

Land Dispossession, Access to Justice and The Role of
Community Based Organizations (CBOs): A Case Study of Maubin

Miss Nwe Ni Soe



บทคัดย่อและแฟ้มข้อมูลฉบับเต็มของวิทยานิพนธ์ตั้งแต่ปีการศึกษา 2554 ที่ให้บริการในคลังปัญญาจุฬาฯ (CUIR)
เป็นแฟ้มข้อมูลของนิสิตเจ้าของวิทยานิพนธ์ ที่ส่งผ่านทางบัณฑิตวิทยาลัย

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A Thesis Submitted in Partial Fulfillment of the Requirements
for the Degree of Master of Arts Program in International Development Studies
Faculty of Political Science
Chulalongkorn University
Academic Year 2015
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การสูญเสียที่ดิน การเข้าถึงความยุติธรรม และบทบาทขององค์กรชุมชน : กรณีศึกษาเมืองมะอูเป็ง



วิทยานิพนธ์นี้เป็นส่วนหนึ่งของการศึกษาตามหลักสูตรปริญญาศิลปศาสตรมหาบัณฑิต
สาขาวิชาการพัฒนาระหว่างประเทศ
คณะรัฐศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย
ปีการศึกษา 2558
ลิขสิทธิ์ของจุฬาลงกรณ์มหาวิทยาลัย

Thesis Title	Land Dispossession, Access to Justice and The Role of Community Based Organizations (CBOs): A Case Study of Maubin
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Field of Study	International Development Studies
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CHULALONGKORN UNIVERSITY

นเว นิ ซอ : การสูญเสียที่ดิน การเข้าถึงความยุติธรรม และบทบาทขององค์กรชุมชน : กรณีศึกษาเมือง
มะ อุ เป็ง (Land Dispossession, Access to Justice and The Role of Community Based
Organizations (CBOs): A Case Study of Maubin) อ.ที่ปรึกษาวิทยานิพนธ์หลัก: ดร.คาร์ล มิดเดิล
ตัน, 107 หน้า.

ที่ดินเป็นสินทรัพย์ที่สำคัญที่สุดของประชาชนชาวพม่าที่อาศัยการเข้าถึงที่ดินเพื่อการดำรงชีวิต ในช่วง
หลายปีที่ผ่านมาการเวนคืนที่ดินได้ก่อให้เกิดปัญหาต่างๆทั้งทางสังคม การเมืองและเศรษฐกิจ การเวนคืน
ที่ดินในอดีตยังส่งผลเด่นชัดถึงปัจจุบัน การเวนคืนที่ดินกระตุ้นให้เกิดการโต้ตอบจากภาคประชาสังคมและ
เกษตรกรที่มีส่วนเกี่ยวข้องในการใช้วิธีการต่างๆแก้ปัญหาที่ดิน วิทยานิพนธ์นี้เป็นผลมาจากการวิจัยเชิงคุณภาพที่
ใช้วิธีการต่างๆในการเก็บข้อมูล เช่น การค้นคว้าจากเอกสาร การวิจัยเพื่อการสำรวจ การสนทนากลุ่ม การ
สัมภาษณ์เชิงลึก และการสัมภาษณ์ผู้เชี่ยวชาญ ได้มีการสัมภาษณ์ตัวอย่างทั้งหมด 21 คน โดยเน้นไปที่องค์กร
ชุมชนสามองค์กรที่ใช้วิธีการแตกต่างกัน ประสบความสำเร็จและล้มเหลวต่างกัน ตำบลมาอุบินเป็นหนึ่งในพื้นที่
ที่มีปัญหาเกี่ยวกับที่ดินมากที่สุดที่หนึ่งในประเทศพม่า และองค์กรชุมชนได้ทำงานเพื่อแก้ไขปัญหา การ
วิเคราะห์ปัญหาในวิทยานิพนธ์นี้จะมองไปที่ความมั่นคงในการครอบครองและการเวนคืนที่ดิน การเข้าถึง
กระบวนการยุติธรรมของเกษตรกร และบทบาทขององค์กรชุมชนในการประชาสัมพันธ์การเข้าถึงกระบวนการ
ยุติธรรมและการกำจัดปัญหาเรื่องที่ดิน ถึงแม้บทบาทขององค์กรชุมชนในการต่อสู้ปัญหาเรื่องที่ดินและการ
กระตุ้นให้เกษตรกรเข้าถึงกระบวนการยุติธรรมจะมีผลดี แต่ยังมีช่องโหว่และอุปสรรคในการดำเนินการและการ
ลงมือปฏิบัติจริง เกษตรกรและองค์กรชุมชนยังไม่ได้รับผลลัพธ์ที่พึงพอใจเนื่องจากข้อจำกัดบางอย่างที่สร้างขึ้น
โดยรัฐบาล เช่น การควบคุมแบบรวมศูนย์โดยรัฐบาล และกลไกกฎหมายที่อ่อนแอ องค์กรชุมชนใช้วิธีการที่
แตกต่างในการประชาสัมพันธ์ให้เกษตรกรเข้าถึงกระบวนการยุติธรรม อย่างไรก็ตามวิธีการเหล่านั้นก็ได้รับ
ผลกระทบจากข้อขัดแย้งต่างๆ เช่น การขาดการประสานงานที่ดีระหว่างองค์กรชุมชนด้วยกันเอง มีบางกรณีที่เกิด
ความขัดแย้งระหว่างองค์กรชุมชนเนื่องจากความเห็นทางการเมืองที่ต่างกัน ประชาสังคมผู้มีส่วนได้ส่วนเสียอื่นๆ
สนใจแค่การผลักดันกฎหมายและนโยบายที่ดินเพื่อผลประโยชน์ในระยะยาว แม้ว่าจะเป็นวิธีการที่ถูกต้องในการ
แก้ปัญหาแต่องค์กรเหล่านี้ยังคงต้องการความร่วมมือจากรัฐบาลเนื่องจากรัฐบาลยังใช้กฎหมายที่ก่อให้เกิดความ
ขัดแย้งและมีการเปลี่ยนแปลงกฎหมายทั้งเก่าและใหม่เพื่อให้สอดคล้องกับรัฐธรรมนูญที่เป็นปัญหา วิทยานิพนธ์
นี้เสนอว่างานขององค์กรชุมชนมีทั้งข้อดี เช่น มีการใช้วิธีการที่แตกต่างและการกระตุ้นจิตสำนึกเกี่ยวกับที่ดินแก่
ชุมชน และข้อด้อย เช่น การทำงานยังไม่ค่อยส่งผลต่อผู้ที่เกี่ยวข้องและบริษัทในการจัดการที่ดิน นอกจากนี้ยังมี
ปัจจัยอื่นที่ส่งผลต่อการทำงานขององค์กรชุมชน เช่น การมีทรัพยากรจำกัด และการทำงานที่ไม่เป็นทางการ
เพื่อที่จะทำให้การเข้าถึงกระบวนการยุติธรรมสะดวกขึ้นองค์กรชุมชนควรมีเครือข่ายที่ดีขึ้นและควรมีรูปแบบการ
ประสานงานที่เป็นทางการต่อผู้มีส่วนได้ส่วนเสียระดับต่างๆ นอกจากนี้กลไกทางกฎหมายในปัจจุบันของพม่า
ยังคงพยามต่อสู้กับการทุจริตและความไม่มีประสิทธิภาพ ดังนั้นการพัฒนากฎหมายและนโยบายเกี่ยวกับที่ดินจะ
เป็นการแก้ปัญหาที่ได้ผลในระยะยาวอีกทั้งยังสามารถลดปัญหาที่ดินที่เกิดขึ้นในปัจจุบันได้

