encouraging the agricultural population. Kerala served as a unique model for social transformation and agricultural development due to the Communist government's 1957 forward-looking land reform policies. The bill sought to grant tenants a security of tenure. But The bill permitted landlords to reclaim possession of land from their tenants and maintain it for three reasons: for the expansion of any place of religious worship, for the building of dwellings, and for self-cultivation (Section 2 (6)). The "self-cultivation" here was defined as the cultivation of the family members and hired labors

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[213] Prakash, B. A. (1984). Changes in Agrarian Structure and Land Tenures in Kerala: A Historical Review. *State and Society, 5(1)* at 1 to 7. (http://www.keralaeconomy.com/admin/pdfs/A%20Historical%20Review.pdf)

[214] Ambili, S. (2021). Major Land Reform Legislations in Kerala. *International Journal of Creative Research Thoughts (IJCRT),* 9(12), 149.

were also considered as self-cultivation and set up 15 acres of double-crop rice cultivation or the same size as the maximum amount of space for a single adult or a family of five. For larger families, each additional member received an additional acre, up to a maximum size of twenty-five acres. The bill sought to nullify land transfers made after certain dates by landowners exceeding the cap. It permitted transfers based on scale or natural affection after 11 April 1957, but prohibited these kinds of transfers after 18 December 1957.[215]

The explicit objective of the Kerela Land Reforms Act of 1959 was to abolish landlordism. It aimed to realize the slogan "land to the tiller" that had been the promise of freedom during the struggle. The objective of the proposal was to make tenants the legal owners of the land they farmed and to outlaw all future forms of tenancy. It was prohibited to reclaim land for "own-cultivation," an umbrella term for tenancy-at-will or wage-based cultivation, which had been a significant drawback of land reforms implemented by other governments. Kerala ended up as the state with the most successful land reforms. Nevertheless, despite the numerous success stories, there are still numerous failures. The tribal population and the fishermen's society are two major groups of the poor that did not benefit directly from the land reform measures.[216]

The Communist Government of Kerala passed the Kerala Agrarian Relations Act, 1960, on June 10, 1959, with the intention of enacting a comprehensive law regarding land reforms in Kerala State. This law covered all aspects of landowner-tenant relations, including tenancy protection, reasonable rent, safeguarding “Kudikidappukars' right, cultivation tenant's ability to purchase landowner's rights, and restriction of the ownership of lands in excess of the ceiling area, among others. In its rulings, the Supreme Court declared unconstitutional the application of the Kerala Agrarian Relations Act to the ryotwari lands of “Hosdurg” and “Kasargod Taluks” as a violation of Section 14[217] of the Constitution of India 1949. In addition, a full bench of the High Court of Kerala ruled that the act was invalid in its application. Therefore, The Kerala land Reforms Act (hereinafter referred to as KLR Act) was enacted in 1963, and certain provisions of

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[215] Ambili, S. (2021) ibid. in Footnote 212 at 230 to 231.
[216] Girish Kumar, E., & Harilal, C. C. (2014). Land Reforms and Agrarian Relations in the State of Kerala, India: An Economic Evaluation. *Indian Journal of Ecology* at 345 to 346.
[217] Article 14 provides “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

the Act went into effect on 1st April, 1964, as a result of judicial decisions that effectively rendered the Act's intended purpose.[218]

The KLR Act, 1963 was listed in the Constitution's 9th Schedule as the primary land reform law in Kerala. Following the 1960 Kerala Agrarian Relations Act, the 1963 KLR Act was enacted. It included all of the state of Kerala. The passage of the KLR Act1963 and its inclusion in the 9th schedule marked the pivotal event in the history of land reform in Kerala. This act provided state tenants with a uniform rate of reasonable rent and ensured the cultivating tenants' security of tenure. This law went into effect in April 1964. The KLR Act 1963 provided the cultivating tenant with three primary benefits as granted security of tenure:[219] the right to pay rent in accordance with the Act,[220] and the ability to purchase the landlord's rights over the property he owns, and to become the exclusive owner of the land.[221]

According to the KLR Act 1963 provisions, in extreme circumstances, the tenant could also request the registration of tenancy rights records,[222] As well as the legal protection granted to hutment dwellers (Kudikidappukars) in Section 75 of the KLR Act, they were granted permanent occupancy rights which is inherited but not transferable. The implementation of the provisions of the KLR Act1963 resulted in the establishment of 15 Land Tribunals with exclusive jurisdiction over matters pertaining to the Act.[223] The Tribunal had a single member and was under the administrative control of the Land Board; its sole member was the First Member of the Board of Revenue. Appeals against the orders of the Land Tribunals regarding resumption of land, determining a fair cost of rent, etc. were to be filed with the Sub Court having jurisdiction over the land's location, and not with the Land Board. The High Court had appellate jurisdiction over all

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[218] Pillai, P. N. P. (1973). *Historical Introduction to the Kerala Land Reforms Act and the Working of the Land Tribunals.* Master of Laws Thesis, Cochin University, India.at 20.
(http://dspace.cusat.ac.in/jspui/bitstream/123456789/11052/1/Historical%20Introduction%20to%20the%20Kerala%20Land%20Reforms%20Act%20and%20the%20Working%20of%20the%20Land%20Tribunals.PDF)
[219] Section 13 of the 1963 Kerala Land Reform Act.
[220] Ibid., Section 27.
[221] Ibid., Section 53.
[222] Ibid., Section 29(1).
[223] Government Notification No. 11841/N/Rev dated 25-3-64 that was mentioned in Pillai, P. N. P. (1973) at 22.

final orders issued by the Land Tribunals.[224] A minimum of 25 lakhs of tenants and 4 lakhs of "Kudikidappukars" in the state demanded that their rights be resolved.[225]

Even after the Act entered into force on January 1, 1964, landlords continued to forcibly remove tenants and "Kudikidappukars" from their homes on a large scale. This was the result of a number of legal loopholes and other deficiencies in the Act. According to Baljit Singh (1966),[226] such loopholes included "(i) land owners' right to reclaim their land for personal cultivation, for which participation by one's own labor has never been required, (ii) clause for voluntary surrenders for the benefit of land owners, (iii) the ability to transfer rights without restriction, (iv) the right to sublet, (v) the nominal clause against 'ejectment, and (vi) difficulty for tenants to purchase ownership rights, while there are few tenancy records, and the law does not recognize hired laborers as soil cultivators."

After the political change of considering to prevent the evictions of the tenants and in order to fill these loopholes, there were three significant amendments to the 1963 Kerala Land Reforms Act: the Kerala Land Reforms (Amendment) Act of 1969, the KLR (Amendment) Act of 1971, and the KLR (Amendment) Act of 1972,which tighten the requirements of "personal cultivation", followed by the strict abolition of the tenancy (section 72), and the narrowed exception to the ceiling, which realized the increase by 67 % of tenants turned to ownership [227].

Thus, the characteristic of Kerala's land reform was original loopholes the rigorous elevation of actual cultivators and tenants, however, after the amendment of the Land Reform Act 1963 by following the land reform in 1969, the giving landlord rights to the cultivating tenants.[228] As the result, more than 3,300,000 people in the state benefited from land reforms, and the state's landless population decreased to 4.8% as a result. The government acquired over 99,277 acres and redistributed over 71,400 acres. It is also stated that 5.28 lakh people, mostly agricultural laborers, many of whom belonged to the Scheduled Castes, received house sites and dwellings. By 1993, it

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[224] Pillai, P. N. P. (1973). ibid. in Footnote 216 at 22.
[225] Ibid., at 21.
[226] Ibid., at 23.
[227] Herring, R. J. (1980). Abolition of Landlordism in Kerala: A Redistribution of Privilege. *Economic and Political Weekly, 15(26),* A59-A61+A63-A69. at A59-60.
[228] Ibid., at A59.

had granted ownership rights and protection to 2,800,000 tenants, and a total of 6 lakh acres (2,428,12 hectares) had been distributed to make the tenants as landowner.[229]

In sum, the major law for Kerala land reform is the Kerala Land Reform Act 1963, which is aimed at all tenants and intermediaries. Within the ceiling limit, the land holder receives ownership rights with heritage and transferability. Section 82 of the Act specifies a ceiling limit of 5 standard acres for single family members and 12 standard acres for families with more than 5 members. Person cultivation is required to keep land ownership rights under Section 160 of the Act. Tenant protection is given by the Kerala tenants and "Kudikidappukars" Protection Act 1963 (Temporary), the Kerela Prevention of Eviction Act 1966, and the KLR Act 1963, which target tenants under Section 4 KLR Act and all tenants under Section 3(26) Kerala Tenants and Kudikidappukars Protection Act 1963(Temporary). Section 13 of the KLR Act grants the right to fixity of tenure. Section 27 of the KLA provides for fair rent, while Section 3 of the Kerela Prevention of Eviction Act 1966 protects all tenants against eviction. Landholders can now get legal documents of their rights, and land rights must be recorded. Ownership rights holders may transfer lands within the ceiling limits, but distributed land ownership rights holders are not permitted to do so. The 2013 RFCTLARR Act applies to all forms of land utilized for public purposes.

4.4 Summary of Findings: Legal Design Choices and Results of Land Reform in India States

4.4.1 Comparison of Legal Design Choices

After achieving independence in 1948, India was no longer subject to foreign invasion, but the situation of peasantry was still exploited by the legacy of colonization, which negatively impacted the impoverishment of the poor due to the exploitation of the rich landlord class. In the beginning of the land reform, there were varieties of difficulties and confusions occurred in each State level of legal designs and implementation, including the evasion of "land to tiller" reform by the landlord class by utilization of loopholes such as thee exception "personal cultivation" which

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[229] Girish Kumar, E., & Harilal, C. C. (2014). ibid. in Footnote 214 at 346.

resulted the eviction of tenants, but this chapter has identified that the States' level started to pursue a trial and error of each unique legal designs to attain the goals from the 1960s and on. One of the primary objectives of the Indian post-independence land reforms was, as declared in the series of Five-Year Plans that main objectives are provided in Chapter 2 of the first five-year plan as "maximum production, full employment, the attainment of economic equality and social justice."[230]

In summary of comparative analysis in this chapter of the different legal design choices of land reforms in four targeted States, as shown in Table 4-1 below, while the coverage of reform areas was similar in all states: (i) vesting the ownership rights to the tillers by the elimination of former absentee landlords (Zamindari and the intermediaries), (ii) re-distribution of land taken from the former absentee landlords to the landless poor, and (iii) protection of the tenant farmers (e.g. rent control, contract renewal, restriction of unilateral contract cancellation, registration system), we find that the emphasis between, and the detailed legal designs in, such reform areas very much between these States, probably a result of the different socio-historical conditions.

First, as for the difference of the focus of land reforms, West Bengal placed an obvious stress on (iii) protection of the tenant farmers since Bargardar Act, with featuring the registration system for "Bargardars" (sharecroppers) under 1978 Tenancy Registration Act, which reflected the high percentage of sharecropper population in the beginning of the post-independence land reform, as a result of the failure of land reform in pre-independence period, while, on the other hand, (i) "ownership to tillers" type reform did not see much active progress under the1955 WBLR Act; whereas, Jammu & Kashmir and Kerala attempted more seriously at the implementation of (i) "ownership to tillers" type reform, as shown in the increase of "ownership" titling during 1950s to 1960s in Jammu & Kashmir and Kelara, and furthermore, these States vigorously aimed at (ii) re-distribution to the landless poor during 1970s under each of the 1976 J&KAR Act and the 1969

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[230] Since the first five-year plan began in 1951, the main goal of the plan has been promulgated in Chapter 2 of the provisions of the plan (http://164.100.161.239/plans/planrel/fiveyr/index1.html). Especially, the 9th five-year plan (1997-2002), which describes the plan's objective as "Growth with Social Justice and Equity," contains the main provision and consideration of social justice and productivity that provided in 9 objectives of the 9th five-year plan, paragraph 1.6. (http://164.100.161.239/plans/planrel/fiveyr/9th/vol1/v1c1-2.htm).

through 1972 amendments to the 1963 KLR Act, as shown in 1971 census ; while Uttar Pradesh took an incremental approach to allow the tillers to grow up to more secured status in a long run.

Second, as for the detailed legal designs of the land reform between the target States, an obvious difference was the target of (i) "ownership to tillers" type reform. Both West Bengal and Uttar Pradesh reforms only targeted the middle-class intermediaries while carefully excluding lower-level tenancy categories as the recipient for the reform, while Jammu & Kashmir included all "tillers" defined as "who tills land with his own hand, in cultivating possession or evicted beyond control" in section 2(d) of 1950 J&KBRA Act as the beneficiaries of ownership distribution without compensation. Kerala was a compromise between these two approaches, in the sense it included "all tenants and intermediaries" under section 4 to 12 of the 1963 KLR Act.

A notable difference of legal design in this regard is the definition of the "personal cultivation" as the exception to (i) "ownership to tillers" type reform and also in (ii) re-distribution to the landless poor. Another notable difference of the detailed legal designs is the legal nature of the ownership offered to the tillers in (i) "ownership to tillers" type reform and/or to the landless laborers in (ii) re-distribution to the landless poor. In Jammu & Kashmir, it has been the "ownership" but its transferability is controlled by the collector (section 20 of 1950 J&KBEA Act). In Kerala, it is also named as the "ownership" but transferable and heritable (section 72 of 1963 KLR Act), whose legal nature is not much different from the "Raiyat right" in section 4 of West Bengal Land Reform Act 1955 which is transferrable and heritable, in contrast to the "Bargadar right" or sharecroppers which is envisaged as the main category of farmer's right in West Bengal, which is heritable but not transferrable (section 15 of the same Act). On the other hand, "Bhuminder rights" in Uttar Pradesh, as the highest category in the hierarchical system of land rights of this State, even though all of such land rights come under the tenancy of the government land (section 18), and consist of both non-transferrable and transferrable categories (section 129) while the latter is obtained only after a long-term continuous cultivation for 10 years Section131B).

In sum, between the target 4 States, Jammu & Kashmir aimed at the most pro-cultivator type of (i) "ownership to tillers" reform in the sense that it aimed at the distribution of "ownership" to the tillers who actually cultivate in his hand, and such "ownership" has been put under the restriction of transfer, which is legal design for the continuous protection of farmland in the hand

of cultivator. Uttar Pradesh's "Bhuminder rights" is the highest ranked tenancy right of the State land, and similar to the nature of Jammu & Kashmir "ownership" in its controlled nature for land transfer. Kerala provides the transferrable "ownership" which seems to have invited the succeeding land concentration of once distributed ownership to the absentee landowners.[231]

4.4.2 **Results of Land Reform Laws Compared**

Then, what are the outcomes of these different legal design choices between the States? While there are various academic researches which conclude the negative evaluation of India's overall results of land law reform based on the indicators of economic results such as agricultural productivity (Ghatak, M., & Roy, S., 2007[232], World Bank, 2012[233] and Deininger, K., Jin, S., & Yadav, V. 2008. [234], gender equality (Asian Development Bank, 2018[235]), as well as the poverty rate as the indicator of social distribution[236], the author pays attention to the difference of performance in the level of States.

In terms of the agricultural productivity, the performance of these States since the 1960s toward 1980s generally showed a great progress, but it was considered mainly as a result of the "Green Revolution" performed in the same period[237], and it is rather difficult to separately evaluate the direct contribution of land reform to the productivity. Even if so, some statistic data of

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[231] Sexena, A. (2019) ibid. in Footnote 113 at 46 to 48.
[232] Ghatak, M., & Roy, S. (2007). Land Reform and Agricultural Productivity in India: A Review of the Evidence. *Oxford Review of Economic Policy.* pp-251-269.
[233] World Bank (2012*). India: Issues and Priorities for Agriculture.* https://www.worldbank.org/en/news/feature/2012/05/17/india-agriculture-issues-priorities
[234] Deininger, K., Jin, S., & Yadav, V. (2008). *Impact of Land Reform on Productivity, Land Value, and Human Capital Investment Household Level Evidence from West Bengal. Department of Agriculture, Food and Resource Economics,* Michigan State University, East Lansing, MI 48824-1039, U.S.A.
[235] Valera, H. G. A., Yamano, T., Puskur, R., Veettil, P. C., Gupta, I., Ricarte, P., & Ram Mohan, R. (2018). Women's Land Title Ownership and Empowerment: Evidence from India. *ADB Economics Working Paper Series, No 559.*
[236] The results for all of India reveal that between 1951 and 1974, the poverty rate grew, from 4.5% in 1952 to approximately 54% in 1974, as a result of the weak economic growth at the period. However, from 1974 to 2000, the rate of property fell, from 54.9% in 1974 to around 23.6% in 2000. See Fox (2002) at 3-5.
[237] Kulkarni, M. (2015). *Land Rights in India: Policies, Movements and Challenges*. Routledge at 107.

international sources tell such results as from the middle of the 1960s to 1991, the agriculture sector increased at a rate of 3.1% from 1976 to 1991 and 3.2% from 1965 to 1976.[238]

In terms of the social justice seen from the progress of distribution of secured land title, either ownership rights or strengthened tenancy rights, it is said in the beginning of the post-independence reform, only 5% of nationwide land was held by landed farmers who represented 60% of the population, while 55% of land was concentrated to the absentee landlord class, which represented 10% of the population.[239] But after the reform, as of the 1980s, According to the Khusro Report, the land holding of small and marginal farmers increased from 20.87% (1970-71) to 28.96% (1981-90). It also increased for medium farmers' land holding from 48.25% (1970-71) to 52.03% (1981-90), while it decreased for large farmers' land holding from 30.88% (1970-71) to 19.01% (1981-90).[240]

When we pay attention to the progress of land title distribution in the target 4 States, the percentage of landless farmers in the West Bengal distribution of land holding for households decreased from 20.4% (1953-54) to 17.21% (1982), while the percentage of large land holdings decreased from 26% (1953-54) to 4.20% (1982). As a result, more than 21% of the land holding increased for the landless, small holdings, or medium holding classes. According to the distribution of holding for households in Uttar Pradesh, the percentage of landless farmers fell from 9.36% (from 1953 to 1954) to 4.85% (1982), and the percentage of large land holdings also fell from 25.15% (from 1953 to 1954) to 15.35% (1982). As a result, almost 10% of the land holding rose for the landless, small holdings, or medium holding classes. According to the land ownership holding distribution for households in Jammu and Kashmir, the proportion of landless farmers decreased from 17.31% (from 1953 to 1954) to 6.84% (1982), while the proportion of large land holdings likewise decreased from 16.65% (from 1953 to 1954) to 5.50% (1982). As a result, ownership holdings for the landless, small holdings, and medium holding groups increased

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[238] Mahadevan, R. (2003). Productivity Growth in Indian Agriculture: The Role of Globalization and Economic Reform. *Asia-Pacific Development Journal, 10(2),* 57-72 at 58.
[239] Bhagat-Gamguly, V. (2016). *Land Rights in India: Policies, Movements, and Challenges*. Routledge Publication at 114.
[240] Bandyopadhyay, R. (1993). Land System in India: Historical Review. *Economic and Political Weekly, 28(52),* A149-A155. at A-154. (https://www.jstor.org/stable/pdf/4400592.pdf?refreqid=fastly-default%3A1c6d5f843f1a2ac6c9b8e91579b4b222&ab_segments=&origin=&initiator=&acceptTC=1.)

by more than 11%. The percentage of landless farmers declined from 36.27% (from 1953 to 1954) to 12.76% (1982), while the percentage of substantial land holdings also decreased, going from 29.21% (from 1953 to 1954) to 4.92% (1982), according to the land ownership holding distribution for households in Kerala. The consequence was an almost 25% rise in the land holdings of the landless, small, and medium land ownership holding groups.[241] Therefore, the social justice as one of the primary objectives of the land reforms saw certain progress, particularly in Jammu & Kashmir where rigorous land distribution creates the new ownership which was controlled for transactions for the purpose of the security of living basis of those who cultivate the farmland.

Further, we may refer to the trend of poverty rate in these States as a proxy for the social justice during the period of land reform following independence in order to understand the outcome of the land reform, according to data on the poverty rate of cultivators by National Sample Survey Organization of India, Employment and Unemployment Survey 32nd round(1982) and 38th round (1989), that are available for the years 1977–1978 to 1987–1988, the West Bengal poverty rate decreased from 46.10% in 1977 to 35.82% in 1987; in Uttar Pradesh, the rate increased from 31.01% to 32.64%; in Jammu and Kashmir, the rate decreased from 20.34% to 11.72%; and in Kerala, the rate decreased from 32.96% to 23.99%. Thus, during the period of 1970s when the land law was rigorously enacted and implemented in each State, the poverty rate was West Bengal was 46.10%, Uttar Pradesh was 31.10%, Jammu and Kashmir was 20.34% and Uttar Pradesh was 31.10%; but in 1980s only Uttar Pradesh's poverty rate grew in the 1980s as a result of land reform, whereas it declined for the other 3 states.[242]

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[241] Sharma, H. R. (1994). Distribution of Land Holding in India, 1953-54 to 1981-82. *Economic and Political Weekly, 29(39),* A117-A128.at A-122. (https://www.jstor.org/stable/pdf/4401814.pdf?refreqid=fastly-default%3A916be6b16353f2c0524566ca50bf242f&ab_segments=&origin=&initiator=&acceptTC=1) (Sharma H.R. used the general word "ownership" for all states in his paper, omitting to distinguish between the various types of land rights in each state from a legal standpoint. However, the nature and characteristics of land rights vary depending on each state's various legal frameworks.)