5781216624 : MAJOR INTERNATIONAL DEVELOPMENT STUDIES

KEYWORDS: COMMUNITY BASED ORGANISATION (CBO), CIVIL SOCIETY ORGANISATION (CSO), LAND DISPOSSESSION, LAND TENURE SECURITY, ACCESS TO JUSTICE

NWE NI SOE: Land Dispossession, Access to Justice and The Role of Community Based Organizations (CBOs): A Case Study of Maubin. ADVISOR: CARL MIDDLETON, Ph.D., 107 pp.

Land is the most important asset for Myanmar population dependent on access to land for their livelihoods. During the past several years, land dispossession has accelerated causing social, political and economic ramifications. Historical land dispossession also remains a significant challenge until the present day. This has provoked a response from civil society actors and farmers who have engaged with different approaches to battle land disputes.

This thesis is a result of a qualitative field research utilizing various methods: documentary research, exploratory research, focus group discussions, in-depth and expert interviews all including 21 people and focused detail on three CBOs based on diverse approaches, having different levels of achievements and failure over the past several years. Maubin Township is one of the most land problem areas in Myanmar and CBOs are working to solve their problems. The analyses are made by looking at land tenure security and land dispossession, farmers' access to justice for land losses, and the role of civil society organizations in promoting access to justice and eliminating land issues.

Even though CBOs' role in battling land issues and mobilizing farmers to promote their access to justice can be considered to have had positive impact, there are gaps and barriers in process and implementation. Farmers and CSOs have yet to see good results because there are restrictions created by the government's centralized control and weak legal mechanisms. CBOs have used different approaches to promote farmers' access to justice; however, their work is affected by their weaknesses, for instance the lack of strong coordination among themselves. There have also been cases where there was friction among themselves because of their political inclinations. Other civil society stakeholders focus their work on pushing forward better land laws and policies for the longer-term benefits. Even though this is a right approach, these groups need the government's cooperation as the government is still in favor of using a controversial and manipulative mixture of old and new laws in accordance with the problematic constitution.

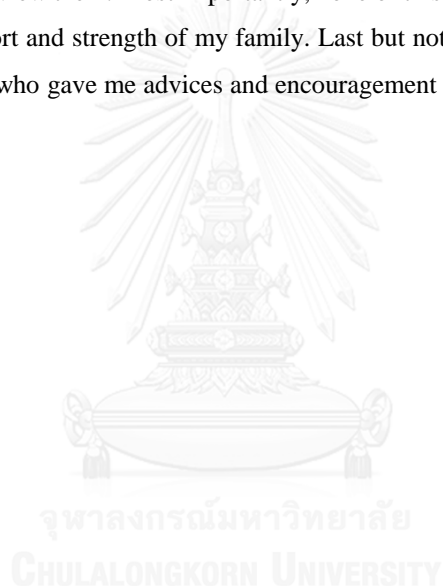
This thesis argues that the work of CBOs has both strengths; using different strategies and awareness providers on land issues to communities, and weaknesses; less influence on land management bodies and companies and limited resources and their informal or casual way of working can affect their performances. To facilitate access to justice, CBOs should have better networking, managing community expectation and harm reduction among stakeholders, and cooperate formal or structured patterns with different level of stakeholders. Furthermore, Myanmar's current legal mechanisms are struggling with corruption and inefficiency, therefore improving land laws and policies would be the key solution for the long-term gain and for mitigating land issues.

Field of Study: International Development Studies
Academic Year: 2015

Student's Signature
Advisor's Signature

ACKNOWLEDGEMENTS

Firstly, my deepest gratitude is to my advisor, Dr. Carl Middleton, for mentoring and teaching me to question and think analytically. I am deeply grateful to him for the long discussions that helped me sort out the technical details of my work. His patience and support has helped me overcome difficulties and finish this thesis. I would also like to thank the rest of my thesis committee: Prof. Prapart Pintobtang and Dr. Matthew Mullen, for their encouragement and insightful comments that have been very useful for me to look at my research from different perspectives. I am indebted to CDSSEA for the financial support that funded my Master studies and research. Without its support, this thesis would not have been possible. I am very grateful to the farmers and civil society leaders who allowed me to interview them. Most importantly, none of this would have been possible without the love, concern, support and strength of my family. Last but not the least, I have to give a special mention to Maung Day who gave me advices and encouragement as well as edited my thesis.