[242] Usami, Y. (1993). Poverty in Rural India, 1970-71 to 1987-88. *Journal of the Japanese Association for South Asian Studies*, 78-101.at 95. (https://www.jstage.jst.go.jp/article/jjasas1989/1993/5/1993_5_78/_pdf/-char/ja)

4.4.3 **Implications for Myanmar**

4.4.3.1 **Objectives of Land Law Reform: Constitutional Contests**

Among the notable lessons learned from a comparative viewpoint in Chapter IV, India's post-independence historical path of land reform is found to be a continuous challenge toward the formation of land reform goals through legal debates, which is in contrast to the situation in Myanmar where constitutional debates have a low presence. Indian land reform has involved fundamental contests of constitutional norms, which even resulted in some constitutional amendments in regard to land reforms as mentioned in below.[243]

The first amendment was made in 1951 when a fundamental contest was raised by the landowner class claiming the state's level legislating aiming at land reforms for redistribution was unconstitutional based on Part III of the Constitution which guarantees fundamental rights. To seek compromises for this contest, the first amendment added two clauses of Section 31(A) and (B) to ensure that the state acquisition of private estates for land redistribution is not found unconstitutional. Also in 1951, the federal government released its first five-year plan, which was a compromise that prompted several states to amend their progressive land reform laws in accordance with the federal policy.

On the other hand, the Indian Constitution contains a unique clause known as the Ninth Schedule that gives the legislature the authority to modify the constitution to exclude some legislation from judicial scrutiny, by adding such legislation in the list of the Ninth Schedule. The Zamindari System was abolished and legislation pertaining to agrarian reform was protected by the addition of Section 31B to the Ninth Schedule, which was created in conjunction with Section 31A. Some states were quick to list their progressive land reform legislation at the list of the Ninth Schedule.

The Indian Constitution's 4th amendment ratified in 1955 was another constitutional change in regards to the land reform, and 7 new acts—including ones that restricted the definition of "personal cultivation," set rent, tenant protections and controlled evictions—were added to the Ninth Schedule in the name of social justice.

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[243] Gae, R. S. (1973). Land Law in India: With Special References to the Constitution. *The International and Cooperative Law Quarterly, 22(2),* pp.312-328.

The 17th Amendment was implemented in 1964, and Section 31A was modified to broaden the definition of estates to encompass all land types for land reform purposes. 44 Acts were added to the 9th schedule to deal with land reform. Sections 14, 19, and 31 of Part 3 of the Constitution, which deal with basic rights, were included in the 9th Schedule without dispute.

The 25th Amendment was ratified in 1971, and Section 31(2) now uses the word "amount" instead of "compensation." Additionally, Section 31(C) was added to reserve Article 39(b) and (c) so as to avoid the contest against the constitutionality of Sections 14, 19, and 31.

The 39th (Amendment) Act to the Constitution included 38 new laws in 1975. The 42nd (amendment) Act of the Constitution was passed in 1976, adding 64 more laws to the Ninth Schedule. The 47th Amendment to the Constitution was ratified in 1984, adding to the already 202 Acts in the Ninth Schedule. The 66th Amendment Act added 55 Land Reforms Acts to the Schedule once again in 1990. The Tamil Nadu government's law, which allowed 69 percent reservation for backward classes, was accommodated by the Constitutional 76th (Amendment) Acts 1994, approved by the Parliament, to remove it from the purview of judicial review. The Constitutional 78th (Amendment) Act of 1995 introduced 27 Land Reforms Laws and once more modified the Ninth Schedule, bringing the total number of 284 Acts.

Thus, a constitutional contest fought in the legislative and judicial spheres in post-independence India between the progressive land reform and the conservative assertion of property rights of landed class have guided a series of constitutional amendments and the periodical changes of five-year plans at the federal level, which influenced a variety of States' level legislative reforms, as described in Table 4.1 below. This dynamism of constitutional contests in Indian land reform teaches a lesson for Myanmar on the possibility of more active constitutional, legislative, and judicial debates in the search for true justice in the land regime.

Table 4-1: Objectives of Land Reform: Constitutional Contests as of 2019

Year	Five Year Plan: Changing Focus of Land Reform	Constitution Amendments on land reform	West Bangel Land Laws	Jammu and Kashmir Land Law	Kerala Land Law	Uttar Pradesh Land law
1951-1956	1st plan: Tenancy reform (20% target)	1st Amendment Act 1950 Inserted Section 31A and 31B.	1950 Bargardar Act (sharecropper) 1953 Estates Abolition Act	1950 Big Landed Estates Abolition Act	Kerala Stay of Eviction Proceeding Act 1957	1950 Zamindari Abolition & Land Reforms Act
		4th Amendment Act 1955 -7 Acts was added to the 9th Schedule (eviction control, land ceiling, fixed rent, narrowing the term "personal cultivation")	1955 Land Reforms Act	Big Landed Estates Abolition Amendment Act 1956	Kerala Land Reform Act 1963	Zamindari Abolition & Land Reforms Amendment Act 1958
1956-1961	2nd plan: "Personal cultivation" remained as compromise	-				Zamindari Abolition & Land Reforms Amendment Act 1961
1961-1966	3rd Plan: -"Personal cultivation" narrowed -purchase based distribution	17th Amendment Act 1964 31A, the enlarging the definition of estates 44 Acts inserted in the 9th Schedule	West Bengal Land Reforms Amendment Act 1965	Big Landed Estates Abolition Amendment Act 1966	Kerala Land Reform Amendment Act 1969	Zamindari Abolition & Land Reforms Amendment Act 1962/1964/11965
1969-1974	4th Plan: -ceiling -permanent tenancy	25th Amendment Act 1971 Section 31(2), and inserted Section 31(C)	West Bengal Land Reforms Amendment Act 1972/1974	Big Landed Estates Abolition Amendment Act 1972/1973	Kerala Land Reform Amendment Act 1972/1973	Zamindari Abolition & Land Reforms Amendment Act 1974

1974-1979	5th Plan Poverty alleviation and social justice	39th Amendment Act 1975 42nd Amendment Act 1976	West Bengal Land Reforms Amendment Act 1975		Kerala Land Reform Amendment Act 1974/1976/1978 /1979	Zamindari Abolition & Land Reforms Amendment Act 1976/1977/1978
1980-1985	6th Plan Poverty alleviation and self- reliance	47th Amendment Act 1984	West Bengal Land Reforms Amendment Act 1981		Kerala Land Reform Amendment Act 1981	
1985-1990	7th Plan Increasing Productivity and improving modernizing industries		West Bengal Land Reforms Amendment Act 1986		Kerala Land Reform Amendment Act 1989/1990	
1989-1991	No plan because of political situation	66th Amendment Act 1990				Zamindari Abolition & Land Reforms Amendment Act 1991
1992-1997	8th Plan Economic Reform to attract Foreign Investment for rapid economic growth	76th Amendment Acts and 78th Amendment Act 1995	West Bengal Land Reforms Amendment Act 1996			
1997-2002	9th Plan Human Development, Poverty Alleviation and Infrastructure Development		West Bengal Land Reforms Amendment Act 2000			
2002-2007	10th Plan Inclusive growth, employment and rural development		West Bengal Land Reforms Amendment Act 2003/2005		Kerala Land Reform Amendment Act 2006	Zamindari Abolition & Land Reforms Amendment Act 2004/2006
2007-2012	11th Plan Inclusive growth, infrastructure development, environment sustainability		West Bengal Land Reforms Amendment Act 2010/2012	Big Landed Estates Abolition Amendment Act 2007	Kerala Land Reform Amendment Act 2012	
2012-2017	12th Plan Social and Economic Reform		West Bengal Land Reforms Amendment Act 2013/2017		Kerala Land Reform Amendment Act 2015	

2017-2022	13th Plan Maintaining economic and agricultural modernization an economic development		West Bengal Land Reforms Amendment Act 2018			

(Source: compilation by the author)

4.4.3.2 **Legal Nature of Land Rights: Balancing Growth and Justice**

Among the different legal design choices of land reforms in the target 4 States, Jammu and Kashmir looks familiar to Myanmar's post-independence land reform in the sense of aiming at (i) "ownership to tillers" type reform which covered all cultivating households as the beneficiary (1953 Land Nationalization Act, Section 5 and 7). Both West Bengal and Uttar Pradesh reforms only targeted the middle-class intermediaries for land distribution, and resulted in the exclusion of lower-level tenancy categories, while Kerala took a compromised approach to target both "tenants and intermediaries." In this sense, Myanmar's post-independence land reform was more tiller-oriented in this comparison.

However, it is debatable whether the legal nature of the land title conferred to the cultivators under Myanmar's Land Nationalization Act was similar to the "ownership" in Jammu and Kashmir. Both are a permanent and heritable right even though their transferability is controlled for the purpose of protection of farm use (see Myanmar's 1953 Land Nationalization Act, Section 10 of the 1950 J&KBEA Act, Section 4 and 5). It is the author's assumption that the drafters of Myanmar's Land Nationalization Act had studied various legal designs of leading States in Indian land reform at that time, and probably took the model after the "ownership" in Jammu and Kashmir, with an intention to establish the Myanmar's "Cultivation Right" as strong as the pre-colonial "Bobapaing" right. However, in the succeeding implementation by the Myanmar government of the 1953 Land Nationalization Act, the "Cultivation Right" has continued to be understood as the tenancy of state-owned land, subject to unilateral cancellation by the government's will, as previously discussed in Chapters II and III, which is succeeding the "Landholder's Right" concept under the British colonial Burma, and more like the legal nature of "Bhumindar" rights in Uttar Pradesh.

Another point of legal design for comparison is the transferability of land rights. The "ownership" in Jammu and Kashmir was put under the permit system for transfer by the government (section 5 and 20(b) of 1950 Big Landed Estates Abolition Act), while Burma's 1953 Land Nationalization Act similarly applied the state control on land transfer, which had been functioned as a strict prohibition until the 2012 land law reform. This is the point of trade-off between the economic efficiency through free transactions and the security of once distributed farmland from a quick loss by sales and mortgage foreclosures. In search of a legal design to balance these two policies needs for the Myanmar's future land law reform, in Chapter V (section 5.2), the author will elaborate in light of Japan's experience.

Table 4-2: **Legal Frameworks and the Results of Land Reform in India States Compare**

	West Bengal (success case II) (Pre: Zamindari ~ agriculture labor)	Uttar Pradesh (failure case) (Pre: Zamindari~ Sharecroppers)	Jammu & Kashmir (success case I) (Pre: Ryatwari-centered)	Kerala (success case III) (Pre: Zamindari~ Sharecroppers)
Laws				
(i) Land to Tillers reform:	1950 Bargardar Act (sharecroppers) 1953 Estates Abolition Act 1955 Land Reforms Act	1950 Zamindari Abolition & Land Reforms Act	1950 Big Landed Estates Abolition Act	1963 Kerala Land Reform Act
●Target	(Section 6) "intermediaries"	(Section18) -Sir (in-village zamindari) -Khudkasht (proprietor) -occupancy tenants -hereditary tenants	(Section 5 (1)) "tillers" (Section 2 (d)) "tiller" defined as who tills land with his own hand, in cultivating possession; or evicted beyond control.	All tenants and Intermediaries
●Non-target	Bargardar (sharecroppers)	-Tenancy-at-will -share croppers -agricultural-laborers	(sec.2 (d): (d)) agricultural laborer	Nil

●Exceptions (ceiling/ or not)	(Section 6) Ceiling of 25 acer, etc.	(Section 9) bhuminder (=landholder), serder (=proprietor), asami (=landed farmers) (no specific provision for ceiling under 1950 land reform Act)	(Section 4) Ceiling for small ownership within 182 Kanals	Ceiling up to maximum 20 acres for more than family members
●legal nature of Right (name) (restriction on transfer) (restriction on lease)	Section 4, Raiyat right (the owner of holding) Transferrable and heritable right Section 15, Bargadar right (heritable but not transferable) Section 49(1) Pattas right (heritable but not transferable)	Bhumindar with transferrable right (former owner within ceiling limit) Bhumindar with non-transferrable right (Distributed landholder) (Section 129)	(Section 4) Ownership Section 5 (transfer right with the permission of the collector (sec 20)) (exception: Section 20 (b): Prohibition of transfer of Kah Krusham, Araks, Kaps and other areas)	Ownership rights (transfer and heritable rights) For dwelling house, only heritable right
●Land record/ registration	Registration (record of right) Section 50	-Deed registration: “relevance” only under 1872 Indian Evidence Act -Land record system maintained but seldom renewed	-Deed registration: “relevance” only under 1872 Indian Evidence Act? -Land record system maintained but seldom renewed?	Registration (Certificate)

(ii) (Ceiling/ Re-distribution):	1955 Land Reforms Act 1973 Land Alienation Prohibition Act	The Uttar Pradesh Imposition of Ceiling on Land Holding Act 1960	1976 Agrarian Reform Act	1963 Kerala Land Reform Act
●Ceiling	Section 14M, 2.5 standard hectares for sole member, 5 standard hectares for 2 or more family members, 7 standard hectares for more than 5 family members.	A family or more than 5 members 7.5 hectors, 2 hectors for adult sons, (Section 5)	Section 2, 110 kanals, 140 kanals and 171 kanals based on categories.	Section 82, 5 standard acres for sole member, 10 standard acres for 2 or more family members, 12 standard acres for more than 5 family members.
●Exception (Definition of. "personal cultivation")	Personal cultivation includes cultivation by labors, family members or servants (section 2(8)) Section 14R, Local authority land, land under government notification. (Section 14S, Raiyat have to vest the land exceed ceiling limit, Bargadar can maintain the cultivated land)	- Person cultivation means land in the personal cultivation permanent lessee (Section 3(28)) who can get Baumidhar right (Section 18) - Bhumidhar, Sirdar, Adhivasi or asami right can continue to use the land within ceiling limits (Section 7)	Personal cultivation Section 5(2).	Personal cultivation Section 160
●Target of Redistribution	Landless or Land poor farmers for 2 acres (Section 49)	Landless people (Section 198 of the Uttar Pradesh Zamindari Abolition and	Section 15(2), first priority – tillers owned less than 2.5 standard acres,	Cultivators (purchase rights)

	Bargardar right for sharecropper (Section 15(2)) Raiyat right within ceiling limit (Section 4, 14(M))	Land Reforms Act, 1950) (3.125 acres)	second – ex-owners less than 2.5 standard acres, third- refugees less than 2.5 standard acres fourth – landless agricultural labors fifth - refugees more than 2.5 standard acres	
●free/ or purchase	Section 49(1), Free	Free (section 198)	Payment of levy (section 15(5))	Purchase (section 53)
●legal nature of Right (name) (restriction on transfer) (restriction on lease)	Section 49 (1)(1), prohibition of transfer for distributed lands holder (Patta) and Bargader (Section15(2)	Buhmindar with non-transferrable right (Section 195)	Ownership right (section 15(5)) Restriction to transfer (section 17)	Section 53, Landlords' rights
(iii) Tenancy protection laws:	West Bengal Premises Tenancy Act, 1997	The Utter Pradesh Tenancy Act 1939	Jammu and Kashmir Tenancy Act 1923	Kerala Tenants and Kudikidappukars Protection Act 1963(Temporary) (hereinafter KTAKPA) Kerela Prevention of Eviction Act 1966 (hereinafter KPOEA) Kerela Land Reform Act 1963 (hereinafter LRA)

●Target	All tenants (Section 2(g) and 5)	Tenants of Sir (Section 20) Classes of tenants (Section 21) a) permanent tenure-holders, b) fixed-rate tenants, (c) tenants holding on pecial terms in Oudh, d) exproprietary tenants, e) occupancy tenants, f) hereditary tenants, g) non-occupancy tenants.	Occupancy tenant (Section 3)/ protected tenant (Section 6)	Deemed Tenants (classification of all kind of tenants (Section 4 of KLA) All tenants (Section 3(26) KTAKPA)
●Exceptions	Eviction can make under section 6 (a to i) (ex, fail to give the rent, rent the part of the land without landlord consent, land is required landlord business, etc..)	NIL	Landlord can get the protected tenant right by personal cultivation (section 49) (landlord need to cultivate the land within six month/1 year after canceling the protected tenant (section 45A)	The landlord can hold only Ceiling limits (maximum 20 acres) Exemption section 14 to 20 KLA (ex, religious worship, residential buildings, more than tenant ceiling area by paying compensation)

●legal nature of right (name) (restriction of sales, etc.)	Only land use right (Section 5) No transfer right (section 5 (6))	Sir right (Section 8) No transfer right (except gift or exchange) (Section 9 and 10) Every transfer is void (Section 44) Rights based on the classes of tenants (Section 21)	Occupancy rights (Section 6) only for occupancy tenants Transfer of occupancy right (Section 64) Succession rights (Section 67)	Fixity of tenure (Section 13 of the KLA)
●protections (rent)(duration)	Fixing the rent (Section 17) Eviction of tenants (Section 6)	Protection of Eviction (Section 157)	Illegal Eviction (Section 11) Fixing the rent (Section 16)	Fair rent (Section 27 KLA) Protection of eviction (Section 3 of the KPOEA)
(iv) Neo-Land Policy:				
●legal nature (evidentiary power) of Title Registration:	Registration (record of right)	Registration (record of right)	Registration (record of right)	Registration (record of right)
●land transfer -free for all land -free for agricultural use -controlled by local body	Land transfer only allow for Raiyat Rights within the ceiling limit (distributed lands are treated in different	Land transfer within the ceiling limit for Bhumindar with transferrable rights (distributed lands are treated	Land transfer within the ceiling limit (distributed lands are treated in different	Land transfer within the ceiling limit (distributed lands are treated in

	way, ex: restriction to transfer) Free agriculture use No control body	in different way, ex: restriction to transfer) Free agriculture use No control body	way, ex: restriction to transfer) Free agriculture use No control body	different way, ex: restriction to transfer) Free agriculture use No control body
●lease -free for all land -free for agricultural use -controlled by local body	Free for all lands Free for agriculture use No controlled body	Free for all lands Free for agriculture use No controlled body	Free for all lands Free for agriculture use No controlled body	Free for all lands Free for agriculture use No controlled body
●Land Acquisition	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

Chapter V

Overall Discussion: Implications for Future Land Law Reform in Myanmar

In this chapter, Section 5.1 will first provide a comprehensive discussion based on the major findings from the previous chapters, with a particular focus on the legal causes of government and the farmers' gap on the understanding of farmers' land right under the present formal land regime of Myanmar under the 2012 Farmland Law through the historical, empirical and comparative perspectives attempted in Chapter II through IV. Then, the author will elaborate a possible legal design choices in Section 5.2 for the future reforms of Myanmar to enable a better protection of farmer's rights for the mitigation of land disputes. For this purpose, a reference will be made to the experience of post-WWII agricultural land reform in Japan. Japan implemented an almost identical "land to a tiller" type reform to Myanmar and India in the same period, and its results have been maintained for several decades, while achieving a rapid economic growth, which is much different from the poor results in Myanmar as well as many of the States in India where the progress of land reforms saw constant delays and once distributed rights were quickly lost. Despite the frequently heard criticisms on the unsuccessful performance in terms of agricultural productivity of thus created small-scale farming in Japan, the stability of once attained land tenure security in Japanese land reform can be learned for the strengthening of current Myanmar's fragile status of farmers under the 2012 Farmland Law. In Section 5.3 of this chapter, the author will make an overall discussion based on the findings from this research for the future improvement of legal design frameworks of Myanmar, with a focus on the strengthening of the legal nature of farmers' land rights.

5.1 Legal Causes of Government-Famers' Perception Gap on the Farmer's Rights

5.1.1 "Bobapaing" Rights vs. Cultivation Right

The highlight of the results of farmers' questionnaires in Chapter III has been that the overwhelming majority of farmers believe that they have "Bobapaing" rights inherited from precedent generations, without regards to the existence of land records (see Table 3-10 of Chapter III). It is a remarkable finding that the farmers have succeeded the traditional notion of ownership

"Bobapaing" rights from the pre-colonial written code *Dhammathat* as the author confirmed in the legal historical review in Chapter II. "Bobapaing" rights were the formal land rights in the King's era with the surmount legal characteristic of a permanent, inheritable and absolute ownership, or *Myaethay*, even excluded from the King's taking. Similarly, the author's interview with experienced farmers in Chapter III (Section 3.4) has identified their strong attachment to their "Bobapaing" right on ancestry land as the irrevocable right even against the land acquisition by the government for public purposes, which remind us of the pre-colonial function of absolute ownership *Myaethay* including "Bobapaing" rights.

It has also been a remarkable tendency that most farmers believe the formal title "Cultivation Right" under the 2012 Farmland Law is weaker than their "Bobapaing" rights, due to the government discretion of revocation, but still many of them attempted to apply for the registration to get the certificate of registration of "Cultivation Right" (Form 7) only for security.

In contrast to this strong belief of farmers on their paramount "Bobapaing" right, the authors' interviews with the government officers in Chapter III revealed that all interviewed government officers have a common perception that what the farmers can have only the "Cultivation Right" vested by the government as a result of the land title registration, with an implication that those who have failed to obtain such registration have no right, including "Bobapaing" right. Most of the interviewed officers confirmed that the proof of this title registration is based on documentary evidence. This is the typical outcome of the Torrens style title registration that the British colonial law introduced to Burma, and has revived in the 2012 land law reform in contemporary Myanmar (Chapter II, Section 2.2). If a farmer lacks any documentary evidence and therefore fails to obtain the title certificate, he lacks any right, is not eligible for the protection of the Land Acquisition Act and his land may be confiscated as a "Vacant, Fallow or Virgin Land". All interviewed officers also hold a common notion that the legal nature of "Cultivation Right" is a mere tenancy of the state-owned land, according to the literal interpretation of Section 37 of Myanmar's current 2008 Constitution which declares that the state is the ultimate owner of all national land and resources.

Thus, the fundamental legal causes of contemporary land disputes in Myanmar are identified through this study: the title registration system of the 2012 Farmland Law is functioning

as the denial mechanisms of existing "Bobapaing" right. What the farmers believe to have as a "Bobapaing" right on their ancestry land is denied by the government in either case: If a farmer lacks documentary evidence, he simply fails to obtain any right secured; if he has documentary evidence, he may obtain the certificate of "Cultivation Right," which is considered a tenancy right on the state-owned land subject to the government's revocations upon various conditions, and in its exchange, his original "Bobapaing" ownership right is irrelevant according to government officials.

Therefore, farmers will continue to protest as long as the government continues to stick to the formalistic implementation of the 2012 Farmland Law as it is. For example, anytime the government implements wasteland management grants to investors, or land acquisition for public projects, the farmers who failed to obtain the "Cultivation Right" title under the 2012 Farmland Law due to the lack of documentary evidence, or the farmers whose "Cultivation Right" were revoked for any reasons, will continue to contest the government based on the assertion of their "Bobapaing" rights on which they have a firm belief even without any documentary record.

5.1.2 **Constitutional Interpretation for a Balanced Policy**

To consider the legal designs to mitigate the future land conflicts, in Chapter IV, the author explored the comparative knowledge from the land reform laws in India, with focus on two aspects: (i) constitutional debates over the balanced policy objectives for the land reform that realize the protection of farmers' right while pursuing the economic growth, and (ii) the legal design of farmers' land rights in various legislations in the State-level which had the concurrent jurisdiction of land reforms under the federalist constitution.

In India, the active debates on the constitutional goals for land law reform, involving the contest between the frequent judicial reviews, and the constitutional amendments to preserve the legislations for reform, has gradually developed a balanced policy to guide the land reform. From this lesson, Myanmar can also strengthen its constitutional practice so as to invite a national debate on the constitutional goal for land reform, particularly on the point that the current formal law aiming solely at the economic growth at the sacrifice of private property rights of ordinary people is constitutionally correct. The Constitution Tribunal in Myanmar had only one decade of

operation without considering constitutional review of legislations before promulgation (Section 322 of 2008 Constitution), nor individual review after the promulgation.[244] In the coming era, as a meaningful forum for the reconciling of the government and the people toward the sustainable society, Myanmar will need a more active role in constitutional review for the sake of the people. Now, Section 37 of the 2008 Myanmar Constitution declares the state as the ultimate owner of national land, and its literal understanding has been the basis of discretionary land management of the government as aforementioned. But this literal method of understanding of the Constitution should be reconsidered from the historical and objective approach of interpretation.

In a historical view, Section 37 of the 2008 Myanmar Constitution has succeeded the same expression in former constitutional provisions, namely, of the post-independence Burma's Section 30 of the 1947 Constitution of the Union of Burma (in Chapter 3 "Relations of the State to Peasants and Workers"), as well as Section 18 of the 1974 Socialist Constitution.

Section 30 of the 1947 Constitution of the Union of Burma reads as follows:

> Section 30.
>
> (1) The State is the ultimate owner of all lands.
>
> (2) Subject to the provisions of this Constitution, the State shall have the right to regulate, alter or abolish land tenures or resume possession of any land and distribute the same for collective or co-operative farming or to agricultural tenants.
>
> (3) There can be no large land holdings on any basis whatsoever. The maximum size of private land holding shall, as soon as circumstances permit, be determined by law.

On the other hand, Section 18 of the 1974 Constitution of the Union of Burma of the socialist era reads as follows:

> Section 18: The State-
>
> (a) is the ultimate owner of all natural resources above and below the ground, above and beneath the waters and in the atmosphere, and also of all the lands;
>
> (b) shall develop, extract, exploit and utilize the natural resources in the interest of the working people of all the national races.

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[244] Section 12 of the 2010 Constitution Tribunal of the Union Law.

And the current 2008 Constitution of the Union of Myanmar read as follows:

Section 37: The Union:

(a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union;

(b) shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic forces;

(c) shall permit citizens right of private property (*Pyitsee Paing Sai Hmu*), right of inheritance, right of private initiative and patent in accord with the law.

Even though these three constitutional provisions similarly declare that the state is "the ultimate owner of all lands," their contexts differ. The 1947 Constitution's Section 30 declares the state's ultimate ownership (sub-Section 1) followed by the purpose of land reform to return possessions or distribute farmland to agriculturalists (sub-Section 2), and the prevention of land concentration toward the future (sub-Section 3). Therefore, the meaning of the state's ultimate ownership in the 1947 Constitution is understood as the statement of the state's power and responsibility to perform the land reform so as to return the land ownership to the farmers. In contrast to this, the declaration of the state's ultimate ownership under Section 18 of the 1974 Constitution lacks any reference to the people's land rights, and therefore, it is understood to literally mean the concentration of strong ownership by the state, according to the military-led socialist regime of that period. In comparison with these two different predecessors, the declaration of the state's ultimate ownership under Section 37 of the current 2008 Constitution is obviously closer to the structure of the 1947 Constitution in that such declaration clause (sub-Section 1) is followed by the clause referring to the state's role of securing the private property rights (sub-Section 3). In this regard, Section 356 of the 2008 Constitution provides that the Union shall protect the lawfully acquired private property rights of every citizen. Therefore, the objective of the state's ultimate ownership in Section 37 of the 2008 Constitution should be understood as a rhetorical declaration of the state's obligation to perform the land management policy so as to protect the people's property rights.

Accordingly, there is an expectation that the Constitutional Tribunal can test the constitutionality of the exploitive system under the 2012 Farmland Law that deprives the farmers

of their ancestry property rights on "Bobapaing" land by a simple effect of the government refusal for the registration, and/or the Supreme Court may initiate a Writ of Mandamus testing the abuse of discretion of the government's formalistic implementation of land management against the constitutional protection of private property rights. The relevant government departments in charge of land management should be aware of these risks of judicial review.

5.1.3 **Reestablishing the "Bobapaing" Right as Formal Right**

Even when farmers' rights are registered as "Cultivation Right" under the 2012 Farmland Law, such rights are merely fragile subject to the discretionary revocation by the government upon the infringement of obligations under the Farmland Law, confiscated by the government during the cultivation recess as a vacant and fallow land under the VFVLM Law, and put outside of the procedural protection under the 1894 Land Acquisition Act. Even though the answers in the author's interviews with the government official detected the hesitation for performing an immediate revocation of "Cultivation Right," they are responsible for the implementation of the law, even though it will result in deprivation of the livelihood of local farmers. This strong formalism in Myanmar's administrative system is what the foreign observers have criticized as "Rule by Law" (*Tayar Upaday Soemoehum Mashite Sanit*), which stems from the colonial era, provided that it must be a better form of state administration than a naked "Rule by Man". To aim at the substantive goal of "Rule by Law" (*Tayar Upaday Soemoehum Mashite Sanit*), which is the notion that the traditional pre-colonial Burma law already knew as the administration dedicated to the laws of Buddha's goodness,[245] the law itself needs to be reformed to attain the substantive goodness.

Ultimate resolution of land disputes between the government and people will only be attained when the substantive law reform is made to explicitly introduce a new provision which clearly defines farmers' rights as "Bobapaing" rights, instead of continuing to use the ambiguous term "Cultivation Right" which can invite a misunderstanding as a tenancy-like right.

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[245] Winfield, J. C. (2010). Buddhism and Insurrection in Burma, 1886-1890. *Journal of the Royal Asiatic Society, 3rd series, 20(20),* 345-367.

Then, the question is how to define the legal nature of such "Bobapaing" rights. Chapter IV explored the different legal frameworks of land reforms in four States in India, and found that there are some States, such as Jammu and Kashmir and Kerala, which have established an absolute ownership as the primary land right for the farmers, while other States only allocated tenancy-like rights such as "Bhmindar" (Landholder's right) in Utter Pradesh and West Bengal centering on the protection of sharecroppers' "Bargardar" rights. Given the overwhelmingly strong notion of Myanmar farmers as shown in Chapter III of this research that they hold "Bobapaing" right as permanent, inheritable and absolute rights, the author contends that the future land law reform in Myanmar should take the approach of Jammu and Kashmir and Kerala, which explicitly established the legal nature of "Bobapaing" as paramount ownership according to the notion of the farmers.

Perhaps an objection could be raised that such absolute ownership design of "Bobapaing" will soon result in the loss of farmland due to the freedom of transfer by sales and mortgages. It is true that, according to the author's interview survey in Chapter III (see Table: 3-10), all of Township Administrators admitted the drastic increase of farmland sales since Section 9(a) of the Farmland Law permits the holders of title certificate of "Cultivation Right" (Form 7) to sell, mortgage, lease, trade, or give all or a portion of their land without restriction, where the majority of the buyers purchase the farmland for the purposes other than agriculture (see Table 3-8). The author will consider this aspect of concerns on the farmland security later in Section 5.2 in regards to the Japanese experience of the agricultural land reform which vested ownership with the control of farmland transfer. (Appendix-3; compiled the nature of private land rights from pre-colonial times to the present.)

5.1.4 **Requirements for Proof: Actual Cultivation vs. Purchase**

One of the critical points for reestablishing the formal farmers' rights by the future land law reform is the definition of the concept "actual cultivation" and its method of proof. As discussed in Chapter II (Section 2.6), under the current 2012 Farmland Law, the "actual cultivation" is a necessary element that a farmer has to establish in order to claim the formal land title of "Cultivation Right" (Section 4 of Farmland Law), while the land purchaser can obtain the same

"Cultivation Right" merely by proof of his purchase contract (Section 8). The proof required to be made by the farmers is the following five criteria according to Section 7(a) of the Farmland Law:

Section 7 (a)

(i) The household which has the right to use the farm land shall be the household of the peasant or the member of the household;

(ii) the head of this household who has the right to use the farm land or the one included in that household or the guardian shall be the one who legally carrying out at present in accord with the existing land laws before this Law is enacted;

(iii) he shall enjoy the benefit legally in accord with this Law or in accord with the provisions of the rule carried out under this Law after enacting this, Law;

(iv) he shall attain the age of 18 years;

(v) he shall be a citizen, an associate citizen or the person permitted to be a citizen.

In the actual practice of Myanmar government on the required level of proof in the implementation of land titling and its related disputes resolution, according to the author's interview surveys in Chapter III (Table 3-5), we have identified an obvious common tendency among the government administration that the "actual cultivation" is primarily needed to be proven by documentary evidence, either the land record or the land tax receipts. Only for the purpose of the initial land titling (Section 7 of Farmland Law), 3 among 4 of interviewed Township Administrators said that they also consider the oral testimony of village leaders on the status of "actual cultivation", but the basic standard of the required time length varied (3 to 5 years). As for the proof in the objection procedure against the once issued title (Section 25 of Farmland Law), only one interviewee answered that he would decide the ultimate title based on the oral testimonies on "actual cultivation", while others prioritize the documentary evidence in deciding such disputes.

However, the author's questionnaire survey with farmers in the targeted 4 Townships has identified that the overwhelming majority of farmers have a belief that they can assert their "Bobapaing" rights without documentary evidence (Table 3-10 of Chapter III). The majority of the answers in 3 of 4 Townships (Table 3-11) believe that the title disputes should be decided according to the testimonies on "actual cultivation" for 10 years, which includes both the

cultivation by individuals in hand and by lessees, without regards to the land record (Table 3-11 of Chapter III).

Thus, a perception gap is obviously found between the government and the farmers on the concept and the method of proof of "actual cultivation": the government side deems it as the formalistic requirement for the land titling, but the farmers require the substantive investigation by the government through the testimonies on the fact of cultivation.

A reference is made in this regard to the different practice in 4 States in India in their distribution of ownership to tillers in the post-independence land reform, as discussed in Chapter IV. Different from the approach taken in Uttar Pradesh, which excluded the lower class tenants from the beneficiaries of land distribution, and West Bengal, which mostly focuses on the sharecroppers rights than lower class tenants, in Jammu and Kashmir, the term "tiller" required the establishment of the fact of cultivation with one's own hand, in cultivating possession; or evicted beyond control (Section 2 (d) of 1950 Big Landed Estates Abolition Act of Jammu & Kashmir), while the documentary evidence of registration of deed was treated merely as "relevance" under the 1872 Indian Evidence Act. In comparison to this Jammu and Kashmir practice, the governmental practice in Myanmar deviates from the original goal of "land to tillers" principle. As far as Myanmar upholds the "land to tillers" ideal, the government is required to investigate into the true facts of "actual cultivation," so as to ensure the land security of cultivators.

Also from a practical consideration, the author contends that it is more justifiable to prioritize the oral testimonies in the proof of "actual cultivation" instead of documentary evidence because of the reality that the majority of farmers lack documentary evidence due to the failure of the government administration in managing the land record and tax receipts. Particularly in the era before the 2008 Constitution when the land tax was extremely low, it was the government practice to handle the land tax collection only nominally on the book, without actually visiting the locality to collect it. Land measurement surveys were seldom conducted, left the farmers away from the documentation even in cases of inevitable land transfers for inheritance and mortgage foreclosures. Given such a reality of poor governmental administration, it is unjustifiable to require the farmers to demonstrate their rights by documents.

5.1.5 **Farmland Management Bodies**

The 2012 Farmland Law of Myanmar as well as its implementation regulations have established the institutional system for implementation led by the layered system of Farmland Management Bodies (hereinafter referred to as FMB), consisting of the following five levels (Farmland Law, Section 16):

(1) Central FMB

(2) Naypyitaw, States or Regions FMB

(3) District FMB

(4) Township FMB

(5) Ward and Village Tracts FMB

According to the author's interviews in Chapter III (Table 3-8), the primary decision-making power is vested in the Region and State levels, while the basic level of Wards and Villages Tracts FMB have no power to make binding comments or forbid wrongful conduct even though such a basic level plays the key function to keep an eye on and safeguard farmland.

Perhaps, this institutional structure is in need of certain improvements. As for the composition of FMB, while each level has its own distinctive foundation,[246] all of the local level Bodies ((2) through (5)) are headed by local administrators who are dispatched from the General Administration Department of the Ministry of Home Affairs, and include representatives from the Land Record Department of Ministry of Agriculture and Irrigation as secretary. A remarkable aspect here is the recent governmental notification has required a certain amount of participation by the representatives of local farmers for the lower levels ((4) and (5)): namely, the Township FMB are required to have 5 farmers' representatives among the total 12 members. The most basic Ward and Village Tract FMB need to have at least 3 farmers' representatives and 2 representatives from the general public.[247]

But still, farmers' voices are difficult to be heard at the local level, since the nomination practice of the members of FMB is still largely controlled by the upper government. Namely,

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[246]According to the country's structure, there are 16 Naypyitaw, States or Region Farmland Management Bodies, 121 District Farmland Management Bodies, 330 Township Farmland Management Bodies, and 17079 Ward and Village Tracts Farmland Management Bodies.

[247] Notification of the Central Farmland Management Body 1/2021, 9-3-2021.

members of all local-levels of FMB are chosen based on the preferences of the chairpersons of relevant township or district administrations. Accordingly, these bodies lack autonomous authority and are controlled by the instructions and guidelines from the upper-level bodies.

According to the author's interviews in Chapter III, among the five levels of bodies, the lowest level Ward and Village Tracts FMB are subject to interventions by the upper government in the nomination process of non-governmental members, even though they are expected to be chosen independently from the Wards and Villages level and the nomination by the Township Administrator as follows:

< The Composition of the Respective levels FMB >[248]

(a)	Ward and Village Tract Leader	Chairman
(b)	2 Representatives from Ward and Village Tracts	Members
(c)	3 Farmers Representatives	Members
(d)	Ward and Village Tracts Clerk from GAD	Member
(e)	Ward and Village Tracts Land Record Clerk	Secretary
(f)	Representatives from Forestry Dept, Livestock and Protection Dept need to be included if they are serving in this area.	

Also, the problem is seen in the Farmland Law's legal designs meant for the central watch over the local administration, ironically resulting in the opposite effect, such that the central permit system for the use change of rice cultivation land as well as the States or Regions permit system for the use change of agricultural land have been implemented without proper scrutiny.[249] The results of the four Township interviews in Chapter III indicated that the permits of use change of farmland have increased particularly since the 2012 land reform.

[248] Central Farmland Administrative Body Notification No. 1/2021, dated on 9-3-2021, The Composition of the Respective levels Farmland Administrative Bodies.
[249] Rules 86 to 89 of the 2012 Farmland Rules.

5.1.6 **Protection from the Wasteland Management**

In Chapter II, Section 2.6, we discussed the problematic use of wasteland management mechanisms, particularly since the 1990s after promulgating the Waste Land Instructions during the Military era, which has been succeeded in the present day's implementation of the 2012 Law on Vacant, Fallow and Virgin Land. Particularly, land lacking the title certificate of Form 7 faces the risk of being deemed as wasteland and confiscated by the government without compensation.

Once the "Cultivation Right" is successfully secured by the issuance of title certificate Form 7 under the 2012 Farmland Law, the risk of uncompensated confiscation under the 2012 VFVLM Law will be reduced. Therefore, as discussed above, if the documentary evidence-based governmental practice is improved toward the future so as to offer the title certificate truly to the actual cultivators, the risk of abuse of such wasteland management will be reduced.

Meanwhile, however, we need to consider the amendment of 2012 VFVLM Law so as to avoid the injustice for the farmers who fail to obtain the CRC (Form 7), facing the risk of unilateral confiscation as wasteland. One of the most problematic legal designs of 2012 VFVLM Law in this regard is, as discussed in Chapter II (Section 2.6), the definition of "Vacant and Fallow Land", which includes the land under a tentative recess for fertilization purposes. This is a matter of substantive property law as how to define the extinctive prescription, which should be carefully elaborated by considering the social norms deeply rooted in the society, so as to avoid the anymore conflicts between the governmental law and the social sense of justice. Also, there should be a certain procedural reform such as the workable objection procedure to let the farmers have a chance to prove their "Cultivation Right" even if not yet secured by the title certification of CRC (Form 7).

5.1.7 **Eligibility of Land Acquisition Procedure**

In Chapter II, Section 2.2, we discussed the structural problem of the 1894 Land Acquisition Act, whose definition of "public purpose" (Section 4) is discretionarily decided by the government, and hence has allowed land confiscation for governmental projects without any consultation with the local society. Even when any projects come under the 1894 Land Acquisition Act, we identified the government practice in Chapter III (Table 3-7) that the government does not

allow the parties who lack the formal title certificate to send the objection as "relevant parties" (Section 5A of the Act).

Therefore, once the "Cultivation Right" is successfully secured by the issuance of title certificate CRC (Form 7) under the 2012 Farmland Law, the risk of exclusion from the due process and compensation requirements under the 1894 Land Acquisition Act may be reduced. Therefore, as discussed above, if the documentary evidence-based governmental practice is improved toward the future so as to perform land acquisition, the risk of abuse of such land acquisition law will be reduced.

Meanwhile, however, we need to consider the amendment of the 1894 Land Acquisition Act toward the incorporation of participatory procedures so as to avoid injustice for the farmers putting them outside of the protection against compulsory taking.

5.2 Implications from Post-WWII Agricultural Land Law Reform in Japan

5.2.1 Post-WWII Land Reform in Japan: Land to Actual Cultivators

In order to close this study with a certain recommendation for the future land law reform of Myanmar, this section intends a brief reference to the experience of post-WWII agricultural land law reform in Japan, a case which has attained the farmers' land security even during the rapid economic growth period.

The primary goal of the Japanese land reform was to strengthen the rights of tenant farmers through government-mandated purchases.[250] Although there are divided opinions on its economic results,[251] the land reform was successful at least in the sense it attained the goal set in the law with a significant achievement, which brought about an ultimate solution for the long lasting critical social problems of landowner-tenant conflict, an issue that the Japanese government had never

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[250] Section 1 of Owner-Farmer Establishment Special Measures Law. See also Ouchi, T. (1966). The Japanese Land Reform: Its Efficacy and Limitation. *The developing Economies, 4(2*), pp. 129-150 at 131.