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LIST OF ABBREVIATION

AFFM	Agriculture and Farmer Federation of Myanmar
CBI	Capacity Based Initiative
CBOs	Community Based Organizations
CLEP	Commission on Legal Empowerment of the Poor
CMFB	Central Farmland Management Bureau
CSOs	Civil Society Organizations
DFID	Department for International Development
FAB	The Farmland Administration Bodies / Committees
FFSG	Farmers and Fishermen Support Group
GPI	Green Peasant Institute
INGO	International Non-Government Organization
LCG	Land Core Group
LNGO	Local Non-Government Organization
ICCPR	International Covenant of Civil and Political Rights
MIMU	Myanmar Information Management Unit
NLD	National League of Democracy Party
NNGO	National Non-Government Organization
UNDP	United Nations Development Programme
USDP	Union Solidarity and Development Party
VFV Law	Vacant, Fallow, Virgin Land Management Law

CHAPTER I

INTRODUCTION

Thesis Statement

This thesis aims to explore the role of Community Based Organizations (CBOs) from Maubin Township in the reduction of land disputes and the promotion of access to justice for farmers. This thesis seeks to examine whether CBOs' strategies they employ are effective. In doing so, this thesis looks into the multiple factors that contribute to success and failure of CBOs, such as their structures, functions, strategies and relationship with different stakeholders including farmer communities. This thesis argues that even though CBOs, using their contextual knowledge, work closely with farmer communities through difficulties, they are yet to see positive outcomes. To improve the outcomes, they need to look at the roles of other stakeholders and how their work can be made better and more effective by making use of the stakeholders' network and their resources. This thesis acknowledges that lack of positive outcomes does not entirely depend on the performance of CBOs and that there are other external factors contributing to it. Therefore, this thesis also looks at the restrictions and obstacles created for CBOs and their work by corruption among government officials, weak legal mechanisms and weaknesses of existing land policy and land laws (chapter 5). It is important to make an analysis from different angles on the role of CBOs working with farmers who seek justice in land disputes and barriers these CBOs face in order to understand and evaluate the effectiveness of their work. Finally, the thesis was able to identify the impacts on CBO performance implementation in order to manage the expectation of farmer communities and whether CBOs have reduce the harm creative by land disputes in terms of achieving their activities in Maubin Township.

1.1 Statement of the Problem

The agriculture sector is the backbone for Myanmar's economy and communities. According to a World Bank report, between 35 to 40 percent of gross


domestic product (GDP) in Myanmar comes from agricultural sector and up to 70 percent of the labor force (of 32.5 million) is either directly or indirectly engaged in agricultural activities or depends on agriculture for people's income in rural areas. Moreover, it is estimated that agricultural products generate between 25 and 30 percent of total export earnings (The World Bank Group, 2014, p. 7). The modernization of the agricultural sector should be a top priority in the economic and social development agenda of Myanmar, given the importance of agriculture to the country's economy. In accordance with one of the major national economic objectives of Myanmar published by state-owned newspapers on 11th of April, 2011 "Building of a modern industrialized nation through the agricultural development and all round development of other sectors of the economy" (The New Light of Myanmar, 2011).

Under Myanmar's 2008 constitution, the state is the ultimate owner of all land and natural resources both above and below it. Even after the recent political reforms, an increasing amount of land dispossession and land-related problems are still taking place continuously within the country. Land grabbing became common practice under the former military regime. Many current land disputes date back to the period before the 2010 general elections, being related to land taken in the 1990s during under the leadership of General Than Shwe. Tun (2012) noted "although Myanmar was the largest rice exporter in the world before 1962, it became smaller exporter in the SEA Region during five decades". Myanmar has long been an agricultural country and rice has been the main export crop. Therefore, the decline in market share for Myanmar rice will negatively affect the country's economy. Tun argues that issues around land ownership are one of the key reasons for the decreasing market share.

Land has been used under the name of the expansion of military bases or infrastructure projects that have been used either by military units for their own purposes or sold to private companies. Myint Thwin, a lawyer expert at land issues, said all of the land acquisitions that have been undertaken did not comply with the Land Acquisition Act (1894).¹ According to him, land users were not notified before the acquisition and neither were they compensated. In the beginning, there was only little

¹ Personal Communication with Land Expert at Land Core Group, Myanmar on December 2013.

grassroots opposition to this land grab and there were few ways to receive adequate compensation. In 2010 Farmers tried to get back their land without any assistance from civil society groups around the country, but they started to realize that they needed to make a substantial effort to claim back their land. However, farmers working alone were not effective enough and they started to seek help from civil society organizations in 2012 in Myanmar. Another reason for the lack of civil society organizations (CSOs) in the beginning was because the government has put restraints on the actions of civil society and the military junta has practiced arbitrary laws to suppress any movement by civil society in the past. However, under the new democratic order, there has been more freedom and space for civil society actors to be involved in social issues.



After the 2010 elections, the country entered a transition from the former military rule to a democracy. This was also when farmers whose land was confiscated in the past started to lodge complaints to the government. However, there are people currently using the land in question and this has led to disputes between past owners and current users. In its attempt to solve land issues, the Government has formed two government bodies: The Farmland Administration Bodies (FAB) and the Parliament's Farmland Investigation Commission. Both were established in July 2012. In the same year, the government issued the new Farmland Law that revoked old laws that are 1953 Land Nationalization Act, 1963 The Disposal of Tenancies Law, and 1963 The Agriculturist's Rights Protection Law. Most of the land disputes were originated in a period when the old laws were in effect. However, there has been complication in the process of solving these disputes because the government is using new laws to tackle. According to The Parliamentary Land Investigation Commission report, land seizures have grabbed more than 500,000 acres of land (Myanmar Eleven, 2014, p. 1).

Moreover, the Central Committee on Land Use Management has been formed in September 2013 as per the Union Cabinet's Notification. This committee operates at different government levels (Village, Township, District and Region/State,) and "at each level" is called the Farmland Administration Bodies / Committees (FAB). It supports farmers in implementing the existing legislation, supervises relevant

government bodies to avoid land confiscation and helps resolve related issues, ensures that farmland released by the government or companies are returned to initial land rights holders, and the committee tries to ensure that land disputes are settled in accordance with the legislation.