[251] Takayama, T., Matsuda, H., Nakatani, T., & Saito, K. (2022). Do partial land rights increase productivity and investment? Evidence from the redistributive land reform in post–World War II Japan. *The Developing Economies, 60*(2), 77-100., Ohakita, H., Usui, N., & Kikuchi, M. (1997). *Productivity Impacts of Land Reform in Japan: Some Evidences from Yamagata Prefecture.* Retrieved from https://opac.ll.chiba-u.jp/da/curator/900026543/KJ00004283768.pdf

been able to attain due to the landlord class's vested interests. The reform broke with long-standing practices and customs by ceasing land tenancy disputes, which were common in the prewar era. The social and political stability of Japanese society after World War II was significantly impacted by the land reform in Japan, which can be said to be a highly successful reform in this regard.[252]

When looking back at Japan's agricultural history, agriculture remained a significant economic sector in the years before World War I, despite the Meiji government's strong preference for industrialization (1868–1911). The peasantry, which consisted of a large number of small family farms, succeeded from the Tokugawa period—which lasted from the seventeenth to the middle of the nineteenth century. Prior to World War II, Japan had 5.5 million households on farms, and almost 5 million hectares of cultivated land were designated for agricultural use.[253]

However, the legal status of the farming households increasingly deteriorated as the capitalist economy's expansion. The landlord-tenant system had been started by the end of the Tokugawa period in the more developed regions, such as Western Japan, where tenant farmers farmed about 30% of the land. Immediately following the Meiji Restoration in 1868, 30% of all arable land was occupied by tenants. This percentage progressively rose to around 45% at the start of the twentieth century, and then increased again to nearly 50% in the 1930s. In years of poor harvests or low farm prices, small-owner farmers frequently found themselves unable to pay the the high cost of the land tax fixed in cash and the small size of their land holdings. They had to take out loans from merchants and moneylenders, and they frequently lost their land as a result of foreclosure. There were 5 million landowners who owned roughly 6 million hectares of farmland as of the 1880s.[254]

There were two different types of landlords in pre-World War II Japan: village landlords and absentee landlords. Total absentee landlords in 1924 were 20,940 (25%) and village-based landlords with more than 5 hectors of land were 62,207 (75%) respectively.[255] This issue was primarily one of poverty. Almost fifty percent of the cultivated land in pre-war Japan was

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[252] Kawagoe, T. (1999). Agricultural Land Reform in Postwar Japan: Experiences and Issues. *World Bank Policy Research, Working Paper No. 2111*. Retrieved from http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2111 at 61-78.
[253] Ibid., at 12-13.
[254] Ibid., at 14-16.
[255] Nihon Nogyo Hatatsushi Chosakai (1955), Volume.7, pp. 669. from Kawagoe, T. (1999) at 48.

cultivated by tenants. The majority of farmers in the country only owned a third of the land they cultivated. A quarter of them rented out almost all of their land[256] as approximately 70% of farmers rented all or some of the land and the rent rate was 50% to 70% of the annual crop production, they farmed prior to the land reform.[257]

During World War II, the country faced starvation following the destruction brought on by the war. Domestic agricultural production had nearly reached its critical limit, and imports had been ceased. The country's severe food shortage had to be addressed by the government. Under the circumstances, major land reform was carried out between 1946 and 1950 with the Supreme Command of Allied Powers (SCAP) providing strong direction.[258]

When the Occupation Forces had not yet taken a firm position on the reform, the Japan Ministry of Agriculture designed an outline of the reform soon after the war. The first Land Reform Bill was drafted as an amendment of the Farmland Adjustment Law of 1938, and this proposal was approved by the Cabinet in 1945. The bill's three main provisions were the forced transfer of all land held by absentee landlords and all leased land belonging to other landowners with individual holdings larger than 5 hectares, substituting traditional land rent in kind with an equivalent cash rent determined by the price of the landlord's rice, and the restructuring of the Farmland Committees. The SCAP, however, disapproved of the land reform bill because it had many deficiencies, such as many absentee landlords were able to dodge the definition because the definition of an absentee landlord was not clear, and the legal definition of land transfers from landlords was not sufficiently covered by the law for nationwide land transfer.[259]

The SCAP and the Ministry of Agriculture continued their discussions as the initial plan was gradually developed and a drastic plan for land reform emerged. The revised plan, referred to as the second land reform plan in Japan, led to the enactment of the Owner-Farmer Establishment

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[256] Dore, R. P. (1958). The Japanese Land Reform in Retrospect. *Far Eastern Survey*, 27, 183-188 at 183.
[257] Williamson, M. B. (1951). Land Reform in Japan. Journal of Farm Economics, 33*(2),* 169-176. Retrieved from https://cooperative-individualism.org/williamson-mark_land-reform-in-japan-1951-may.pdf at 169.
[258] Kawagoe, T. (1999) ibid. in Footnote 250 at 27.
[259] Ibid., at 28 to 29.

Special Measures Law and an amendment to the Farmland Adjustment Law of 1938.[260] Thus, these two legislations became the two primary laws governing Japan's post-war land reform.

According to the Land Reform Program, agricultural lands that are targeted for the government purchase include: (1) those owned by absentee landlords; (2) those operated by tenants above certain retention rates; (3) owner-operated lands above the specified retention rates, excluding those that could be reasonably worked by the cultivator and his family; (4) Corporation-owned lands that did not directly contribute to the main work of the corporation; and (5) lands that were eligible for reclamation for agricultural use.[261]

As for the category of (1) those owned by absentee landlords, a question was the precise definition of what "absentee landlord" was. Landowners were considered an absentee if they did not live in the village where their land was leased out Therefore, land that farming landlords leased out and that extended into nearby villages was therefore thought to belong to absentee landowners. As for the category of (2) those operated by tenants, the ceiling of the compulsory purchase was set at more than 1 hectare in size (4 hectares in Hokkaido prefecture). If owner-cultivated land was found to be inefficient in terms of land productivity and measured in excess of 3 hectares (12 hectares in Hokkaido), it was to be purchased. These restrictions were to be imposed on a per-household basis.[262]

As for the procedure of the compulsory purchase of farmland, three levels of land committees were established: the village (or town), prefecture, and central land committees. The members of each level of land committee consisted of ten members, including five tenants, three landlords, and two owner farmers, each of them independently elected from the corresponding groups. The Village Land Committee made the draft proposal of the purchase plan, which the Prefecture Land Committee approved, before the government made the actual purchase. When the initial land reform plan was released to the public on November 23, 1945, that date was used as the foundation for the pricing of the purchase plan.[263] The government then resold the acquired the lands through the Village Land Committee to qualified purchasers. Priority was given to existing

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[260] Kawagoe, T. (1999) ibid. in Footnote 250 at 29.
[261] Williamson, M. B. (1951). ibid. in Footnote 255 at 171.
[262] Kawagoe, T. (1999) ibid. in Footnote 250 at 30.
[263] Ibid., at 31.

tenants as of November 23, 1945, followed by additional tenants, other tenants, and people who wanted to cultivate the land. The amount paid by the government to the original owner and the price paid by the buyer typically corresponded. Cash up front or payments spaced out over 24 years at 3.2 percent interest were the buyer's two available payment choices. Land purchased from the government could not be subject to liens or other encumbrances.[264]

The implementation of this compulsory purchase and sales was efficient and drastic: following the initiation of land reform, the majority of the tenancy farmland was transferred to cultivators within five years.[265] While almost 50 % of the nationwide farmland was farmed by the tenant farmers prior to the reform in 1941, tenant held land decreased to thirteen 13% by 1949, when the land reform project was almost finished, and further decreased to 9% by 1955. As a result, the percentage of owner cultivators rose from 31% in 1941 to 70% in 1955, while the percentage of tenant farmers—those who rented out most of their farmland—dramatically decreased from 28% to 4% during the same period. The percentage of tenant cum owner farmers—those with less than 50% of their total cultivable area under ownership—was decreased, falling from 20% to 5%.[266]

During this drastic reform, 80 to 90% of the land that used to be held by absentee landlords, which is estimated to be around 560,000 hectares, was compulsory purchased, and roughly 70 to 80% of the cultivated land from this 80 to 90% that used by cultivated by the tenants. As a result, landlordism was outlawed in Japanese agriculture.[267]

In summing up the entire process of land reform in Japan, the central finding is the effort of the Japanese government to prepare for land reform prior to World War II under the SCAP. The Japan Ministry of Agriculture drafted the first comprehensive land reform bill to address the central land issue in Japan, but this bill was amended prior to the release of the official land reform laws, The Owner-Farmer Establishment and Special Measures Law and the Agricultural Land Adjustment Law 1938, with the approval of the SCAP. However, the initial performance of the

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[264] Trewartha, G. T. (1950). Land Reform and Land Reclamation in Japan. *Geographical Review Journal, 40*(3*),* 376-396 at 383.
[265] Ibid., at 383 (the land reform started in 1945 and finish in 1949)
[266] Kawagoe, T. (1999) ibid. in Footnote 250 at 33.
[267] Ibid., at 32-33.

Japanese government in preparing for land reform appears to bode well for its successful implementation. Consideration of social justice in the land reform process is the second finding. The owner cultivator principle was implemented, which means that the actual cultivator had a chance to own the land under land reform, and the protection of farmers' rights is evident, as the government granted absolute ownership rights to farmers who could be transferred land by following the restrictions under the land reform program. The third finding is the consideration of the Farmland protection policy after the land reform under the Agricultural Land Law of 1952 by granting autonomy to agricultural committees for farmland transactions, despite criticism for the strict control on the farmland market imposed by the Agricultural Land Law to freeze the mode of agricultural production (Kawagoe, 1993).

5.2.2 **Farmland Ownership in Japan: Exclusive Use and Restriction of Transfer**

On July 15, 1952, the Japan Agricultural Land Law (hereinafter JAL Law) was released and went into effect on October 21 of the same year. The primary goal of this legislation was to maintain the accomplishments and successes of the Japan Land Reform, which took place between 1950 and 1954. This law grants farmers ownership rights while also encouraging an economically stable environment for owner farmers.[268] The JAL Law safeguards the owner farmers from being taken advantage of by Japan's feudalistic system while also aiming to sustain the reform in the agricultural structure.[269] This Section will explore the legal design of the 1952 JAL Law with emphasis on the mechanisms to secure the farmers' ownership rights following the initial land reform by imposing some limitations for farmland sale, lease, mortgages, and use changes.

The JAL Law was not brand-new, but it was a comprehensive compilation of the Owner-Farmer Establishment Special Measures Law, the Farmland Adjustment Law, and Order No. 307 of 1950. The markets for farmland were strictly regulated by the Agricultural Land Law. Farmland transactions required the local government's approval. Landlords were not permitted to sell the rented land to anyone other than the tenants, so if the land was leased, the cultivator was the only

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[268] *Annual Report of Land Policy (1952),* Agricultural Land Bureau, Ministry of Agricultural and Forestry, Nochi Nempo, Tokyo, at 220.
[269] Kajita, M. (1965). Land Policy after Land Reform in Japan. *The Developing Economic, 3(1)* at 91. (https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1746-1049.1965.tb00749.x)

potential buyer. It was nearly impossible for landowners to expel tenants who were cultivating land because tenancy rights were so fiercely protected. Although landlords in the village were permitted to keep up to 1 hectare of leased land, absentee ownership was not permitted. As a result, if village landowners relocated outside the village, their leased land was considered absentee and subject to compulsory purchase.[270]

The main purpose of this law is provided in Article [271] 1 of the JAL Law. By controlling the conversion of agricultural land, this JAL Law seeks to stabilize the position of cultivators and promote domestic agricultural output in light of the crucial role that farmer ownership of farmland has played.

The Chapter 2 of the Act sets restrictions on the transfer of agricultural land and rights. Although there are some exceptions under Article 3 of the JAL Law, the Agricultural Commission of Japan (JAC) plays a significant role in granting permission on the sales, lease and mortgages of farmland by its discretion within the conditions provided by the Act. This permit is only allowed under Article 3(2) of the Act, to a person who is engaged in agricultural business and has previously acquired the JAC's permission. The revocation of once permitted transfer is also provided by Article 3-2(1) of the JAL Law: particularly, when the right holders do not conduct agricultural business on transferred land or when the transferees' operations impair nearby agricultural activities. The JAC must revoke the permission if they find a breach of Article 3-2(1).[272]

According to Article 4(1) of the JAL Law, farmland use conversion is restricted and requires the consent of the prefectural governor and the relevant mayor. However, there are various exceptions listed in Article 4(1) (I to VIII). One of the important things to take into account for the farmland conversion under Article 4(3) is the opinion of the JAC. And before approving the conversion, the head of the prefecture must hear the JAC's opinions under Article 4(9).

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[270] Kawagoe, T. (1999) ibid. in Footnote 377 at 34.
[271] In order to be consistent with previous academic works, books, and papers, the author uses the term "Article" to refer to law provisions in Japanese legislations, and the term "Section" refers to law provisions in Myanmar and India.
[272] Article 3-2(2) of the Agriculture Land Law.

Recently, however, the JAL Law is facing the pressure of repeated changes meant for the deregulation of farmland security policy which has guided the country's agricultural sector since the post-WWII era. The first amendment of the JAL Law was carried out in 2009 with a focus on the liberalization of the leasing of agricultural land to all types of corporations, by amendment of Article 3(2), which prohibited the lease of farmland to the corporations other than agricultural production corporations. Further, in 2015, a second amendment was implemented which realized the following three proposals: 1) amendment of the Agricultural Land Law to deregulate the restriction of farmland sale to corporations; 2) amendment of the JAL Law to remove the restriction on land use change; and 3) amendment of the Law on JAC Land to abolish the direct election process of its members and replace it with the nomination by the municipal mayor. Additionally, the third amendment was performed in 2019 for eliminating the prefecture governor's permit system of "Land Concentration/Grant Plan" by the mayor.

To understand the reality of the impact of deregulation of the JAL Law, the author conducted interviews in March 2023 with the mayor, the officials in charge of agricultural policy, and local farmers in Yabu City in Hyogo prefecture, Japan. Yabu city is a rural municipality located in the most mountainous areas in Hyogo prefecture with a population of not more than 20,000 people. It was designated in 2014 by the national government as the first ever case of the National Strategic Special Zone under the 2013 Law on National Strategic Special Zone. Due to this designation, Yabu city was exempted from the farmland transfer restriction under the 1952 JAL Law, and successfully invited investments by 13 non-agricultural corporations from the urban regions of the country.[273] Yabu city's success was largely reported nationwide, and utilized as the governmental campaign leading to the 2015 amendment to the JAL Law. However, the author's interviews have identified some different facts from what are often reported.

On the author's question of whether the farmland sales have increased in Yabu after the deregulation of farmland transactions, the answer was negative because most of the investing corporations have utilized the lease form, mostly through Intermediary Organizations for Agricultural Land Management established under the 1980 Law on Promotion of Strengthening of

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[273]Yabu's Challenge: National Strategic Special Zone and Regional Revitalization,Yabu City, (2022) and See Yabu City webpage (https://www.city.yabu.hyogo.jp/soshiki/sangyokankyo/nochiseisaku/1_1/1_1/6176.html).

Agricultural Operation Basis, instead of owning farmland. This interview result was also confirmed by Prof. Kinugasa and her research team at the School of Economics at Kobe University who found that all interviewed corporations in Yabu Strategic Special Zone depend mostly on the lease form rather than farmland ownership.[274] Ironically, Yabu city's mayor, Sakae Hirose, claimed in the author's interview that he has aimed to preserve Yabu's traditional agriculture-based socio-economy through the promotion of Yabu's Strategic Special Zone, instead of weakening it. In fact, the actual practice of the city has been centered on the catalytic role of daily coordinating between the investors and the local communities. Leasing of farmland to outside investors always requires the community's prior approval and is subject to specific conditional requirements imposed by the community's side. Mayor Hirose emphasized that investors are required to withdraw if these conditions are not satisfied, by returning the possession of land to the original community.[275]

To the author's question on the results of performance compared between individual local farmers, agricultural production corporations (less than 25% of non-agriculturalists participation), which are eligible for farmland purchase since the start of the 1952 Agricultural Land Law, and the non-agriculturalist corporations under the Strategic Special Zone, a clear answer was not obtained from the local officials in charge.

Asked about the socio-economic benefit brought to Yabu as the overall result of deregulation, while there was a certain reduction of fallow land confirmed, agricultural productivity did not see a significant change, which corresponded to the result of the questionnaire survey conducted by Kinugasa in 2019, where less than 50% of the total 1,222 agricultural households answered that they had positive expectations for the Strategic Special Zone.[276]

In conclusion, we cannot deny the role played by the 1952 JAL Law in upholding the status quo of the agriculture land reform that abolished landlord exploitation during the pre-World War II period. Even though the Law was amended in 2015, the author's interviews in Yabu city imply

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[274] Kinugasa, T., Eto, A., & Yasuda, K. (2020). Evaluation of the Effect of Yabu National Strategic Special Zone. *Kobe University School of Economics Discussion Paper No.2006*.

[275] The author conducted interviews in Yabu City, Kobe, from March 19 to March 21, 2023, by meeting with the mayor of Yabu City, representatives of the government, and some investors who are conducting business in Yabu City.

[276] Kinugasa, T., Eto, A., & Yasuda, K. (2020). ibid. in Footnote 271.

that the results of deregulation by such law amendment has been nominal. To understand the causes of such stable functioning of the 1952 JAL Law, we should next look into the characteristics of the structure and function of the JAC, which is the heart of the implementation of land transfer restrictions under the Law.

5.2.3 **Agricultural Commissions in Japan: Farmer's Autonomy**

In Japan, a variety of agricultural land issues have been managed by the JAC, a distinctive administrative body based on the local autonomy. In 1938, the JAC was established in accordance with the Agricultural Land Adjustment Act, which was the first agriculture related organization in Japan, and was formed to mediate conflicts between landowners and tenant farmers. The Law required the establishment of the JAC in every local government, whose members were chosen by the prefectural governments' economic departments. Between 1945 and 1951, considerable changes in agricultural policy occurred. A system of direct elections for commission members was put into place when the Agricultural Land Adjustment Act was updated in 1947. The JACs were envisaged as the central institutional basis for the implementation of the post-WWII agricultural land reform, where all absentee owners were required to give up ownership, while the local landowners were allowed to hold the land for their own cultivation. The Agricultural Land Commissions took the responsibility to design the whole plan of land purchase from landlords and distribution to the tenants.[277]

After the agricultural land reform was completed in 1950, the Law on Agriculture Commission was introduced in 1951 to newly form the present JAC in each municipality by combining the former Agriculture Land Commission, Agriculture Extension Commission, and Agriculture Adjustment Commission. Then, the 1952 Agriculture Land Law was passed, which placed the Agricultural Commission as the principal institution responsible for enforcing the Law's goal of farmland security.

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[277] Godo, Y. (2013). *Agricultural Commissions in Japan*. [Professor, Meiji Gakuin University, Tokyo]. at 1-2.

The JAC succeeded the direct election system of members from the previous law. In order to be eligible to vote and be elected to a JAC, a person must be at least 20 years old and meet at least one of the following three criteria: (1) A person who farms for more than 60 days a year and lives with someone who farms so, (2) A person who farms for more than 60 days a year and is a member of an agricultural legal entity, or (3) A person who farms for more than 60 days a year and is self-employed. The Public Offices Election Law governs the election of commission members, who serve three-year terms. The Law clearly stipulates the maximum number of elected commission members that may be appointed in accordance with the total area of agricultural land and/or the total number of farm households in a municipality.[278]

To guarantee the basis of independence of the JAC, the mayor is obliged to allocate funds to each local agriculture commission. A JAC's office personnel are selected and/or dismissed in line with the JAC's own decisions, and a municipal mayor is not allowed to influence such decision-making.[279] Although the Law on Agriculture Commission has undergone a number of revisions, its essentially independent structure and autonomous function has not been changed until the recent amendment in 2015, which abolished the direct election system of the members.[280]

5.2.4 **Proof of Ownership**

In Japan, regardless of the non-existence of documentary evidence such as land registration, ownership can be asserted in the court, based on the doctrine of "natural determination of ownership" that decides the ownership based on the proof of most substantially significant control over the land.[281] However, in the recent government campaign that the existence of numerous land parcels "without identifiable owners" has caused great economic loss, a series of new legislations have been introduced for facilitating the utilization of such "land without identifiable owners." In 2018, the Law on Special Measures for the Facilitation of Utilization of Land Without Identifiable Ownership was introduced, and in 2019, the Law on the Adjustment and Administration of Land

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[278] Godo, Y. (2013). ibid. in Footnote 274 at 4.
[279] Ibid., at 3-4.
[280] Ibid., at 3.
[281] The Mita aqueduct case (Supreme Court decision dated 18th December 1947, reported in Shoumu Geppo Vol. 15, No. 12, p. 1401) and the Dotonbori case (Osaka District Court decision dated 19th October 1976, reported in Hanrei Jiho No. 829, p. 13), etc.

with Unidentifiable Ownership in the Heading Section Registry followed, which introduced a procedure of land development through a court order for the management of land with an unidentified owner, upon an ex officio survey by the registry officer (article.3 through 8).

The author was interested in the reality of this implementation of ex officio survey by the registry officers, and conducted an interview with the Kobe Judicial Bureau's Registration Office on January 12, 2023. The interview revealed that the officers consistently visit the site to thoroughly review all available materials and gather testimony from relevant community members before conducting an ex officio registration as “Land with Unidentifiable Ownership”. The officers explained that this cautious approach is taken in preparation for the future legal disputes which can be raised be a true owner against the government, probably based on the claim of acquisitive prescription. This cautious practice differs from Myanmar’s issuance of title certificate of “Cultivation Rights” which is given a finality under the law excluding the judicial review relying solely on pre-registration government data and information and mistakes and arguments will decrease as a result because of this detailed performance.

5.2.5 **Land Expropriation Law in Japan**

There are also certain aspects which can be learned from the Japanese legal system on land expropriation for the future reform of Myanmar’s outdated 1894 Land Acquisition Law. Article 29, Section 1 of Japan’s Constitution states that “the right to own property is inviolable,” but in Sections 2 and 3 continues, “property rights shall be defined by law, in conformity with the public welfare; and private property may be taken for public use upon just compensation therefor.” Based on Section 3, the Land Expropriation Law (hereinafter JLE Law) was adopted in 1951, which serves as the foundational legal framework for acquiring land for public purposes, together with the Law of Special Measure for Land Acquisition of 1961 which addresses the urgent expropriation of lands for the social and economic well-being of society.

The first relevant point for Myanmar is the wider target of property rights protected under the JLE Law. Different from the practice in Myanmar of only targeting the registered land rights, the 1951 JLE Law (Article 5) explicitly covers all affected property rights such as leaseholds, tenancy, mortgages, mining rights, access rights to hot springs, etc. in addition to ownership itself,

without regard to the registration, and a series of Japanese Cabinet Decisions in 1960s further extended its coverage to communities' public facilities, and case laws at Japanese courts have further extended the coverage to natural and cultural heritage sites.[282]

Another characteristic of Japan's land taking is a layer of procedures dedicated for amicable settlements. In actual practice, the project initiator, landowners, and interested parties first negotiate as a triangular approach to complete the voluntary land purchase. When such negotiation fails, land expropriation procedure is started, but the mediation system is available during its process.[283] In addition, "consultations" and "arbitrations" processes were created by adding Articles 15-2 through 15-13 under amendment of the 1951 JLE Law in 2001. The prefectural governor appoints the members of the mediation committee, who coordinate the parties' interests and push them toward a resolution during mediation. Only situations involving compensation are subject to arbitration proceedings, which are initiated by both parties and intended to settle their disagreement. An arbitral award is rendered by the members of the arbitration committee that the prefectural governor appoints, and it serves the same purpose as a verdict that is conclusive and binding.[284]

Another characteristic of the JLE Law is the listing of project categories presumed to meet the "public purpose" requirement under Article 3, which is a device to prevent the conflicts on the ambiguity of its interpretation. Namely, Article 3 of the JLE Law lists 35 total sectors of projects that are eligible for expropriation by purchase or compelled use of land, such as building roads, rivers, water supplies, railroads, and facilities for disposing of garbage, based on the particular laws and standards. So long as a project does not fall within one listed in Article 3 of the legislation, even if it is a large project that appears to bring almost the same advantages to society that cannot expropriate property.[285]

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[282] See e.g., Niko-taro-sugi tree cutting case, the Tokyo High Court on July 13, 1973 from Kadomatsu, N. (2008). Functions of the Proportionality Principle in Japanese Administrative Law. *Academia Sinica Law Journal*, *(22),* 203-242. http://dx.doi.org/10.2139/ssrn.3401898 at 219-222.

[283] Kotoka, T., & Callies, D. L. (Eds.). (2002). *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries*. University of Hawaii Press. pp. 198. Retrieved from http://www.jstor.org/stable/j.ctvvn148 at 147.

[284] Article 15(2)/ (3) of the Land Expropriation Act 1951.

[285] Kotoka, T., & Callies, D. L. (Eds.). (2002). ibid. in Footnote 280 at 147.

However, the listing in Article 3 does not alone conclude the lawfulness of expropriation. Apart from this listing of project types under Article 3 which are presumptively regarded as "public purposes," the case law of the Japanese court has rigorously applied the requirements of Article 20 of the same Law, since the ruling in the Niko-taro-sugi tree cutting case by the Tokyo High Court on July 13, 1973. Article 20 outlines the requirements for the project permit for land expropriation by the Minister of Land, Infrastructure and Transfer, or the prefecture governor, including (i) included in the list in Article 3: (ii) the ability of the constructor, (iii) the project contributes to the adequate and reasonable land use; and (iv) public needs.

In this process of the expropriation permit, an independent administrative panel known as the Expropriation Commission plays a central role, which is also one of the central characteristics of Japan's expropriation system. It has the authority to decide in a fair and impartial manner with a view to striking a balance between the public interest and private ownership. The commission is composed of 7 members chosen from among those with expertise and understanding in legal, economic, or administrative concerns by the prefectural governor, with the approval of the prefectural legislature.[286] The commission members execute their authority independently from the prefectural governor and any other organs, despite being selected by the prefectural governor.[287]

After project preparation is complete, the project's initiator begins negotiations with the landowner as well as other interested parties for the expropriation and payment of the land. After the project has been approved, the project initiator is obliged under Articles 35 and 37 of the Law to investigate the land and other things, make a record of them, and then submit the land and other items for approval again. In accordance with Article 39 of the Law, the project initiator has a year from the day the project was recognized to ask the expropriation committee for a ruling on expropriation. According to Article 101 of the Law, the project's initiator will gain land ownership when the acquisition of rights is determined by the decision for acquisition of rights. Anyone who disagrees with the expropriation committee's decision has the right to ask the minister of

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[286] Article 51 to 55 of the Land Expropriation Act 1951.
[287] "Outline of the Land Expropriation Proceeding", Expropriation Commission, Tokyo Metropolitan Government, at 5.

construction to look into it under Article 129 and to file a lawsuit related to the decision on loss compensation under Article 133. The cabinet resolved on "The Guideline of Standard for Compensation for Loss Caused by Acquisition of Land for Public Use" in order to implement complete compensation with regard to compensation under the JLE Law.[288]

5.3 Consideration for the Future Land Law Reform in Myanmar

This section will provide specific recommendations for future land law reform in Myanmar, based on the overall considerations on the findings from the previous discussions on the research question stated in Chapter I for understanding the fundamental causes of land related conflicts in current Myanmar, and realizing the balance between both policy needs of economic growth and the fulfillment of social justice.

5.3.1 Redefining Farmers' Land Rights

As we identified in the farmers' questionnaire in Chapter III, an overwhelming majority of farmers in Myanmar have a strong belief that they hold "Bobapaing" rights, which is the traditional paramount land rights that were even protected from the King's taking in the pre-colonial era as shown in Chapter II. To this, government officials have the opposite perception that farmer rights are as weak as tenancy rights of state-owned land. The author finds that such a perception held among government officials is a negative heritage from the past legal history, including the vulnerable concept of "Landholder's Right" during the British colonial era which was a tenancy right easy to be revoked by a unilateral decision by the government as the sole owner of national land, and also Section 18 of the 1974 Constitution which applied the socialist nationalization policy of the whole national land. The author contends that an objective-based interpretation of Section 37(a) of the present 2008 Constitution, read together with Section 37(b) of the same Constitution on the state's obligation to protect private property rights, is the declaration of the state's responsibility of land management to protect the national people's property rights, which is equivalent to Section 30 of the 1947 Constitution of the Union of Burma.

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[288] Kotoka, T., & Callies, D. L. (Eds.). (2002). ibid. in Footnote 280 at 148 to 156.

Accordingly, based on a proper understanding of Section 37 of the present 2008 Constitution, future land law should establish farmers' rights as a strong ownership right. The current "Cultivation Right" under the Farmland Law only creates an impression of a vulnerable tenancy or tentative possession right, which causes the fundamental gap from the expectation of social justice held by the people based on their "Bobapaing" rights.

5.3.2 **Restriction of Land Transfer to be Managed by Local Bodies**

Even after recognizing farmers' rights as "Bobapaing" rights, a certain control of land transactions should be maintained at least during the period of rapid economic development so as to mitigate the negative impact of social changes. As aforementioned, legal mechanisms for land control in Myanmar have often shown malfunctions, such that the permit system of farmland sales or lease has been decided according to the upper-level administration which lack knowledge of the facts, and that the permit system for farmland use changes by upper-level administration has often resulted in the promotion of economic projects against the local will and without proper compensation. But Myanmar may learn from the experience of Japanese law, as discussed above, where the 1952 JAL established the JAC system as an autonomous institution consisting of locally elected commissioners from among the local farmers and take in charge of land control based on accurate knowledge of the local conditions and needs. The author, therefore, contends that future reform of Farmland Law in Myanmar should reinstate the prior permit procedure of farmland transfers, and at the same time, establish the local-level Farmland Management Body based on the general election among the farmers, and provide the Body the autonomous power to decide on such permits.

Such a permit system of land transfer is different from an absolute prohibition as applied in the socialist era, but will be implemented wisely according to the local conditions. It may realize a compromise between the need of economic growth through land transactions and the social control of farmland. While the tight restriction of the farmland transaction is not advantageous for Myanmar's future agricultural sector, one trait is the promotion of the mode of investment by taking the form of a lease rather than a land transfer, in order to bridge the gap between the promotion of investment and the preservation of farmers' interests. A reference is made to the

long-term lease utilized in the agricultural communities in the Strategic Special Zone of Yabu city in Japan, which are typically arranged by the Intermediary Management Organization established by the government, as a way of realistic compromise given the Myanmar tradition similar to Japan where local farming households have strong ties to their ancestral land.

Such a wisely balanced land management can be made possible through the independence of a local farmland management system. A reference is made to Japan Agricultural Commissions, whose members used to be chosen by the direct election of local farmers, until the recent deregulation of the Agricultural Commissions Law in 2015. Presently, the members of Myanmar's local Farmland Management Bodies are appointed by the government, and therefore, the decision-making of local Bodies are largely controlled by the upper level, resulting in land disputes.

5.3.3 **Proof of Farmers' Land Rights**

Chapter III identified the gap between the government and people in terms of the requirements in proving the existence of farmers' rights in various stages of land administration, in particular the issuance of title certificates of "Cultivation Right" (Form 7) under the Farmland Law. Once a famer fails in his proof and thus cannot obtain this title certificate, his land is treated as a vacant or fallow land under the 2012 VFVLM Law, and the eligibility of objection procedure and compensation under the Land Acquisition Act is lost. The government side basically takes a formalist approach to require documentary evidence while treating the claims lacking documents as mere "customary land users", but the majority of farmers believe that they can prove the rights by testimony on the facts of "actual cultivation". There are also various discrepancies between them on the criteria of "actual cultivation," such as whether "actual cultivation" can include cultivation by lessees, how long such "actual cultivation" needs to continue, whether tentative suspension of cultivation for fertilization purpose can be counted for the period of "actual cultivation", and how many years of such suspension would result in the extinction of rights.

Given the finality of government decisions on the title of "Cultivation Right" under the present compulsory registration system, such decisions have to be made on substantive investigations, instead of a mere documentary review. In this regard, the aforementioned Japanese practice of substantive investigations made by the local branches of the Legal Bureau for the ex

officio registry of "land with unidentifiable owner", in which a careful onsite investigation is done for every case, in preparation for the possible future judicial claim by true owners. Even though the current Farmland Law in Myanmar assured the finality of the government decision excluding the judicial review, the constitutionality of such finality may be questioned in the future, and the government will be required to prepare for future claims as Japanese practice. Given the reality in Myanmar that most local farmers lack access to the land registration system since the government registration office is located extremely far, and the land taxation practice is also usually only done based on the book, the need of the government's substantive investigation is all the more necessary.

As for the basis for such governmental role of substantive investigation, the legal historical review in Chapter II might offers some hints. The author investigated the original concept of "Bobapaing" rights provided in the formal code *Dhammathat* in the King's era, and recognized the rule of proof consisting of two stages: the first stage is *Myaeshin*, which is initiated by four origins ("Damaugya" as initial clearance of vacant land, king's grant, purchase by contract, and inheritance) but still not absolutely uncontestable; and the second stage is *Myaethay*, which is the uncontestable absolute right as the result of continued cultivation for many generations. Since the "Bobapaing" was a typical *Myaethay*, once established "Bobapaing" had no more need for proof of its existence.

In light of this legal tradition of Myanmar, the local farmers' strong perception, depicted in Chapter III, that they do not need any documentary evidence for their "Bobapaing" right is logically acceptable. Accordingly, the author contends that the Farmland Law should be amended to require the ex officio substantive proof by the government as of the land title registration, and in its objection procedure, and delete the "finality" clause to make the registration as voluntary evidence, instead of the final one, subject to the judicial review based on the farmers' claims of unregistered "Bobapaing" rights based on testimony of "actual cultivation".

This amendment will bring about solutions for numbers of land conflicts in the course of land titling, vacant and fallow land management and land acquisition cases, toward the satisfaction of people's notion of social justice.

5.3.4 **Overcoming the Vacant, Fallow and Virgin Lands Management**

As the author described in Chapter I, one of the critical causes of land disputes in current Myanmar is the wasteland management, or the government's unilateral confiscation of land without compensation based on the declaration that such land is vacant or fallow land. This notorious government practice known as "land grabbing" peaked during the military reign under the 1991 Vacant, Fallow and Virgin Lands Management Procedure (Notification No. 41 of 1991), but, actually, it was a rebirth of the colonial 1861 Waste Land Management Act and the 1889 Upper Burma Land and Revenue Regulations, and is succeeded in the contemporary 2012 Vacant, Fallow and Virgin Lands Management Law.

Even though an amendment to the 2012 Law was introduced in 2018, its main change was the expansion of coverage into forest and coastline areas,[289] which left the wasteland management mechanism mostly unchanged with the exception of minimal potential for local engagement.[290] While encouraging the local landless population to apply for the wasteland grant is emphasized in Section 5(a), the criminal penalties for resisting eviction have increased in Section 27. Therefore, this only serves to highlight the policy of further enhancing this colonial-inherited land exploitation mechanism.[291]

The author believes this notorious legal framework for exploitation in Myanmar should simply be abolished. But if the government has difficulty in its abolishment, a possible compromise would be, again, the strengthening of the autonomous power of the local-level FMB, instead of the current top-down mechanism by the Central Committee for Vacant, Fallow, and Virgin Lands Management, which was established by the President under the Ministry of Agriculture and Irrigation,[292] in consultation with the Myanmar Investment Committee (MIC).[293] Also, if future amendment of Farmland Law achieves the strengthening of farmers' rights as "Bobapaing" and its proof is made possible through the testimony of "actual cultivations," the risk of abuse of the 2012 Vacant, Fallow and Virgin Lands Management Law will be reduced.

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[289] Section 2(f) of the 2018 Amendment Law.
[290] Ibid., Section 3(a).
[291] Kaneko, Y. & Ye Naing Lin (2021) ibid. in Footnote 33 at 258.
[292] Section 3 of the 2012 VFVLML.
[293] Ibid., Section 7.

5.3.5 **Centralization and Improvement of Land Acquisition Act**

When a property right is infringed by the government, lawful procedure and compensation is the constitutional requirement (2008 Constitution, Section 21(d) and 356). However, there have been plenty of routes to evade the Land Acquisition Law, such as ignorance and eviction during the land titling procedure of unregistered farmland as "customary land users," and also the eviction under the 2012 VFVLM Law. Therefore, the centralization of the Land Acquisition Act in the government development planning, with the coverage of both registered and unregistered land rights is the necessary step toward the mitigation of land conflicts in Myanmar. If the future amendment of Farmland Law achieves the strengthening of farmers' rights as "Bobapaing", and its proof is made possible without documentary evidence of land registration, then, the target of the Land Acquisition Act will naturally expand to cover all such "Bobapaing" rights.

In addition, a century old Land Acquisition Act succeeded from the British era definitely requires an overhaul. In particular, the government's unilateral power of declaration of "public purpose/ public interest" (Section 6) which is final and free from judicial review (Section 7) should be changed into a contemporary participatory procedure.

In this regard, the bill of the 2019 Land Acquisition, Resettlement and Rehabilitation Law, which was considered at the Union Parliament but did not reach promulgation because according to Section 1(b) of the law, a presidential notification is needed to enforce the law but there is no presential notification to enforce the law till now, should require a study. It contained the provisions for "early participation" that allows for the incorporation of an objection mechanism before the declaration of acquisition's effects are finalized.[294] The 2019 Bill seems to have specified an administrative objection procedure,[295] which may give an affected group of people the opportunity to exercise a stronger bargaining position to impact the appropriateness contest between the public purpose and adequate compensation.

To avoid future property complaints and conflicts over land acquisition methods, the government's precise interpretation of what the term "public purpose" means in this context is truly necessary for the land acquisition mechanism, as seen by the example under Section 3 of the Japan Land Expropriation Act which lists the categories of public purposes, and should be subject to judicial review.

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[294] Section 28 of the 2019 Land Acquisition, Resettlement and Rehabilitation Law.
[295] Ibid., Section 21-23.

Chapter VI

Conclusion and Recommendations

This chapter will conclude the overall analysis of the previous chapters, and make a certain recommendation for the future land law reform and administrative implementation in Myanmar. Following the presentation of research question and hypotheses in Chapter I, Chapter II of this study clarified the changing legal nature of farmers' rights under Myanmar's formal law from a legal historical perspective. Then, Chapter III explored the gaps between the government implementation of current formal law and the people's perceptions on their rights on the ground, based on the author's empirical surveys in four townships from different regions in Myanmar. Chapter IV investigated the historical paths of land law reforms in four states in India from a comparative legal perspective, with the expectation to seek hints for an alternative way for better redefining farmers' rights in Myanmar to overcome the enlarging perception gap between the government and the local people. Chapter V presented overall discussions based on the findings from previous chapters as well as additional knowledge obtained from the author's interview surveys in Japan.

6.1 Need of Land Law Reform for Policy Balancing

In Chapter I, after describing how severely land disputes emerged in Myanmar under the 2012 land law reform performed by the U Tein Sein government for the stimulation of economic growth through land transactions, the author raised the research purpose dedicated to the legal designs of land law which can concurrently achieve two goals of economic growth and social justice. Based on the author's own experience of taking in charge of land dispute resolution at the Special Scrutinizing Committee for Land Confiscation established in all administrative levels under the Presidential Notification No. 14 in 2016 together with the 52 Policy Principles rendered by the President Office as the normative basis for such dispute resolution, and guided by the knowledge obtained from literature review, the author raised the hypothesis that the lack of consensus between the local people and the government operations regarding the legal nature of farmers' rights on land is a major cause of land conflicts, as particularly revealed in the government practice of treating the farmers lacking a land record or other documentary evidence as mere

"customary land users" easy to be evicted by an unilateral decision by the government, while the farmers insist on their strong rights free from land taking without formal procedure and compensation. Also, a related hypothesis is that the perception gap between the people and the government on the requirements for the proof of farmers' rights constitutes another critical cause of disputes, as the people insist their continued cultivation for many generations as the sole evidence of such rights, while the government tends to require a strict sense of "actual cultivation" together with the documentary evidence. By mitigating these perception gaps on the nature of farmers' rights and the method of proof, the author has intended to propose a better legal design for balancing between the government's growth-oriented policy and the people's sense of justice.

6.2 "**Cultivating Right" as a Negative Inheritance from Legal History**

In Chapter II, the author investigated the historical changes of the nature of farmers' rights and the method of proof thereof according to six stages up to the present: (1) the pre-colonial period, (2) the British colonial period, (3) the post-independence period under the 1947 Constitution, (4) the socialist era starting in the 1960s care-taker government and particularly under the 1974 Constitution, (5) the post-1988 military regime, and (6) the present stage after the 2008 Constitution. The major findings in Chapter 2 include that during the King era (Chapter II, 2.1), the traditional "Bobapaing" land right was recognized as the formal land right of farming households by the written code *Dhammathat* as well as accumulated judicial case law *Hpyathon* and king's law *Yarzadat*, with the absolute and stably permanent legal nature which was free from the King's seizing, and was proven its existence by the result of many generations of continuous cultivation after the initial start as either (i) "Damaugya" right on land cleared from forest, (ii) king's allowance, or (iii) getting the lands from transfer. However, this strong legal nature of "Bobapaing" land right was altered during the colonial period (Chapter II, 2.2). British colonial law eliminated such absolute nature of "Bobapaing" by establishing the dualistic land regime in Upper and Lower Burma. Specifically, in Upper Burma, it denied various categories of private land tenures by introducing the state land/non-state land separation, where the land was automatically deemed as state land unless the proof of "Bobapaing" was successfully done. In Lower Burma, the farmers could obtain a "Landholder's Right" as "a permanent heritable and

transferable right of use and occupancy" (Land and Revenue Act, Section 8), which was a mere tenancy right on the state-owned land, even though transferable. The legal nature of such a Landholder's Right was susceptible to governmental revocation in the event that the farmer failed to comply with the various requirements established by the government under colonial law, including the obligations to pay land revenue (Land and Revenue Act, Section 7). The initial requirement for the proof for obtaining a "Landholder's Right" was 12 years' continuous occupation by oneself or by servant, agent, tenant or mortgagee, or by some other person paying land revenue (Land and Revenue Act, Sections 3(a) and 7), but after 5 years from the registration of a "Landholder's Right", such registration became final evidence, which even the court could not deny (Land and Revenue Act (Sections 16, 17), and excluded the claims of adverse possession (Limitation Act, Sections 26-27). This finality effect of registration put aside unregistered farmers outside the formal system as mere "customary land users". Following the nation's independence in 1948, the 1953 Land Nationalization Act aimed at the redistribution and security of farmers' land rights, but it did not detail the legal nature of such rights more than a general description of "rights to possess, to cultivate and enjoy all the benefits" (Section 9 (1)), and "rights to sell or transfer the possession to agriculturalists" (Section 10 (1)). Instead, it contained various causes of the state's power of forfeiture and reclamation of land rights without compensation, including the failure of meeting the obligations to pay taxes, not to make the land fallow, and the prohibition of lease (Sections 11 (1), 12 (1), 29-32) as well as the permit system of inheritance for agricultural use (Section 9 (2), Section 10 (2)), which was not different from the state's tenancy structure of "Landholder's Right" during the colonial time. The institutional system of state control was based on the District Land and Rural Development Councils put under the central control through the appointment power concentrated to the union president (Section 22), which exercised the same power as vested in a Civil Court under the Code of Civil Procedure (Section 22).