Most of the land grabs during this period occurred in the Sagaing Division and Irrawaddy Region (McCartan, 2013, p. 1). Farmers are still waiting to claim back their land confiscated from them by the military. In response to the land grab, farmers have filed official complaints to the committees and have organized rallies to make their voice heard. Farmers have to rely on FABs to make decisions for the disputes. However, it is questionable whether decisions made by the committee truly bring justice for farmers. Besides, farmers' rallies have also been declared illegal by government officials and protesting farmers have been arrested. Because private companies and government officials have counter-sued farmers and tried to arrest and jail them.² Farmers lack knowledge and information regarding land laws, land registration and access to land tenure security.

To tackle these problems, Myanmar CSOs are also taking part to support farmers who face land problems and to reach Myanmar's democratic transition and development process. This is where the role of civil society comes in. CSOs and farmers have worked together on different levels in their bid to reclaim land and to reform land laws. Establishing an effective Civil Society Sector is very much in line with establishing a sound and effective Democratic Government. Farmers in Myanmar and CSOs have urged relevant government ministries to facilitate the swift return of unused land that had been confiscated from farmers or to compensate them fairly; for example,

1. Prioritizing the comprehensive land survey activity on how judicial review on the decision of the land administrative bodies should be improved (CPF, 2014, p. 4)
2. Promoting land tenure security for the poor and especially to protect the land rights of smallholder farmers (Land Core Group, 2012a, p. 11)

² Personal Communication with Green Peasant Institute in Maubin Township, Myanmar in April 2014.

3. Improving land governance and tenure security for communities protected by Nation Land Use Policy with consulting the voices from the bottom (Mann, 2014, p. 1)

However, the role of CBOs in land issues is a critical question. Their performance and capacity in working with farmers to solve land issues and foster access to justice in Maubin Township need to be looked at and identified. Among the many functions of CBOs which include working towards the promotion of access to justice and mobilizing the community to organize themselves to claim back their land and get compensation, the cooperation among CBOs is an important component. It should be noted that the cooperation among CBOs does not always take a positive form, and they are not always in sync with each other. One prevalent issue among CBOs is they often have different agendas and approaches, which may lead to some form of rivalry and disharmony. Even though CBOs are run by people who are willing to work for and serve people, some social organizations employees may seek power and monetary incentive which may become a more important priority for them.

The purpose of this thesis is to identify the strengths and weak points of relationship between CBOs and farmers. That results can highlights the important clues to provide the better solutions to access the justice on land issues and should provide a stimulus for further activities in Myanmar. Identifying the problems of land disputes is an urgent need to be better land reforms and the process of country's development in Myanmar.

1.2 Research Question

My main research question is “how do CBOs facilitate the community to get access to justice regarding land dispossessions and disputes?”

1. What are the different strategies CBOs employ in their attempt to solve land issues working with the community, which ones are successful and why?
2. What are the different strategies CBOs employ in their attempt to solve land issues networking with other actors, which ones are successful and why?

3. What are the key factors that contribute to success and failure of CBOs in strengthening the community's access to justice?

1.3 Research Objectives

My main objective is to analyze and evaluate how CBOs facilitate the community to get access to justice on land dispossession and disputes.

- To research the different strategies CBOs employ in engaging the community in their attempt to solve land issues, and explore reasons behind the successful ones.
- To research the different strategies CBOs utilize when they cooperate with other actors, and explore the strategies that are successful.
- To explore the factors behind success and failure of CBOs in strengthening the community's access to justice.

1.4 Conceptual Framework

The key concepts that will be addressed in this thesis are: land tenure security and land dispossession among farmers, access to justice and the role of civil society organizations in eliminating land grab and reforming land laws.

1.4.1 Land Tenure Security and Land Dispossession

Land tenure security has been a controversial topic over the past ten years. There have been discussions with regard to land ownership of general public, national land use policy and land as the foundation and the most important asset for the country's development.

FAO's definition of **Land Tenure** is: “ The relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and an institution” (FAO, n.d). FAO describes land tenure as being how access is granted

to rights to use, control, and transfer land, as well as associated responsibilities and restraints to the assurance that the land one owns or holds for an agreed period of time or purpose is certain. To be able to link land tenure concept to land policy, Thiesenhusen (1991) debates that “Land tenure system may also be regarded as a prism that determines which policies, technologies, and public resources differentially affect which classes of farmers”.

As another perspective on security of land tenure, UN-Habitat describes **Tenure Security**, “the right of all individuals and groups to effective protection by the state against forced eviction” (UN-Habitat, 2004). This approach discusses related to the interpretation in the General Comment 4 of the 1966 Covenant on Economic, Social and Cultural Rights. This perspective may be far from an inclusive participation, for example, multilateral, bilateral development agencies and mass development projects for country development, rather than human right based perspective or social justice and equality for individual or smallholder farmers.

It is also necessary to include in the analysis the relationship between land tenure security and country development that are interacted directly and vice versa. According to the discussion of IFAD, “Lack of secure land tenure exacerbates poverty and has contributed to social instability and conflict in many parts of the world” (IFAD, 2015). Moreover, taking the case of Maubin, the constant threat of land disputes affects the livelihood of poor rural farmers to prepare to invest in the long-term wellbeing of their land. Land tenure security is significant not only for agriculture production, but also it allows people’s livelihoods by using their land that use as renting or selling.

As the explanation of **Land Ownership**, Gelder (2009, p. 130) explains “legal tenure security is land titling and land-related laws (regulations) as a sense of security that is derived from a probability estimate of the chance of eviction or other factors that threaten a tenure situation and may cause involuntary relocation”. It is an element of property rights that are clear in purpose and accepted as legitimate and legal without facing problems such as unlawful evictions. These rules may be established by the State or by custom. Some further defined that “the level of landholder security can be captured by a simple dichotomy of ‘titled’ and ‘untitled’ owners” (Roth, Barrows,

Carter, & Kanel, 1989, pp. 211-214). In other definition on land tenure, “There are two systems of tenure based on freehold and leasehold. ‘Freehold’ land is considered to provide absolute ownership rights, implying the right to own, control, manage, use and dispose of property. ‘Leasehold’ land is based on the notion of rentals for long periods” (Economic Commission for Africa, 2004, p. 21). Land tenure systems determine who can use what resources for how long and under what conditions.

Private Property as commonly defined “Property owned by an individual person, company, etc.” (Oxford Dictionaries Website). On the other hand, **State Property** is defined by Clarke and Kohler (2005) , “ It is called public ownership or government ownership, is property interest that is vested in the state, rather than an individual or private entity”. The interlocking concepts of private property and state property have been argued by Lewis (1949, pp. 99-101) and he concerned with monopoly power of the state and cited advocated the nationalization of land and other sector. To be able to link more on this concept of private property and state property, Lahiff and Scoones (2000) argue, “In many such states there remain stark differences between large-scale commercially oriented farms and a marginalized peasant sector”. In this thesis, I maintain that development of the country is important, but the wellbeing of citizens who relies on land for their livelihood is equally important. The right of citizens to their wellbeing and livelihood should be reaffirmed and they should have equal access to land use and ownership.

Rural land has become a major issue of the practice of dispossession in many developing countries. **Land Dispossession** implies “ the loss of something that was once held, controlled, used or claimed by an entity, individual or group” (Oxley, 2015). As the result, the former and customary titleholders have been relocated, sometimes violently, with losing their rights over years or many decades.

Land and land related resources are associated with political economy of every State. It holds the power to decide how and for what purposes the land can be used now and in the future. It means to control land is to capture power. This practice has usually portrayed the exchange of land ownership as an illegitimate seizure of land from a

person or people that leads to their expulsion from the land. Some governments have seized land for redistribution to others as 'State Interests' and under the name of 'Country Development Purpose'. Rahmato (2009, p. 283) states that control over land resources has always been the main source of political power, and the state holds the ultimate authority in making decisions as to who should be granted access to land and who should not. In the context of Myanmar, as in many other countries, pressure and competition for land have heightened owing to growing foreign investment and the government's new development projects. This phenomenon has disturbing results to local land-based social relations. In the process of allocating land to investors, local communities, many of whom rely on land for their livelihood such as farmers, have been pushed aside.

Levien (2013, p. 352) argues that the use of eminent domain and other state powers to expropriate land from farmers for increasingly privatized industrial, infrastructural, and real estate projects has generated widespread agrarian uprisings, popularly dubbed 'land wars'. In some countries like Myanmar, governments hold sole ownership over land, and people are just entitled to rent it. Oftentimes, land laws and policies of government are weak and not clear. People have to go through a very difficult and lengthy process to get access to land security, and oftentimes, this process may prove too long and inefficient. The promise of restored property, raising expectations generates tension and division between the farmers and the grabbers. The special Economic Zones, high-tech cities, real estate, and privatized infrastructure have joined dams, mining, heavy industry, and commercial forestry as causes for dispossessing peasants. This has led to land disputes between local residents, governments and business investors.

1.4.2 The Concept of Access to Justice

Nyenti (2013, p. 904) states that **Access to Justice** is a concept that consists of many different elements: the rule of law, access to legal services, legal awareness, access to courts and asking the fundamental rights. However, access is often obstructed for some people, mainly the poor. Justice is concerned with fairness and the notion of

everyone being treated to the same standards despite their economic or social status. For everyone to be able to be held to the same standards, everyone in a society must be aware of the standards, laws and be equally able to seek set rights.

The concept of access to justice has been internationally recognized by several **International Human Rights Treaties**, are guaranteed by Universal Declaration of Human Rights (Article 8), the United Nations ICCPR (Article 14) and European Convention of Human Rights (Article 6). Access to justice has been declared a universal human right that is equal and available to all and therefore has been incorporated into the domestic law of many States. Domestically, in Myanmar, section 21(a) (d) of the 2008 Myanmar Constitution deals with the issue of the rights of justice and grants citizens that is “Every citizen shall enjoy the right of equality, justice” and “Necessary law shall be enacted to make citizens freedoms, benefits, rights, responsibilities and restrictions effective, steadfast and complete.” Furthermore, the section 347 said “the Union shall guarantee any person to enjoy equal rights before the law and shall equal provide legal protection”.

Legal Empowerment of the Poor (CLEP) of United Nations Development Programme (UNDP) defines **Legal Empowerment** as “ways to secure broader access to legal, fungible property rights over real and movable assets – and thus replacing, supplementing or improving existing local or national arrangements for the purpose of expanding and improving their utility for bottom-up economic and social empowerment and poverty reduction”(UNDP, 2008). According to UNDP, in developing countries, laws and policies for social and economic development do not protect the interest and rights of the poor who are the majority of the population. These people are faced with structural barriers to get access to their rights and equal opportunity. Instead of fostering inclusive and equitable growth, some laws and institutions tend to impose barriers and biases against the poor. Even where there are laws that protect and uphold the rights of the poor, they are often too ambiguous, cumbersome and costly for them to access. In many developing countries, informal norms, practices and institutions govern the everyday life of the poor.

In case of land issues in Myanmar, the disputes are settled outside the court and screened by the committees formed by the government that can be biased towards companies or are powerless when a high profile official or company is involved. Some of high-ranking officials and Members of Parliament serving in the government today took land from farmers during the junta's time, therefore, it is very likely that they would protect their property and actions by creating barriers for farmers to get access to justice. According to CBOs and farmers, the process for settling disputes and for filing complaints with the committees takes a long time. So much so that, farmers are kept waiting for the solution and this has led to CBOs seeking other means to tackle land issues.