Such weak legal nature of farmers' rights was further weakened under state control during the Ne Win era with the increased state discretion as "the ultimate land owner of national land" under the 1974 Socialist Constitution (Section 18), which was further escalated during the military era since the 1988 coup d'état when the SLORC government frequently utilized the wasteland management method under the 1991 Waste Land Grants Instruction which applied the logic of

state utilization of national land as the ultimate owner. Since, currently, many unregistered leases, mortgages and inheritances had inevitably occurred to evade the strict state control during the socialist era, numerus farmers' rights were ignored as a mere "customary land users" lacking lawful formalization.

The 2012 Farmland Law of the present era under the current 2008 Constitution essentially succeeded the same vulnerable legal nature of farmers' rights, which is newly named as "Cultivation Right" (*Lyae Yar Myae Loat Paing Kwint*) but defined as a permission given by the state as the original owner of all land (Section 3 (d)), which is understood as corresponding to the provision of the current 2008 Constitution (Section 37) which maintains the same expression that the state is "the ultimate land owner of all national land" as the former socialist constitution. Even though the Farmland Law has been demonstrated as a liberal framework for the promotion of foreign investment by increased transferability of land (Section 9b, e, f), it should be noted that the Law provides for even more vulnerable legal nature of "Cultivation Right" subject to strengthened state powers for control, such as the administrative penalties involving imprisonment upon the failure to meet with various regulations as well as the revocation of rights and compulsory eviction (Section 12, 17d, 19, 31, 37). The objections are decided final by the Region & State level Council (Section 25c), excluding the judicial review. The system of farmland control has also maintained a centralized structure since the Union level Farmland Management Council has the power to form all local level councils (Section 16).

Thus, the legal historical review in Chapter 2 has revealed that a weak legal status for farmers' land rights under the current formal law of Myanmar has been an improper inheritance from the "Landholder's Right" under British colonial law, which was has been succeeded up to the present legal system under the 2008 Constitution.

6.3 Enlarging Perception Gap on Farmers' Rights Identified in the Empirical Survey

Chapter III intended to identify the reality of the perception gap between the government in its implementation of the formal law with negative characteristics as analyzed in Chapter II, on one hand, and the farmers who make a daily living from their farmland, on the other. As for the choice of target areas of the survey, the author selected a total of four Townships, each from

Ayeyarwaddy Region, Bago Region, Mandalay Region, and Shan State, which share a similar agriculture-based socio-economic status as well as a similar population size, but the applicable law and legal traditions are slightly different each other due to the legal historical background such as Upper/ Lower Myanmar separation since the colonial land law and the strength of remaining customary law. Questions were asked to the government side (4 Township Administrator and 4 heads of the Township Land Record and Statistics Department who are in charge of farmland administration) and local farmers (120 people answered to the questionnaire as well as the personal interviews with total 8 experienced farmers of village leaders' class). The interviews focused on the legal nature of land rights as well as the actual status of implementation of land-related laws and regulations.

The results of survey in Chapter III indicate that there is a significant gap between the government and farmers in terms of the perspectives on land rights. The government side revealed an extremely different view on the legal nature of farmers' land rights. All of the interviewed government officials answered that what the farmers have is the "Cultivation Right" under the 2012 Farmland Law, and its legal nature is a "tenant" status under the state's land ownership, in accordance with Section 37(a) of the Union of Myanmar's 2008 Constitution which states that the Union is the ultimate owner of all land and natural resources. Therefore, if any of the obligations set by the governmental regulations are not met by a farmer, all of them answered that the government may unilaterally revoke the "Cultivation Right" and evict the farmer according to the provisions of Farmland Law, which is a logical outcome of the formalist understanding of the current law. On the other hand, nearly all farmers (98.33%) answered that they have the "Bobapaing" right—which stems from the traditional concept of ownership over land recognized by the pre-colonial written code *Dhammathat*.

Another discrepancy is on the concept of "actual cultivation" (*Ahma Take Saight Pyu Chin*) as the fundamental requirement in the proof of farmers' rights. It is one of the formal requirements for the farmers to assert the "Cultivation Right" for the registration of title under the Farmland Law (Section 4), also in the defense against the governmental confiscation for wasteland management under the VFVLM Law, and also for the eligibility of objection procedure and compensation under the Land Acquisition Act. While the government requires the documentary evidence (land record

or tax receipts) for the fact of self-cultivation by the farmer himself, and does not accept the recess of cultivation over the legally provided recess period (two years under the Farmland Law and one year under the VFVLM Law), the majority of them farmers (75%) answered that the continuation of "actual cultivation" should be proven by the oral testimony, without mentioning any official documentation. Most of the respondents (75%) believe that "actual cultivation" includes the cultivation done with the help of tenants. The majority (99 %) believe that "actual cultivation" can continue even during the suspension period of cultivation for the purpose of fertilizing.

Thus, the author's empirical survey has identified a clear perception gap between the government and farmers' side on the legal nature of land rights and the means of its proof. It is remarkable that the overwhelming majority of the famers have a firm belief in the concept of "Bobapaing" right, whereas the government side holds a firm formalist view of the "Cultivation Right" as the tenant of state-owned land.

6.4 Comparative Implications from India for Redefining the Farmer's Rights

In chapter IV, in order to induce hints for Myanmar to overcome the obvious perception gap between the government and people on land, a comparative legal analysis was attempted on the land law reform experiences in four States in India, namely, West Bengal, Uttar Pradesh, Jammu & Kashmir, and Kerala. Myanmar and India share a historical similarity of the starting point of the law-making for land reform in the 1950s in the context of independence from British colonial reign. Four States were targeted because they took mutually different paths of land reform due to the federal system of the Indian 1947 Constitution which placed the land reform matters under the concurrent list of federal-state jurisdictions.

Based on the findings of Chapter IV, Jammu and Kashmir appear to be similar to Myanmar's post-independence land reform in that they aimed to implement an "ownership to tillers" type of reform that included all cultivating households as the beneficiaries (1953 Land Nationalization Act of Jammu and Kashmir, Sections 5 and 7). The land distribution reforms in West Bengal and Uttar Pradesh exclusively targeted middle class intermediaries and excluded lower-level tenancy categories, while Kerala used a compromise strategy to target "tenants and

intermediaries." From this comparative view, Myanmar's post-independence land reform is said to be more tiller-oriented.

It is questionable, however, whether the legal status of the land title granted to farmers under Myanmar's Land Nationalization Act was comparable to the concept of "ownership" in Jammu and Kashmir. Both are a permanent and inherited right, notwithstanding restrictions on transferability that safeguard agricultural usage (Section 10 of the Myanmar Land Nationalization Act of 1953 and Sections 4 and 5 of the Jammu and Kashmir Big Landed Estates Abolition Act of 1950). The author speculates that the drafters of Myanmar's Land Nationalization Act studied various legal models sought by leading States in Indian land reform at the time and likely adopted the model after the "ownership" in Jammu and Kashmir with the intention of establishing Myanmar's "Cultivation Right" as strong as the pre-colonial "Bobapaing" right. The Supreme Court of Burma also rendered the opinion that the provision of Section 30(1) of the 1947 Myanmar first Constitution should be read as supporting the land reform. However, the succeeding government practice treated the farmers' right as a tenancy of state-owned land based on the literal understanding of the wording of Section 30 (1) as "State is the ultimate owner of all lands."

In this regard, it is noteworthy that India has experienced a dramatic path of constitutional changes in pursuit of a better consensus for the land reform, as a result of compromise between the progressive legislations in the state level and the judicial challenges from the conservative sect of landed class. Such serious constitutional debates have something lacked in the present Myanmar's legal scene.

6.5 **Overall Analysis and Discussions for Future Reforms**

In Chapter V, an overall discussion was made to answer to the research question for identifying the legal causes of land disputes, in seeking for a better legal design of land law for the future of Myanmar, based on the findings in the previous chapters.

To narrow the perception gap between the government formalism and the farmers' historical belief on "Bobapaing" right as identified Chapter II historical review and Chapter III empirical study, based on the post-independence experience of land reform in India as analyzed in Chapter 4, the author contends that more active development of constitutional debates should be

explored in Myanmar toward the national compromise in sought for a batter balanced land reform policy. Instead of facing with numerous individual disputes by the governmental discretionary schemes, an open discussion through the constitutional forums such as the Constitutional Tribunal and the judicial procedures for writ in sought for the national consensus must guide the most fundamental solution for the land disputes in Myanmar.

Also, a special emphasis is placed on the law reform so as to formalize the “Bobapaing” right for the strengthening of farmers’ rights. Chapter II found that Myanmar's current "Cultivation Right" is designed after the colonial “Landholder’s Right” which was a tenancy of state-owned land, and Chapter III found that such a vulnerable legal nature of "Cultivation Right" is confirmed in the government practice by the literal understanding of the government officials on Section 37 of the 2008 Constitution of Myanmar which states that the union government is the ultimate owner of all lands. To this, a comparative perspective into India post-independence land reforms in Chapter IV found that certain states in India, such as Jammu and Kashmir, have been successfully defined the legal nature of farmers’ rights as “ownership”. Also, the post-World War II agricultural land reform in Japan, where a nearly identical type of "land to a tiller" type reform to India and Myanmar was started in the same period, rigorously implemented the distribution of “ownership”, and its results have been maintained for several decades up to the present. Here, the primary elements of Japan’s Agricultural land reform is not only the grant of stable and absolute “ownership” to the framers, but also the system of restrictions of succeeding dispositions of agricultural land ownership under the 1952 Agricultural Land Law which maintained a system of local autonomous control for the dispositions of agricultural land by the Agricultural Commissions’ permit system on sales, lease, and mortgages of agricultural land (Article 3), and the prefecture governors’ permit system on the changes from agricultural land use (Articles 4 and 5). The 1953 Land Nationalization Act of Myanmar also had restrictive system of ownership disposals, but a difference was in its institutional system: namely, Japan’s Agricultural Commission has been established in each community as an autonomous body whose members are directly elected from among the local farmers under the Law on Agricultural Commissions, while the administrative council under the 1953 Land Nationalization Act of Myanmar was subject to the control by the central council. Furthermore, it is difficult to convert the land use of farmland in Japan since the

governor's consent is often said to pay due respects to the Agricultural Commission's opinion in each locality. Even though this independent status of the Agricultural Commissions in Japan is now facing challenges due to the recent drive of neo-liberal law amendments to the Agricultural Land Law as well as the Law on Agricultural Commissions, still Myanmar can learn lessons from Japan's experience in forming the country's eventual land reform.

6.6 Recommendations for Future Land Law Reform in Myanmar

Finally, the author concludes this dissertation with a series of recommendations induced from the findings from this research toward Myanmar's future land reform, which should balance the need of economic growth and the need of meeting with local people's sense of social justice.

(1) Establishment of "Bobapaing"

First, in reflection of the strong belief of the large majority of the farmers in their ancestry rights, the Farmland Law should be amended to establish farmers' land rights as "Bobapaing", which is the ownership, in reflection of the overwhelmingly strong perception held by Myanmar farmers as identified in the author's survey in Chapter III. According to the survey and interview results in Chapter III, Table 3-10 (questionnaire answer) and Section 3.4.1 (experienced farmers interview answer), the majority of farmers believe that their "Bobapaing" rights are secure; however, farmland must be cultivated by farmers and cannot be vacant for ten years because they may lose their lands if other people cultivate their lands for ten years while they leave their lands for ten years for no reason. They did, however, answer that abandoning farmland for specific fertilization is permitted for the possession of "Bobapaing" right.

The amendment of law to establish the "Bobapaing" right does not contradict with the Myanmar Constitution (Section 37), which declares the state as the ultimate owner of all land and resources, when this provision is interpreted structurally based on the objectives of land reform, as learned from the comparative analysis with India, so that the government can maintain its role as the ultimate guardian of all land and resources through land use planning as well as agricultural policy guidance in the sphere of public law, while fulfilling its constitutional role to protect the ownership of people in the sphere of private law within the legal limit (Sections 356, 357, 372).

The legal nature of the “Bobapaing” right should be clarified in the formal provisions of the Farmland Law by incorporating the notion of current farmers as well as the results of legal historical studies, as a permanent, inheritable and absolute right for occupation, use and disposition, but it should be subject to the minimum restrictions of disposition within the policy purpose of protection of agricultural land security. This is the approach taken in examples from Japan as discussed in Chapter V.

Particularly, the stability of once-obtained ownership in Japanese agricultural land reform is remarkable, which is something to be learned for the strengthening of Myanmar's current fragile status of farmers' rights, despite frequently heard criticisms on the agricultural productivity of thus created small-scale farming in Japan. This stability was made possible by the 1952 Agricultural Land Law in Japan, which provides for the permit system of land sales, lease, mortgages and agricultural use change by the local autonomous Agricultural Commissions based on the local direct election system for its members. Therefore, the author recommends an amendment to the Farmland Law of Myanmar to deconcentrate the powers of farmland management to the community level.

(2) **Principle of “Acquisitive Prescription”**

The Farmland Law should also be amended to recognize the principle of “acquisitive prescription” so as to help the farmers to prove their rights in their claim for title certificate and other land disputes resolution. By this, without depending solely on the governmental documentary evidence such as land record and tax receipts, the fact of actual possession and cultivation will be substantially investigated to decide the land disputes. This will help reduce the land conflicts in various critical circumstances such as granting a land title certificate, defense against the wasteland confiscation under the Vacant, Fallow and Virgin Land Law, and deciding the eligibility of loss compensation under the Land Acquisition Act. In order to take into account the "Acquisitive Prescription."

The historical review in Chapter II identified the pre-colonial layered system of “adverse possession” referred to in Volume I, Section 5 of *Manugye Dhammathat*, also in the case law affirming a loss of “Bobapaing” right (*Myaethay*) in cases of continued occupation by the third

party for ten years In addition, the pre-colonial time separation of the *Myaethay* right, which was granted to farmers who had consistently owned farmlands for more than three generations and was a strong and absolute right, and the *Myaeshin* right, which was granted to farmers who had owned farmland for at least ten years but was not a strong and absolute right, is considered under Chapter II. Various *Myaeshin* rights can elevate into a *Myaethay* right after 10 years' period of holding, such as the purchaser after 10 years from the land sale (Volume VII, Section 41 of *Manugye Dhammathat*).

Even though the colonial Land and Revenue Act provided for a 12 years' prescription for initial land title and 20 year prescription for unregistered "customary land users" under Section 26 of the Limitation Act, but such rules were not explicitly succeeded in the requirement of "actual cultivation" in the post-independence 1953 Land Nationalization Act, resulting in confusion in the operation manuals on the government side, which applies various standards of duration from 3 to 5 years as shown in Chapter III. The author recommends that the law be changed to grant the ownership to the actual cultivator for more than two decades, based on the Myanmar's legal tradition, and also the comparative perspective such as adverse possession under the British common law, also applied in India, and the acquisitive prescription in the continental code countries such as Japanese Civil Code (Article 162).

Accordingly, farmers should be allowed the same method of proof of their rights in the defense under the VFVLM Law. The author's survey in Chapter III identified the government practice that decides the target land of wasteland management based only on the land registration, thus unrecorded property is automatically considered to be abandoned or fallow even if some farmers are actually cultivating it. The VFVLM Law should be simply abolished, or at least changed to include the objection mechanism which accepts the claim of acquisitive prescription by the farmers who lack land registration for what they believe to be their "Bobapaing" rights, in order to reduce the land conflicts in this regard.

Similarly, the 1894 Land Acquisition Act should be amended to explicitly accept the objection by the farmers who lack the land registration but can prove the acquisitive prescription. Chapter III found the current government practice that treats only the parties with land registration to submit the objection under the Land Acquisition Act, and as eligible for loss compensation. In addition, recent

discussion on the participatory procedure from the early stage of development planning would also be made available for those affected populations both with and without land registration. Also, more elaboration should be made to amend this more-than-a-century-old Act, such that a clearer breakdown of the "Public Purposes" requirement as under Article 3 of the Land Expropriation Law of Japan, and the mediation procedure before the expropriation in Chapter II of the same Law.

(3) Local Autonomy of Farmland Management Bodies

Another crucial recommendation is to amend the Farmland Law to increase the autonomous nature in the formation of the Farmland Administration Bodies at the local level, based on the experience of Japan as discussed in Chapter V. As aforementioned, the stability of once-obtained land security in Japanese land reform is largely owed to the independence of land management by local Agricultural Commissions. By introducing a local direct election system for the members and vesting a wider power of land management to the independence body, Myanmar's Farmland Management Bodies may increase efficiency to make decisions based on each local condition, which can better balance economic growth via free land transaction and the needs of farmland conservation.

In this connection of policy balance led by local autonomy, a reference is made to the utilization of lease form in the agricultural communities in Yabu city, Hyogo, Japan, which has implemented the National Agricultural Strategic Special Zone since 2014. According to the author's finding in Chapter V from the interviews with Mayor Hirose and other agriculturalists in Yabu, despite the expectation of the national government to promote agricultural land sales to outside corporate investors beyond the restriction under the 1952 Agricultural Land Law, the mode of investments in almost all 13 cases were based on the lease contracts with varieties of conditional covenants, rather than land sales. The local officials in charge of agricultural policy explained this as a result of compromise between the investors and the local communities in order to bridge the gap between the promotion of investment and the preservation of farmers' interests. In particular, long-term leases which are typically arranged by the Intermediary Management Organization established by the government are a compromised choice because local farming households have strong ties to their ancestral land and do not plan to sell it, while investors want to have a stable base of land protected from abrupt cancellation. One thing to keep in mind is that long-term leases sometimes come with terms that benefit the surrounding communities. Therefore, Myanmar's Farmland Law can provide for such a long-term lease managed by the local Farmland Management

Bodies in cases of clearly defined situations, as an exceptional utilization of farmland whose owner has explicit reason to place his land for investors' use, with explicit legal requirements for their duration, rent, continuance, conditions for unilateral termination, etc.

However, in this case, it is crucial to take into account the democratic election of the members of the autonomous body for farmland management in order to prevent corruption among the bodies' members and to take into account more advantageous decisions for the respective communities in order to give social justice in those communities.

(4) **Abolishment of Colonial Land Laws and Manuals**

The final recommendation is to overcome all outdated colonial laws and related government manuals pertaining to land which are still in use in the government practice, particularly the manuals on the Land and Revenue Act of 1876, the Upper Burma Land and Revenue Regulations of 1889, the Lower Burma Town and Villages Land Act of 1899, and the Land Acquisition Act of 1984. Now is the time for graduating from the past to aim at the legal basis for a future consorted society which can achieve an agriculture-based economic growth without causing tragic conflicts which deprive people of their beloved home, livelihood, and communities.

Appendix- 1, Questions to Government Side (Township Farmland Management Body and Scrutinizing Committee of the Confiscated Farmlands and Other land) and Summary of Answers

Questions to Government Side (Township Farmland Management Body and Scrutinizing Committee of the Confiscated Farmlands and Other land)

1. Characteristics of your Township

(a) Population (Male/Female/Total

(b) Main industries that contribute to the economy:

(i) Rice: %

(ii) Other crops (Please specify:): %

(iii) Mining (Please specify:): %

(v) Manufacturing (Please specify:): %

(c) Households (numbers/or percentage) according to the main source of income:

(i) Farming households:

(ii) Commercial households:

(iii) Workers:

(iv) Others (specify:) :

(d) For the farming households, percentages of:

(i) Landed farmers: ( ) number or %

(ii) Tenants at fixed rent: ( )

(iii) Tenants by sharecrops: ( )

(iv) Landless farmers: ( )

2. Land-related Policies of GAD's administration

(a) Which of the following was the main land policy in this township during 1950-60s?:

(i) Land allocation to actual cultivator (=landed farmers only)

(ii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)

(iii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)

(iv) Land re-distribution to landless poor

(v) Others (Please specify:)

(b) Which of the following was the main land policy in this township during 1970-80s?:

(i) Land allocation to actual cultivator (=landed farmers only)

(ii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)

(iii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)

(iv) Land re-distribution to landless poor

(v) Others (Please specify:)

(c) Which of the following was the main land policy in this township during 1990-2000?:

(i) Wasteland management

(ii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)

(iii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)

(iv) Land re-distribution to landless poor

(v) Others (Please specify:)

(d) Which of the following was the main land policy in this township after 2012 Land Law Reform?:

(i) Freedom of Land transactions

(ii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)

(iii) Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)

(iv) Land re-distribution to landless poor

(v) Others (Please specify:)

(e) Does government organizations revokes the cultivation rights when:

(i) Farmer fails to cultivate more than ( ) years: (Yes/ No);

(ii) Farmer fails to pay the tax more than ( ) years: (Yes/ No);

(iii) Farmer fails to register his right for more than ( ) years: (Yes/ No);

(iv) Farmer fails to obtain permit for land lease (Yes/ No);

(v) Farmer fails to obtain permit for land sales (Yes/ No);

(vi) Farmer fails to obtain permit for land use change (Yes/ No);

(vii) Farmer fails to meet with the crop production plan (Yes/ No);

(f) In such a revocation, did you first send an order for improvement to the farmer, or did you unilaterally revoke the right? What is the procedural manual of such revocation?

3. Farmland Law: the issuance of land use certificates (Form 7):

(a) Which in the following is/are the evidence that you depend on in deciding on Form-7 as cultivator's right?:

(i) land record _ (Yes/No);

(ii) tax receipts _ (Yes/No) →What kind of tax?;

(iii) land sales contract (Yes/No);

(iv) the opinion of the Registration Officer _ (Yes/No);

(v) the opinion of the village tract leader _ (Yes/No);

(vi) the fact of actual cultivation (more than: years) _ (Yes/No);

(vii) Other evidence (Please specify:)

(b) If the information of above (i) through (vi) contradict each other, which information will you prioritize in making a decision?