1.4.3 The concept of Community Based Organizations (CBOs)

The concept of Civil Society Engagement is not a new approach at each country. Chong (2011, p. 223) states that **Civil Society Organizations (CSOs)** are a complex and dynamic ensemble of legally protected non-governmental institutions that tend to be non-violent, self-organizing, self-reflexive, and permanently in tension with each other and with state institutions that 'frame', constrict and enable their activities. CSOs are critical actors in the advancement of universal values such as human rights, environment issues, anti-corruption and labor standards. In fact, each community has created individual formal or informal organizations to provide the quality of lives in communities. In light of this definition, CSOs can be considered an important component of a society to provide checks and balances for the benefit of the State as well as its people. This task may also include recommendation of new and better laws.

However, it cannot always be presumed that work of CSOs is always beneficial to a country and its people. The dynamic of these organizations may prove very complex with many of them working with clashing agendas, approaches and objectives even in the same area of work. Sometimes, some organizations may try to claim dominance and better legitimacy over and then others, and this may create a confusing pattern in the realm of civil society, and may often disrupt their work. However, these clashes and conflicts may produce lessons learnt that these organizations can utilize in their future work, which will bring well results in the long run.

CSOs are into the following categories;

Table 1: The Different Forms of CSOs

Types of CSOs	Meaning and its functions
National NGO	Formally constituted, legally registered, free from commercial interests that provide services, information, and expertise, sensitize public opinion, and conduct advocacy activities.
International NGO	Has the same mission as a NGO, but it is international in scope and has outputs around the world to deal with specific issues in many countries.
Local NGO	Have some structure or regularity. Whether they are formally and legally registered or not are not important but they do have some permanent activity through regular meetings, membership or some organizational frame.
Community Based Organization (CBO)	Member-based organizations and locally based organizations made up of stakeholders who want to work towards a variety of common goals such as managing common resources, lobbying on certain issues or providing goods or services. The primary objective of CBO is to improve their livelihoods and their members'.
Social Movement Group	Includes platforms, committees, mechanisms, federations and networks of advocacy-based and policy-oriented organizations that promote specific claims or rights. CBOs are different from social movements that they respond directly to their members. The nature of Social movements may coordinate different organizations that include NGOs.
Corporate Groups	A corporate group or group of companies is a collection of parent and subsidiary corporations that function as a single economic entity through a common source of control for the economic benefit of their members and business interests groups such as rice federation.

(FAO, 2013, p. 17)

UN defines “CSOs include organizations devoted to environment, development, human rights, peace and their international networks. They may or may not be membership-based” (United Nations, 2004, pp. 111-135). CBOs, that are an integral part of the broader civil society, utilize different strategies in specific contexts. Contextualizing a strategy is very crucial so as to meet the needs of a community and to bring about the desirable outcomes. While some may focus on one strategy, others may use a combination of several strategies and approaches.

As the purposes of enlightening *publics* about collective efforts at social change, Tilly (1998, pp. 453-480) says, “**Social Movement** is a kind of campaign that demands righting of a wrong, most often a wrong suffered by a well-specified population. The social movement pays off in the effective transmission of the message that its program’s supporters are WUNC: Worthy, Unified, Numerous and Committed. Moreover, Fernando (2012) states that social movements can be national or (increasingly) transnational. National movements have grown from mobilizing against a particular local issue to become a national movement. Fernando added that CSOs/ NGOs also differ from social movements in the sense that they are bureaucratically structured organizations, not loose associations of citizens engaged in civic action especially since social movement itself is not homogenous and vary in how far it incorporates the characteristics of other civil society institutions.

Willetts (2006) argues “Social movements may wish to see movements as being more progressive and more dynamic than NGOs, this is a false dichotomy”. He describes the activities of CSOs are between small-scale change achieved directly through projects and large-scale change promoted indirectly through influence on the political system. There are most common types are between operational and campaigning NGOs. Operational NGOs are likely an efficient headquarters bureaucracy and, on the other hand, campaigning NGOs are to mobilize promoting changes. However, he mentioned the at times NGOs are contrasted with the 'new social movements'. These can be portrayed as dynamic, innovative and non-hierarchical.

The interlocking concepts of CSOs and Social Movement have been argued by Petras and Veltmeyer (2005),

“NGOs emphasize projects, not movements; they "mobilize" people to produce at the margins but not to struggle to control the basic means of production and wealth; they focus on technical financial assistance of projects, not on structural conditions that shape the everyday lives of people. The NGOs co-opt the language of the left: "popular power," "empowerment," "gender equality," "sustainable development," "bottom- up leadership." The problem is that this language is linked to a framework of collaboration with donors and government agencies that subordinate practical activity to non-confrontational politics. The local nature of NGO activity means that "empowerment" never goes beyond influencing small areas of social life, with limited resources, and within the conditions permitted by the neoliberal state and macro-economy”.

To further illustrate this, the causal relationship of social movement and land reforms are further explained by Scott (1985) who states that “ a social movement with no formal organization, no formal leaders, no manifestoes, no dues, no name, and no banner. By virtue of their institutional invisibility, activities on anything less than a massive scale are, if they are noticed at all, rarely accorded any social significance”. The impacts of the movement, therefore, may vary to different societies that enable changed communities and peasants to confront a supportive subculture and the knowledge that the risk to any single resister is generally reduced to the extent that the whole community is involved.

Table 2: Types of Activities

Category of activity	Examples of activity
Conventional Approach	- Lobbying - Negotiation / Compromise - Using informal relationship (with Government etc.)
Disruptive Approach	- Mobilizing and organizing protest initiated by Farmers - Mobilizing and organizing protest initiated by CBO
Violent Approach	Plow protest

Source: Tilly (2007, pp. 111-135) Modified by Nwe Ni Soe

It has an ever-changing pattern because while the common goal may be fixed, the activities and approaches that will bring the change can be shifting, depending on the reaction of other parties such as governments. CSOs can be seen at the forefront of social movements. Working closely with different stakeholders such as farmers, experts, lawyers, media and scholars, their work on land issues has taken on the form of a social movement and has gained a nation-wide attention.