(c) Is there any legal basis, or notifications by GAD or other department for such an operation?

(d) Tell me about typical cases when you had a difficulty in making a decision on cultivator's right?

(e) In deciding on the fact of "actual cultivation," which of the following is the basis of your decision to give a title for a Farmer?

(i) cultivation by the Farmer himself for ( ) years (Yes/No);

(ii) cultivation by his family in the village for ( ) years, even if Farmer is away (Yes/No);

(ii) cultivation by using the landless workers employed by such Farmer (Yes/No);

(iii) cultivation by tenants by fixed rent for such Farmer (Yes/No);

(iv) cultivation by tenants by sharecrop for such Farmer (Yes/ No);

(v) Recess of cultivation up to ( ) years, for the purpose of re-fertilization (Yes/No);

(vi) Recess of cultivation up to ( ) years, for other purposes than re-fertilization (Yes/No);

(vii) historical rights of the Farmer such as Damaugya or Bobapain (Yes/No);

(viii) cultivation by the Farmer as a pledge contract (lyae-pyan-ngwe-pyan) (Yes/No);

(ix) Other situations (Please specify:)

(f) Tell me about any typical cases when you had a difficulty in making a decision of "actual cultivation".

(g) What is the basis raised by the farmers who believe they have cultivation rights?

(h) Statistic numbers of annual disputes on Farmland Law since 2012:

(i) Form-7

(ii) Land use change (LaNa 39)

(iii) Others (Please specify:)

4. Vacant, Fallow, and Virgin Land Management Law:

(a) Statistic number of "grants" (art.4).

(b) In which, the ratio of "Vacant Land" and "Fallow Land".

(c) Length of "abandonment" as requirement of "Vacant Land" /"Fallow Law" : ( ) years

(d) Statistic numbers of annual disputes on VFV Law since 2012.

(e) Tell me about typical cases when you had a difficulty in making a decision on VFV Land.

5. Land Acquisition:

(a) Tell me about typical cases of land acquisition in the township.

(b) Was the public notice given to local community before the land acquisition?

(c) Was a third-party committee established to consider the "Public Purpose"? What kind of persons were nominated?

(d) Was a third-party committee established to consider the compensation? What kind of persons were nominated?

(e) In resolving the claims, was a third-party committee established? What kind of persons were they? How long was the duration of typical land dispute cases?

(f) Statistic numbers of annual disputes on Land Acquisition Law.

6. Additional Questions

(1) Do you think farmland sales have increased since the 2012 land reform?

(2) How do you think the majority of developers who purchased farmland are conducting agriculture businesses for the development of townships or not?

(3) When farmland is sold to a developer in front of the ward and village farmland administrative bodies, can these bodies suggest that the land not be sold for other purposes than agricultural business, or do they have the authority to request that the developer engage in agricultural activities for local development?

(4) Land leases are permitted under the 2012 Farmland Law for farmers who do not wish to sell their land but instead wish to lease it while they are unable to cultivate it. Are there any lease cases following the 2012 law?

(5) What are your thoughts on the 2012 farmland laws and the provision for free transaction?

(6) Can you explain the relationship between GAD and Department of Settlement and Land Records regarding land tax collection?

Government Answers to Q1: Characteristics of the Agricultural Sectors of Target Townships

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
1(a)	Characteristics of the Township Population & area	Male – 71,300 Female – 80,777 Total – 152,077 Total area 363.99 sq miles	Male – 92,343 Female – 95,752 Total – 188,059 Total area 574.8466 sq miles	Male – 112,685 Female – 118,669 Total – 231,327 Total area 348.23 sq miles	Male – 108,203 Female – 115,875 Total – 224,078 Total area 282.84 sq miles.
1(b)	Main industries, households & framing households %	**Main industries** - Rice 8.59%, - other crops 69.36%, - mining 1.61%, - Manufacturing &SME 20.44%	**Main industries** - Rice 25%, - other crops 50%, - mining 1%, - Manufacturing &SME 24%	**Main industries** - Rice 50%, - other crops 25%, - mining 0.01%, - Manufacturing &SME 24.99%	**Main industries** - Rice 40%, - other crops 35%, - Manufacturing &SME 25%
1(c)	Total Households	**Households** - Framing 60%, - commerical 20%, - worker 5%, - other 15%	**Households** - Framing 25%, - commerical 25%, - worker 10%, other 40% (tourism, hotel, travel agency)	**Households** - Framing 75%, - commerical 5%, - worker 15%, - other 5%	**Households** - Framing 40.6%, - commerical 35%, - worker 14.4%, - other 10%
1(d)	Farming household %	**Farming households** -Landed farmers: 70 %, -Tenants at fixed rent: 10%, - Tenants by sharecrops: 10%, - Landless farmers: 10%	**Farming households** - Landed farmers: 80 %, - Tenants at fixed rent: -5%, - Tenants by sharecrops: 7%, - Landless farmers: 8%	**Farming households** - Landed farmers: 90 %, -Tenants at fixed rent: 5%, -Tenants by sharecrops: 5%, - Landless farmers: No	**Farming households** - Landed farmers: 60 %, - Tenants at fixed rent: 10%, - Tenants by sharecrops: 10%, - Landless farmers: 20%

(Source: Compilation by the author based on Interview results from 4 Townships)

Government Answers to Q.2: Periodical Changes of Land Policies

	Questions	**Tada-U (Mandalay Region, Upper Myanmar)**	**Nyaungshwe (Shan State, Upper Myanmar)**	**Nyaungdon (Ayeyarwady Region, Lower Myanmar)**	**Nyaunglebin (Bago Region, Lower Myanmar)**
2(a)	Policies 1950s-60s	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants)
2(b)	Policies 1970-80s	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Tenants under 1963 Tenancy Act	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)
2(c)	Policies 1990-2011	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)	Tenants under 1963 Tenancy Act	Land allocation to actual cultivator (=landed-farmer + Fixed-Rent Tenants + Sharecroppers)
2(d)	Policies under 2012 Farmland law	Freedom of land transaction distribution - VFVML	Freedom of land transaction distribution – VFVML	Freedom of land transaction distribution - VFVML[1]	Freedom of land transaction distribution – VFVML
2(e)	Does government organizations revoke the "Cultivation Right" when?	Farmer fails to cultivate more than 5 years	Farmer does not vacant the land without any reason (Section 19(c) of the farmland law 2012.) Need to pay tax but it is not the main reason for revocation Farmers fail to obtain land use change. In this case issued notice than revocation (3 times)	1- Farmer fails to cultivate more than (not specify in Law may be 1 year and above) 2- Farmer fails to pay the tax 3- Farmer fails to obtain permit for land use change	Farmer fails to cultivate more than 2 years

[1] 2012 Vacant, Fallows and Virgin Management Law.

2(f)	In such a revocation, did you first send an order for improvement to the farmer, or did you unilaterally revoke the right? What is the procedural manual of such revocation?	No revocation 2012 Farmland Law	No revocation 2012 Farmland Law	No revocation 2102 Farmland Law	No revocation 2012 Farmland Law

(Source: Compilation by the author based on Interview results from 4 Townships)

Answers to Q3: Implementation of the 2012 Farmland Law (especially the issuance of Form 7)

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
3(a)	Which in the following is/are the evidence that you depend on in deciding on Form-7 as cultivator's right?	-Land records (Land is recorded every year)	1- Land records 2- the opinion of the village tract leaders and neighbors	1- tax receipts, 2- the opinion of the village tract leader the fact of actual 3- cultivation (more than: 5 years)	1- Land records 2- Tax receipts 3- Land sale contracts 4-the opinion of the village tract leader 5- Instruction from central committee
3(b)	If the information of above (i) through (vi) contradict each other, which information will you prioritize in making a decision?	land records	Self-cultivation 3 years (instruction at the central committee meeting in 2013)	tax receipts	land records Land sales contract
3(c)	Legal Basis	2012 Farmland Law	2012 Farmland Law	2012 Farmland Law	2012 Farmland Law
3(d)	Typical case	-	-	-	-
3(e)	Facts of actual cultivation	Cultivation by himself	Cultivation by himself	Cultivation by himself	Cultivation by himself
3(f)	Typical case of actual cultivation	-	-	-	-
3(g)	What is the basis raised by the farmers who believe they have "Cultivation Right"?	They cultivate the farmland for more than 5 years No "Bobapaing" land	They cultivate the farmland for more than 3 years No "Bobapaing" land	They cultivate the farmland for more than 5 years, recommendation from the village leaders, "Bobapaing" rights **<u>"Bobapaing" land – 54.902 acres (0.042%)</u>**	They cultivate the farmland for more than 5 years Instruction under 1953 land nationalization act No "Bobapaing" land

3(h)	Annual disputes	12 cases (recorded) Traditional settlement (not recorded)	7 cases (recorded) Traditional settlement (not recorded)	63 cases (recorded) Traditional settlement (not recorded)	More than 100 cases (recorded) Traditional settlement not recorded)

(Source: Compilation by the author based on Interview results from 4 Townships)

Government Answers to Q4: Implementation of Vacant, Fallow and Virgin Land Management Law

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
4(a)	Statistic number of "grants" (Section 4).	For agriculture – 15 grants Livestock - 16 Total – 83 acres Total applicants- 31 Total VFVL – 1183 acres	For agriculture – 2 grants Total – 157.89 acres Total applicants- 2 Total VFVL – 4489 acres	For agriculture – 45 grants Livestock – 51 grants Total – 1778.99 acres Total applicants – 96 Total VFVL- 78158 acres	For agriculture – 10 grants Total – 2185 acres, Total applicants- 10 Total VFVL – 24947 acres
4(b)	Ratio of Vacant and Fallow land	-	-	-	-
4(c)	Length of "abandonment "as requirement of "Vacant Land" /"Fallow Land" :	4 years	4 years	not provide in Law, may be more than 1 year	4 years
4(d)	Statistic numbers of annual disputes on VFVLM Law since 2012	No	No	22 cases, 20 cases with gov and 2 cases with local business, method Third parties' negotiation	No
4(e)	Typical cases when you had a difficulty in making a decision on VFV Land.	No	No	Yes	No

(Source: Compilation by the author based on Interview results from 4 Townships)

Government Answers for Question No.5, Implementation of Land Acquisition Law

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
5(a)	Typical Case	No land acquisition after 2012 Before 2012 2 huge land acquisition cases (1) Mandalay international Airport construction (2) Yangon-Naypyidaw Highway Road Construction	No land acquisition after 2012	No land acquisition after 2012 Can not disclose information before 2012	2 land acquisitions after 2012 (1) highway construction (2) Irrigation - Both cases perform under land acquisition act and instruction from ministry of construction.
5(b)	Public Notice	-	-	-	-
5(c)	Third-Party Committee	-	-	-	-
5(d)	Compensation	-	-	-	-
5(e)	Members of third-party committee	-	-	-	-
5(f)	Statistics	-	-	-	-

(Source: Compilation by the author based on Interview results from 4 Townships)

Answers 6 for 6 Additional Questions from Government Side

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
1	Do you think farmland sales have increased since the 2012 land reform?	Yes, After the 2012 farmland provision, land sales have exploded. Due to the nearness of my township to the highway and airport, the majority of developers are constantly pursuing the farmers in an effort to induce them to sell their land. Thus, nearly 20% of total farmland was sold to developers by the majority of farmers who sold their land.	Yes, land sales have increased since 2012 laws. approximately 120 cases covering 200 acres. However, the majority of farmers prefer to cultivate their own land because the agricultural industry is doing well in the area, and exporting crops to other countries allows them to obtain high selling prices and motive them to produce the crops.	Yes, land sales have increased slightly in this region as a result of the 2012 Law. However, the majority of farmers in my township are reluctant to sell their farmland because agriculture is their primary source of income, and rice and other crop prices have been rising since 2020 due to increased export demand.	Yes, the actual land sale took place in 2018, as the government allowed land transactions in 2018 following a directive from the central committee. There have been nearly 300 land sale transactions since the start of 2018. The primary reason is that the township area is closed the highways, so developers offer farmers incentives to sell their land.
2	How do you think the majority of developers who purchased farmland are conducting agriculture businesses for the development of townships or not?	After getting the land, the developers do not operate any agricultural businesses. Their main reason for purchasing the land is to use it for other purposes or to hold it while land prices continue to rise in this area. After acquiring the land for business purposes, they immediately converted it to a land use right for other business purposes (Laya 30).	No, all developers purchased the land for other purposes other than agriculture.	Agriculture is the primary industry in the township. However, the majority of developers want to change the land use right for purposes other than agriculture.	No, all developers purchased the land for other purposes other than agriculture. Some developers hold land without performing anything on it. In this instance, we issued the notice that they would complete the land use change business within four years. However, there are numerous cases of no revocation cases now

3	When farmland is sold to a developer in front of the ward and village farmland administrative bodies, can these bodies suggest that the land not be sold for other purposes than agricultural business, or do they have the authority to request that the developer engage in agricultural activities for local development?	No, the body has no power under 2012 Laws. Only perform be a role of the witness for selling contract.	No, the body has no power under 2012 Laws. Only perform be a role of the witness for selling contract.	No, the body has no power under 2012 Laws. Only perform be a role of the witness for selling contract.	No, the body has no power under 2012 Laws. Only perform be a role of the witness for selling contract.
4	Land leases are permitted under the 2012 Farmland Law for farmers who do not wish to sell their land but instead wish to lease it while they are unable to cultivate it. Are there any lease cases following the 2012 law?	No	No	No	No

5	What are your thoughts on the 2012 farmland laws and the provision for free transaction?	Some farmers in my township are now more interested in selling their land than in farming due to the enormous incentives offered by developers. However, they never consider food security in their community and pay higher prices for rice from other regions. Therefore, I am concerned because this issue is becoming more severe as land sales increase.	After 2012, land sales have increased. Approximately 120 cases covering 200 acres are currently for sale. All land purchasers changed the land's use right to conduct other businesses, such as gas stations and tourism-related enterprises. Actually, land sales between farmers do occur, but local farmers do not want to visit the government office to change the new owner's name because land selling taxes are so high (approximately 7 percent of the land's selling price per acre).	I believe farmers can obtain registered "Cultivation Right" and then use these rights as evidence after obtaining them. The majority of farmers in my community are devoted to their land and cultivation; consequently, the stability of agricultural product prices is more important than the freedom of land transfer. Due to the current high rate of inflation, the situation of land sales may increase if farmers are unable to make a profit from farming.	Due to the enormous incentives offered by developers, some farmers in my township are now more interested in selling their land than farming. Concerned about the rapid loss of farmland in the near future, we attempted to persuade farmers not to sell their land so easily. However, the law allows for unrestricted sales, and there are numerous incentives offered by developers on a daily basis, so we are limited to merely educating the farmers.
6	Can you explain the relationship between GAD and Department of Settlement and Land Records regarding land tax collection?	GAD is solely responsible for land tax collection because Department of Settlement and Land Records records has no staff at the village level, whereas GAD has a clerk in each ward and village tract. Therefore, the department of land records prepares and maintains land tax receipts and writes land tax receipts by performing all procedures except tax collection, which is handled by GAD.	GAD is solely responsible for land tax collection because Department of Settlement and Land Records has no staff at the village level, whereas GAD has a clerk in each ward and village tract. Therefore, the department of land records prepares and maintains land tax receipts and writes land tax receipts by performing all procedures except tax collection, which is handled by GAD.	GAD is solely responsible for land tax collection because Department of Settlement and Land Records has no staff at the village level, whereas GAD has a clerk in each ward and village tract. Therefore, the department of land records prepares and maintains land tax receipts and writes land tax receipts by performing all procedures except tax collection, which is handled by GAD.	GAD is solely responsible for land tax collection because the Department of Settlement and Land Records has no staff at the village level, whereas GAD has a clerk in each ward and village tract. Therefore, the department of land records prepares and maintains land tax receipts and writes land tax receipts by performing all procedures except tax collection, which is handled by GAD.

Appendix- 2, Questionnaire to Local Farmers (30 farmers in one Township (Total 120) and Interview and Summary of Answers

Farmers side Questionaries Questions to Local Farmers (30 farmers in one township)

Questions to Local Farmers (30 farmers in one township)					
I. Farming characteristics					
1-1 Family members	Total( ) → working age male ( )/ working age female ( )				
1-2 land size (acres)	Total ( ) acres				
1-3 cultivation time	( ) years, since (his own/ father/ grandfather/ others:)				
1-4 main crops	( )				
1-5 cows/horse, etc.	Cows ( ) / horse ( )/ farm machines ( )				
1-6 distance from home	( )mile				
1-7 irrigation	Good (by government)	Good (by own)	Not enough (by Government.)	Not enough (by own)	
1-8 village structure	Landed farmer ( )%	Tenant by fixed rent ( )%	Tenant by sharecropp ( )%	Landless Agri. worker ( )%	Others: (Please specify: ( )
1-9 family status (choose one)	Landed farmer ( )%	Tenant by fixed rent ( )%	Tenant by sharecropp ( )%	Landles Agri. worker ( )%	Others: (Please specify: ( )
1-10 Change of Family Status	King era/Colonial era: From ( ) To ( ) After Independence: From ( ) To ( ) 1970 Reform: From ( ) To ( ) 1990 Reform: From ( ) To ( ) 2012 Reform: From ( ) To ( )				

1-11 Income (now)	Farm Income ( )kyat/year Non-Farm Income ( )kyat/year				
1-12 Change of Family Income	Before/and After 1953 Reform: Increase/ Same/ Decrease (by %) Before/and After 1970 Reform: Increase/ Same/ Decrease (by %) Before/and After 1990 Reform: Increase/ Same/ Decrease (by %) Before/and After 2012 Reform: Increase/ Same/ Decrease (by %)				
2. Land Right					
2-1 Name of Land Right	Cultivation right	Tenancy: -Period ( ) -Rent (Fix:) -Rent (Share: %) -Recovery by repaying loan?	Bobapaing	Damaugya	Others: specify ( )
2-2 since when?	King era	Colonial era	1950-80s	1990-2012	2012~
2-3 Registration	Yes (since when:)		No →Reason ( )		
2-4 Inheritance of right possible?	Yes		No		
2-5 Sales of land right possible?	Yes →(Permit needed: Yes/ No) →(Increasing: Yes/ No)		No		
2-6. Lease of land right possible?	Yes →(Permit needed: Yes/ No) →(Increasing: Yes/ No)		No		
2-7. Mortgage of land right possible?	Yes →(Permit needed: Yes/ No) →(Increasing: Yes/ No)		No		
2-8 Purchase right in Mortgage Sales?	Yes		No		

2-9 Have you mortgaged land?	Yes →(Registered: Yes/ No) →Loan Period ( )year		No		
3. Dispute					
3-1. Dispute rate	Increase	Decrease	Others ( )		
3-2. Disputed matter	-Land Titling (Yes/ No) -Eviction by Private Developer (Yes/ No) -Eviction by Government by the Land Acquisition Act for Public Project (Yes/ No) -Eviction by Government as Waste Land (Yes/ No) -Villager's Common land taken by Private Developer (Yes/ No) -Villager's Common land taken by Government (Yes/ No) -Others (specify:)				
3-3. Resolution method	Village mediation	Complaints to Registry Office	Complaints to GAD	Court	Others: ( )
3-4. On-site hearing	Yes (hours) →Who ( )		No		
3-5. Basis of proof of "Actual Cultivator"	Cultivation by himself	Cultivation by landless workers	Cultivation by tenants	Receipt of Land revenue	Registr ation
3-6. Results	Satisfactory resolved within ( ) year	Unsatisfactoy resolved within ( ) year	Continuing ( ) years	Others: ( )	
3-7. Remaining problems (Free talk)					
3-8. New attempts in your village for a	-Incorporation by local farmers (no/ yes) ⇒If yes, details( ) -Long-term contract with Agri-Businesses (no/ yes)⇒If yes, details( )				

stable market access/ or larger production scale-merit	-Leasing-out to local farmers (no/ yes)⇒If yes, more details( ) -Leasing-out to Agri-Businesses (no/ yes)⇒If yes, more details( ) -Land sales to local farmers (no/ yes)⇒If yes, more details( ) -Land sales to Agri-Businesses (no/ yes)⇒If yes, more details( )

Farmers' Answers to Q1: Farming Characteristics

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
1	Farming Characteristics	Average household: Male – 2 Female – 2 Total – 4 Land size – 2/3 acres	Average household: Male – 3 Female – 2 Total – 5 Land size – 1 to 115 acres	Average household: Male – 4 Female – 2 Total – 6 Land size – 4 acres	Average household: Male – 3 Female – 2 Total – 5 Land size – 1 to 115 acres
	Name of Farmer' Land Right	All said "Bobapaing" land	All said "Bobapaing" land	Bobapaing" land Inherited land	"Bobapaing" land Inherited land
	Starting Time of Cultivation time	1980/1992	1980/1992	1986/1990/1991	1980/1992

	main crops		**Main crops**		**Main crops**		**Main crops**		**Main crops** rice
		10 *	rice	30 *	Rice	22 *	rice	16*	other crops
		20 *	other crops (peanuts, vegetables and beans)	10 *	other crops (sunflowers, peanuts and beans)	8 *	other crops (peanuts, sugarcanes and beans)	14*	(peanuts, vegetables and beans)
	Cows/ horses and machine ry	20*	**Cow/ machines**	30 *	**Cow/ machines**	9 *	**Cow/ machines**	14*	**Cow/ machines**
		10*	2 cows/ 1 machinery	30 *	1 to 3 cows/ 1 to 2 machineries	17*	2 cows/ 1 machinery	8 *	2 cows/ 1machinery
			3 cows/ 2 machinery			4 *	2 cows	8 *	1 cow/ 1 machinery
							1 cows/ 1 machinery		1 cow
	Irrigat-ion		**Irrigation**		**Irrigation**		**Irrigation**		
		28 *	enough by gov	30*	enough by gov	21*	enough by gov	30*	
		2 *	Local irrigation system			9 *	local irrigation system		**Irrigation** enough by gov
	Family status change	30*	landed farmers	30*	landed farmers	30*	landed farmers	30 *	landed farmers
		20 *	no change	24*	no change	20*	no change	11*	no change
		10 *	increase	6 *	some family members need to go abroad or urban area for business	10*	some family members need to go abroad or urban area for business	19*	some family members need to go abroad or urban area for business

	Family income	25 *	enough for living	24	enough for living	22*	enough for living	8 *	enough for living
		5 *	not enough and need to rely on the other family members' jobs	6 *	not enough and need to rely on the other family members' jobs	8 *	not enough and need to rely on the other family members' jobs	12*	not enough and need to rely on the other family members' jobs
	change	25 *	not change	24*	not change	22 *	not change	8 *	
		5 *	change since 1990s	6 *	change since 1990s	8 *	change since 1990s	12 *	not change
									change since 1985
	Village structure **	**60% landed farmers 20% tenants 10% share croppers 10% landless and other business		**50% landed farmers 15% tenants 10% share croppers 25% landless and other business		**70% landed farmers 10% tenants 10% share croppers 10% landless		**45% landed farmers 10% tenants 10% share croppers 35% landless and other business	

(Source: Compilation by author based on 120 questionnaires answers)
(*Note: The number of the answers, 30 farmers in one Township, therefore the total numbers of answers are 120 in each question. The author compiled all 120 answers in the Table by carefully checking all 120 questionaries answers
**Note: The author calculated these data based on the results of farmer questionnaires and government interviews. The majority of farmers are unfamiliar with the method of calculation, so the author made three times requests on 29-4-2023, 1-5-2023, and 2-6-2023 until the farmers could provide concrete data and finally the author calculated the result after getting approval from the farmers and government side.)