Sailer (1978) says that a **Network** is a pattern of social relations over a set of persons, positions, or organizations. In civil society sector as in other fields of work, a network is formed by a complex pattern of social relations among organizations, and a major component in bring about a larger voice. A network among civil society organizations also enables these organizations to share information and resources as well as to work towards a common goal on a broader scale though their approaches they use may differ. The nature of a network strengthens transparency and accountability among the members, as they tend to cultivate a good sense of communication.

Sailer adds that **Network Organizations** as societies are burdened with identity maintenance activity, relationship building, power seeking, and political influence activity. While these can be seen as positive and beneficial aspects of networking, it should also be noted that there may also create incongruences and conflict as the network members sometimes compete for a bigger role and resources such as funds. Within a network, there will also be different levels of communication among the members. Despite these issues, networking among organizations is important especially while working under political restraints.

It cannot be denied that CSOs have powerful force for the culture of peace that must play a very important role. Their movements and activities support to ensure justice by overcoming the obstacles that obstruct access to justice. Its operations can provide the communities who have lack of human rights and access to justice, fair trial process. The effective participation of Civil Society in policy decisions affects not only the poorest members of their community but also local social and economic conditions in general. As a respond to obstructions to access and limited legal aid, CSOs that focused on the promotion of access to justice and provisions of sustainable livelihood have been established at international, national and local levels in the communities.

Despite their great role in the society, CSOs have experienced and encountered a number of common problems and dilemmas. “CSOs are often locked in a fierce competition, one against another, for limited resources. They have the lack of a common voice and downward accountability” (CIVICIS, 2013, p. 4). Under qualified and poor-capacity organizations tend towards privatization or commercial and they are not able to adequately represent the people from communities. A lack of socially active organizations working to solve the problems and social justice can cause the bad consequences to communities. Moreover, if CSOs have poor capacity they may not represent the voices in promoting access to justice and overcome the challenges of land issues. Tensions exist between CSOs and its partners, and CSOs create their own fiefdoms of client villages, while some officers use the CSOs for personal promotion. A working relationship will always require trust between an organization and the community, as the community is the key actor and the organization may just act as

facilitator. It is important to highlight the ways in which CSOs might more critically engage with the community agenda.

Brown (2007, p. 5) state that CSOs have depended on their legitimacy as embodiments of widely held social values to mobilize support and credibility. If CSOs leave questions about their legitimacy and accountability unanswered, they risk undermining organizational identities and capacities that depend on values and voluntary commitments. Working with a community takes a good process of building trust between the organization and the community as people representing an organization may be merely seen as outsiders in the eyes of the beneficiaries, and without proper trust and confidence built between the organization and the beneficiaries, there may be a lack of good communication and transparency. Building trust with a community may be a long daunting process, but it is very important. Lack of communication may lead to an organization not getting to know the context and it can also be very difficult for it to involve the community in its work.

1.5 Research Methods

A qualitative method was utilized for this study in order to answer the research questions and ensure that the objectives were met. This was entailed in a cross-sectional study using various methods including: documentary research, exploratory research, focus group discussions, in-depth interview and expert interviews.

1.5.1 Documentary Evidence

Documentary research was used to gain an understanding of the Myanmar legal system and the successful legal aid cases due to CBOs' performances at Maubin Township. Secondary data was collected from books, journals, reports, news articles and credible Internet sources. Moreover, documentary evidence to examine existing government data and official reports was included.

1.5.2 Field Study Research: Data Collection and Method

To understand the issues of land specific to Myanmar, the following section will discuss the details about the data collected in the field. The data for this thesis was gathered during a one-month field study (from 1st May to 31st May 2015). The farmers who are victims of land grabbing, CBOs leaders, Local NGOs, National NGOs and INGOs who are supporting the issues of land, lawyers who are solving land issues and government officials who are serving land sector and related issues were included. For this research the case studies were used in Maubin Township. See appendix A for the list of key informants and appendix B for secondary informants.

Table 3: Methodology Matrix and Interview Strategy

How do CBOs facilitate the community to get access to justice regarding land dispossessions and disputes?	Data Needed	Interviewee/Origin of the Source	Tools
What are the different strategies CBOs employ in their attempt to solve land issues working with the community, which ones are successful and why?	Different strategies used by CBOs to organize and mobilize farmers	-13 Farmers from Maubin Township - 3 CBOs and 2 Village Leaders -2 Spoken person of FABs - 2 Lawyers who helping land issues in Irrawaddy Region	- In-depth Interview -Focus Group Discussion - Secondary Data Review -Non-Participatory Observation
	Different strategies used by farmers with support from CBOs (Demonstration/ Cooperation with other organizations/ Complaints to Land Authorities)		
	Funding sources and their influences in shaping the agenda of CBOs		
	The differences between the approaches and their social & political implications as well as the degree of effectiveness of these approaches		

What are the different strategies CBOs employ in their attempt to solve land issues networking with other actors, which ones are successful and why?	The network dynamics and the level of cooperation among organizations	- 13 Farmers from Maubin Township - 3 CBOs Leaders - 2 Village Leaders - 2 Spoken person of FABs	
	Evaluation of effectiveness and outcomes resulting from the networking and cooperation among different actors by looking into the factors that contribute to these outcomes	- 3 Lawyers who helping land issues in Irrawaddy Region	
	Funding sources and their influences in shaping the agenda of CBOs	-3 Representatives of CSOs	
What are the key factors that contribute to success and failure of CBOs in strengthening community's access to justice?	Researching the level of achievement of CBOs in their bid to promote access to justice by looking at their strengths, shortcomings and challenges		

In-depth interviews and two focus group discussions were conducted with 13 farmers involved in land disputes and different actors involved in land issues with different capacities. These actors were three CBOs, four NGOs, two INGOs, one government attorney, one lawyer, one legal support group, the deputy officer from Settlement and Land Record Department of Maubin, land activist, one village administrator and one team member of the Maubin's Member of Parliament. Through these interviews, the role of FABs and the outcomes of their activities were explored. The details of the legal channels they provided were looked at and the process that farmers went through to get access to justice was investigated. These interviews also touched upon the role of civil society organizations in facilitating farmers to get access to justice. The paper also utilized records and documents provided the Maubin MP;

these records and documents show the profiles of land disputes with different categories in his authoritative area. These are important numbers as implications on the performance of the FABs in Maubin can be drawn from them.