Farmers' Answers to Q2: Land Disputes Resolution

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)		Nyaungshwe (Shan State, Upper Myanmar)		Nyaungdon (Ayeyarwady Region, Lower Myanmar)		Nyaunglebin (Bago Region, Lower Myanmar)	
2	Land rights Name of rights / when	30* 11* 10* 9	"Bobapaing" rights since their parents 1980s 1990s	30* 22* 8*	"Bobapaing" rights since king era/parents 1980s	30* 30*	"Bobapaing" rights 1970 to 2012 inherited	28* 2 * 30*	"Bobapaing" rights "Cultivation Right" 1980s to 1990s inherited
	How to get	30*	inherited	30*	inherited	30 *	inherited	30*	Inherited
	Sale	30* 2*	Yes partially sale No permission	30* 10*	Yes partially sale No permission	30* 5 *	Yes partially sale No permission	30*	Yes No permission
	Lease	Yes No permission		Yes No permission		Yes No permission		Yes No permission	
	Mortgage	Yes No permission		Yes No permission		Yes No permission		Yes No permission	
	Purchase	Yes No permission		Yes No permission		Yes No permission		Yes No permission	
	Mortgage lands	No But unregistered mortgage is still happening in the villages		No But unregistered mortgage is still happening in the villages		No But unregistered mortgage is still happening in the villages		No But unregistered mortgage is still happening in the villages	

(Source: Compilation by author based on 120 questionnaires answers)

(*Note: The number of the answers, 30 farmers in one Township, therefore the total numbers of answers are 120 in each question. The author compiled all 120 answers in the Table by carefully checking all 120 questionaries answers.)

Farmers' Answers to Q3: Land Disputes Resolution

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
3	Land Disputes	No	Yes	No	No
	Resolution method*	30* village traditional mediation	25* village traditional mediation complaints to land record and GAD 5*	30* village traditional mediation complaints to land record and GAD 5*	23* Village meditation 7* complaints to land record and GAD
	On side hearing		7 days (village mediation) 1 month to 1 year (LR & GAD)	No experiences Some cases by hearsay (long process and have to go to the government office when he got notices)	No experiences
	Basis of proof of "Actual Cultivator"	-Cultivation by himself Tentative -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)	-Land Records -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)	-Cultivation by himself -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)	-Cultivation by himself -Should Consider for suspension Of cultivation for fertilization purpose (1 or 2 years)
	Result	Village mediation is ok Gov side- long process, time consuming, some places are far	Village mediation is ok Gov side- long process, time consuming, some places are far	Village mediation is ok Gov side- long process, time consuming, some places are far	Village mediation is ok Gov side- long process, time consuming, some places are far

(Source: Compilation by author based on 120 questionnaires answers)

((*Note: The number of the answers, 30 farmers in one Township, therefore the total numbers of answers are 120 in each question. The author compiled all 120 answers in the Table by carefully checking all 120 questionaries answers.)

Appendix-3, Interview Questions to Local Farmers (2 farmers in one Township (Total 8)) and Summary of Answers

No	Questions	Tada-U (Mandalay Region, Upper Myanmar)	Nyaungshwe (Shan State, Upper Myanmar)	Nyaungdon (Ayeyarwady Region, Lower Myanmar)	Nyaunglebin (Bago Region, Lower Myanmar)
1	What is the difference between "Bobapaing" right and "Cultivation Right"?	**Both farmers:** We believe that all of our lands were inherited from our parents and are therefore "Bobapaing" lands. When we submitted Form 7, we were informed that our only right is to cultivate. However, we believe that our land is "Bobapaing" because we inherited it from our parents.	**Both farmers:** Actually, we do not know the differences between these two terms very well. Our land was given to us by our parents, so we call it "Bobapaing" land.	**Farmer 1** - I possess "Bobapaing" rights. I believe that my "Bobapaing" right is stronger than cultivating right because the government cannot easily take what I learned from my parents. **Farmer 2** - The land records officer informed me that I must acquire form 7 in order to obtain my land rights. However, he stated that the provision only applies to "Cultivation Right". According to my understanding, I inherited my land from my parents. Since I do not wish to lose my land, so I submitted form 7.	**Both farmers:** My parents provided us with our land. Therefore, we indicated in the questionnaire that our right is "Bobapaing" right. However, to obtain proof of land ownership, the officer advised us to submit Form 7. Thus, we applied it. However, he also stated that this is only "Cultivation Right". In reality, we inherited our land from our parents, so it is "Bobapaing" land.
2	"Actual Cultivator" is a necessary element for the land rights? If so, are you familiar with the land leases in the area you live and do you consider such a lease as "actual cultivator"?	**Both farmers:** Yes **"Actual cultivation"** (*Ahman Take Sight Pyo Chin*) can include the cultivation by using tenants. one- or two-years' tentative suspension of cultivation for fertilization purpose should be counted for the period of "actual cultivation". And the method of proof for actual	**Both farmers:** Yes **"Actual cultivation"** (*Ahman Take Sight Pyo Chin*) can include the cultivation by using tenants. one- or two-years' tentative suspension of cultivation for fertilization purpose should be counted for the period of "actual cultivation". Land record is necessary for the	**Both farmers:** Yes **"Actual cultivation"** (*Ahman Take Sight Pyo Chin)* can include the cultivation by using tenants. one- or two-years' tentative suspension of cultivation for fertilization purpose should be counted for the period of "actual cultivation". And the method of proof for actual cultivation is "actual cultivation" by himself.	**Both farmers:** Yes **"Actual cultivation"** *(Ahman Take Sight Pyo Chin)* can include the cultivation by using tenants. one- or two-years' tentative suspension of cultivation for fertilization purpose should be counted for the period of "actual cultivation". And the method of proof for actual cultivation is "actual cultivation" by himself.

	Before and after 2012, are there any land leases agreements with investor?	cultivation is "actual cultivation" by himself. **For land Lease**- Some landowners are unable to cultivate their lands due to health and family issues, and they do not want to lose their land. As a result, we have a traditional land lease system that is written or spoken in front of village leaders. There is no investor-related land leases in our villages after 2012.	method of proof for actual cultivation. **For land Lease**- Due to health and family issues, some landowners are unable to cultivate their land, but they do not wish to lose it. As a result, we have a written or verbal land lease system that is conducted in front of village leaders. After 2012, there will be no land leases for investors in our area. We have heard that in specific parts of the Shan state, investors have leased farmland for the production of bananas and watermelons destined for the market and not Myanmar. Due to reports of environmental and social concerns in the area, we cannot determine whether or not this is a good idea.	**For land Lease**- In fact, land leases exist between the villagers before and after 2012. Some farmers in our villages lease their land because they are unable to cultivate it for social or health reasons, lack of children, etc. In this instance, there are two types of land leases: sharecropping and fixed rent. Most landowners lease their land to relatives. In the event of a dispute, the local leader is aware of this lease situation, and only the landowners are entitled to their land. Before and after 2012, there is no land leasing to outside investors in our villages.	**For land Lease**- We have a traditional land lease system that is written or spoken in front of village leaders because some landowners are unable to cultivate their lands due to health and family issues, and they also do not want to lose their land. After 2012, however, there is no investor-related land leases in our rea.

3	How do you evaluate the advantages and disadvantages of land rights before and after the 2012 land reforms?	**Both farmers:** After the 2012 land reform, we have the legal right to sell, mortgage, and transfer our land, whereas we did not have this right prior to 2012, as said by the land record officers.	**Both farmers:** The 2012 Farmland law allows us to legally sell, mortgage, and transfer our property. However, this is a problem in the area because the majority of farmers sell their land to developers for non-agricultural purposes. Tourism and travel-related business are so prevalent in the area. Thus, the majority of investors provided incentives to sell our lands. We are concerned that this situation will worsen in subsequent results of this land reform.	**Both farmers:** I think the land was sold to the other party prior to 2012. However, according to the explanation provided by government officials, this is illegal. After 2012, it will be legal to sell land. But we, as farmers, cherish our land and do not wish to sell it easily, even though the law permits it. Before 2020, rice and other crop prices were unstable and extremely low, so some farmers mortgaged their land in order to avoid losing it. However, they are unable to repay the loans, and their land was lost from the mortgagee. This is one reason why some farmers in our village lost their land. After 2020, rice and crops prices are increase, so land sales in my village is not increase because we have sufficient motivation to cultivate for survival.	**Both farmers:** Since 2013, we have been applying Form 7 in accordance with the suggestions of government officials. They said that we can obtain proof of cultivation as soon as a dispute arises, and that we can legally sell, mortgage, and lease after obtaining form 7. I believe this is the only possibility following the 2012 land reform.
4	Why do villagers choose traditional village mediation instead of going to the government office or court to resolve land disputes?	**Both farmers:** We had prior knowledge of the court and government dispute resolution system. For land disputes, only the land record office and GAD are accessible, not the court. In this circumstance, our locations are so distant from the government office that we could not easily	**Both farmers:** We heard that some villagers went to court for inheritance disputes. They were required to spend a lot of money on attorneys and court attendance. We cannot bear the burden. In the case of government offices, we must also invest time and resources.	**Both farmers:** It is our custom to resolve all disputes, including land-related disputes and other social issues, at the home of the village chief. Most farmers avoid government offices and courts due to the lengthy, expensive, and cumbersome procedures involved. We never go to court for land disputes because we fear dealing with	**Both farmers:** We are hesitant to visit government offices and courts. In addition, in our villages, we are familiar with an inexpensive and effective mediation system. In one week, we can resolve the problems we have.

		meet with officers to discuss our issues. Therefore, we must spend money on travel and wait in order to meet the officers. Our daily operations would be disrupted if we went to the government office, making it a very difficult station to use. Therefore, we chose mostly for the village mediation system.	Therefore, we never go to the government office or court for ordinary disputes; we only go there if our disputes cannot be resolved through the village's mediation system.	judges and lawyers. When traveling to the country, some individuals must spend quite a lot of money. Additionally, we satisfy our village mediation system so that disputes can be resolved in a single day without lengthy and expensive procedures.	
5	According to the Land Acquisition Act, the government may seize your property for public purposes and compensate you. What are your views on this acquisition and the nature of land rights in this circumstance?	**Both farmers:** The majority of farmers in our region sell their land to developers because they receive a large sum of money and do not value their farmland. However, we have a different perspective because we do not lose our land. We are aware that we cannot object to the government taking our land because we only have "Cultivation Right" according to their explanations. However, our land was given to us by our parents, so it is "Bobapaing" land.	**Both farmers:** Our land is "Bobapaing", so we do not wish to lose it. We do not face the issue of government land acquisition, so we cannot answer this question accurately at this time.	**Farmer 1** - I have "Bobopaing" rights, so my rights cannot be taken easily by the government. This is only my opinion, and I am unsure whether it is correct or incorrect. However, we cannot prevent land taking from the government's projects and am only thinking about compensation. Land is very important to me and my family, as I am only familiar with agriculture. I intend to protect my family's land until the end of time and give it to my children. I do not want a situation in which the government can easily take my land for public projects and developers, and I want to keep my parents' land. **Farmer 2** - This is the primary reason we hear so much about land acquisition in other areas.	**Both farmers:** We do not have sufficient knowledge to answer these questions, but we believe that our land is "Bobapaing" land, we do not want to lose our land, and we will not accept compensation because we love our land.

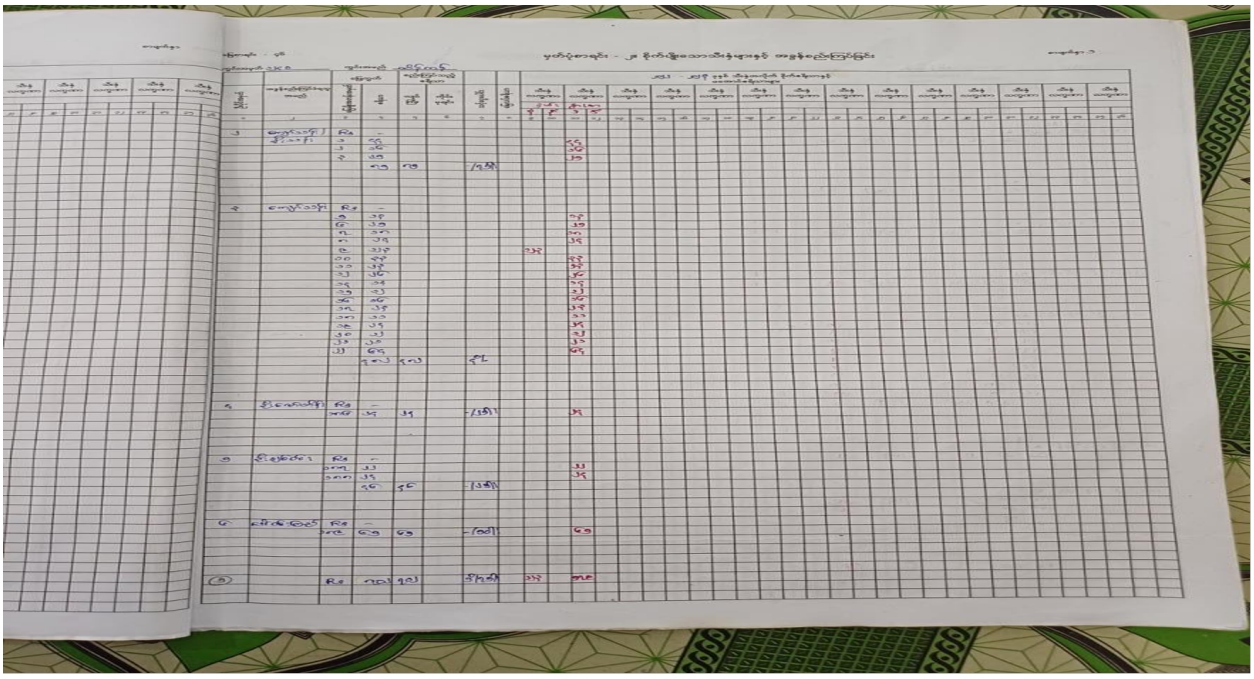
				We are also concerned about this circumstance. The officers stated that since we only have the “Cultivation Right”. We cannot prevent the government from acquiring our land and compensating us. Actually, we are farmers who rely solely on agriculture for our livelihood; therefore, compensation is not the only thing we seek when acquiring land. We treasure our land and wish to cultivate and pass it on to future generations.	

Appendix- 4: The Nature of Private land rights from pre-colonial times to the Present

	Name of Land Rights	**Legal Basis**	**Legal Nature of Farmer's Land Rights**
King Era	"Bobapaing" Right (stemming from either (i) "Damaugya" Right, (2) king's offer, (3) transactions)	Section 8 "Dhammathats" "Hpyathon","Yazathat" (see: king era information compiled by Bagan Minister U Tin (1920)	Permanent right of exclusive ownership for subsistence, transferability, and inheritance, which is not taken by king.
	"Damaugya" Right	"Dhamatthats" Section 8, "Hpyathon", "Yazathat" (see: king era information compiled by Bagan Minister U Tin (1920)	Tentative right of exclusive use for subsistence transferability and inheritance. "Damaugya" can continue even during the recess of cultivation.
Colonial time	"Bobapaing" right, if proven as such (Upper Burma),	The Land and Revenue Act 1879 Section 8)	- (Upper Burma) Unless the proof as "Bobapaing" was successfully made, land was deemed as State Land
	"Landholder's Right" (Lower Burma)	The Upper Land and Revenue Regulation 1889 (Section 25)	Any person who cleared and tilled virgin land at once became entitled to hold that land against any other person. This person can get the permanent right to hold such land against all the world only after ten years' continuous occupation according the rights under "Manugye Dhamathat." Section 48, Directions under the Upper Burma Land and Revenue Regulation, 1889, and the Rules.
		The Lower Burma Towns and Village Act 1898 (Section 4(10)	- (Lower Burma) A landholder right shall have a permanent, transferable, and inheritable right to use and occupy his land, subject to payment of all revenues, taxes, and rates. (Sec 8) "Landholder's Right" means a permanent heritable and transferable right of use and occupancy in land in the landholder's possession subject only: to the payment of all such revenue, taxes, cesses, rates and other impositions. (Section 4(10)) an occupier of State land can have no heritable or transferable right of use or occupancy therein, nor can any rights adverse to

			the Government exist in such land unless they have been created or continued by a grant made by or on behalf of the Government; (Section 25)
After Independence	"Bobapaing" right (Upper Burma), "Landholder's Right" (Lower Burma)	The 1947 Constitution of the Union of Burma Chapter III, Section 30 The 1974 Constitution of the Union of Burma Chapter III, Section 18 The 2008 Constitution of the Union of Myanmar, Section 37	The State is the ultimate owner of all lands. (Sec 30(1)) The State is the ultimate owner of all natural resources above and below the ground, above and beneath the waters and in the atmosphere, and also of all the lands (Sec 18(a)) The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union; (Sec 37(a))
After Independence	Cultivation Right	1953 Land Nationalization Act Section 5 (1st land reform)	-It is prohibited to mortgage, or to sell or to transfer by some other means or to divide the lands, if the act is against this Act or against bye-laws of this Act. (Section 4) Right on Exempted Land holders (Section 9) - Transfer/sell right only to agriculturists and farmer organizations with the permission of the Gov Rights to Distributed Land holder (Section 10) - Transfer/sell right only to farmer organizations
Revolutionary Council	Cultivation Right	Tenancy Act 1963 Tenancy (Amendment) Act 1965	- Only the government may rent any land or field that is subject to an announcement through appointed land committees, and when the government issues the announcement, the landlord's rental rights will expire. (Section 3) - Both tenants and landlords must submit an application to obtain tenancy status.
After 2008	Cultivation Right	2012 Farmland Law , Section 3 (d) Cultivation Right/ Right to Farming (2nd land reform)	"Cultivation rights " is defined that as the State is original owner of all lands, giving permission for cultivating in conformity with this law and bylaw, rule and regulation of this law so that agricultural production capacity develop, excluding exploring gems, mines, petroleum, gas and natural resources below and above ground; (Section 3(d))

Appendix- 5, A Sample of the Land Records Booklet.



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1876 Land and Revenue Act

1877 Myanmar Specific Relief Act

1881 Forest Act

1885 Bangel Tenancy Act

1889 Lower Burma Town and Village Lands Act

1889 Upper Burma Land and Revenue Regulation

1894 Myanmar Land Acquisition Act

1908 Myanmar Limitation Act

1923 Jammu and Kashmir Tenancy Act

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1954 West Bengal Estate Acquisition Act

1957 Kerala Agrarian Relations Bill

1958 Kerala Jenmikaram Abolition Act

1960 Kerala Agrarian relations Act

1963 Kerala Compensation for Tenant's Improvement Act

1963 Kerala Land Reforms Act

1963 Kerala Tenants and Kudikidappukars Protection Act 1963(Temporary)

1963 Myanmar Tenancy Act

1963 Myanmar Safeguarding Peasants Rights Law

1966 Kerela Prevention of Eviction Act

1969 Kerala Land Reforms (Amendment) Act

1971 Kerala Land Reforms (Amendment) Act

1972 Jammu and Kashmir Agrarian Reforms Act

1972 Kerala Land Reforms (Amendment) Act

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1995 West Bengal Land Reform Act

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2012 Myanmar Farmland Rules

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