1.5.3 Research Scope

Currently in Myanmar issues of land grabbing still occur all over the country, particularly in Irrawaddy Division. The research focused land dispossession issues in Maubin Township that is situated in Irrawaddy Region that has the most land problem areas and CBOs who are working to solve their problems.

Maubin has a population of 314, 093 (Ministry of Immigration and Population, 2015, p. 80). The total landmass of Maubin is 322, 211.25 acres and farmland accounts for 224, 481 acres, according to Maubin Settlement and Land Record Department. The inhabitants of the town, as well as the district are mainly Bamar and Karen. Maubin district is 1651.49 square miles and 50 kilometers away from Yangon. There are 315 land cases according to the information provided by the same department.



Figure 1: Location of Maubin Township, Irrawaddy Division
(Source: http://members.tripod.com/~bore_encyclopedia/BurmaBig.gif)

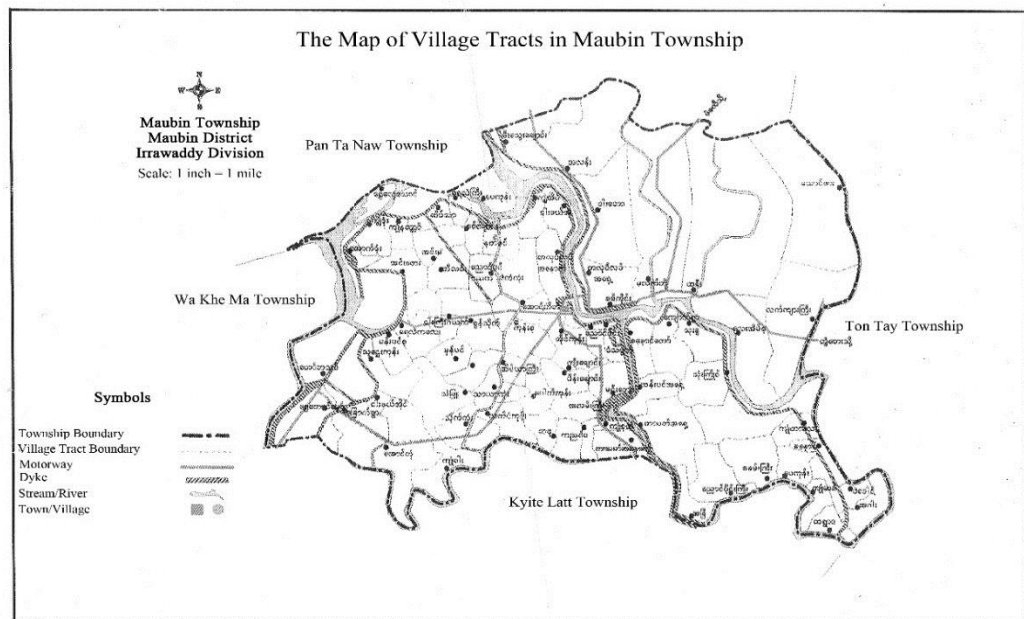


Figure 2: The Map of Maubin Township (*Source: Maubin Settlement and Land Record Department*)

1.5.4 Sampling

There are approximately seven CBOs in Maubin, whose common goal is to help the farmers in the community to have access to justice. However, I have chosen three out of these seven CBOs; Pyo Khin Thit Foundation, Farmers and Fisherman Support Group (FFSG), and Agriculture and Farmers' Federation of Myanmar (Maubin branch). The three CBOs were chosen based on diverse approaches, having different levels of achievements and failure over the past several years. I was interested to look at the factors that lead to these different levels of outcomes as I tried to understand their different directions, goals and strategies that these organizations embody, in relation to the impact they have on the community, the relationship between them and the community, and among themselves.

I looked at 3 CBOs and their work, as they are the focus of this research. Then I looked at the community to see how CBOs work with them. Finally I talked to other actors such as government officials:

- Palong village Administrator

- An officer of Land Record and Settlement Department in Maubin
- Minister of Agriculture in Patheingyi Division

INGOs and funder organizations:

- Namati Myanmar
- Pyoe Pin Program (DFID)
- Paung Ku Program

Local NGOs:

- Green Peasant Institute (GPI)
- Land Core Group
- MLaw

It is important to explore how CBOs and these organizations influence each other and the outcomes from this dynamic. This sampling created an opportunity to look into how other factors such as funding opportunities, local political context and different agendas of these organizations play a role in promoting the access to justice for the local land-deprived farmers.

1.5.5 Method of Data Analysis

For data analysis, firstly, I transcribed my entire interviews with the stakeholders and then code the data for certain words or content and grouping similar kinds of information together in categories, labeled according to different themes. The next step was to interpret what all of these findings meant and I translated from Burmese to English. I compared different types and results of interview results to find out dominating factors of land issues. It included the critical events in chronological order and the most important facts in the process of solving land issues. I organized my translated and transcribed data sorted into categories to answer research of the sub questions.

1.6 Ethical Issues

Ethical issues were carefully considered during the research. The interviews that took place with victims of land dispossession and key informants were done after their understanding and agreement were attained. It was informed to people before interviewing that he or she can withdraw from the research at any time if they want to stop the interview. In addition, the name of the farmers, CBOs leaders, lawyers and land management authorities who give comments upon sensitive information were not be mentioned in the Thesis in order to protect them. As the researcher had in the past worked for a CBO that has been promoting land rights for farmers, she was able to get access to information through the actors that she used to work with. However, she was careful not be biased and made sure to crosscheck all information that she got from those actors. Before conducting any interview or questionnaire, the explanation about the purpose of the research, expected during and procedures and what and how the information would apply were clearly provided. It was ensured that giving information to interviewees about how photos, audio and video recording, and secure their consent.

1.7 Significance of the Research

The implementation of land reform and granting land tenure security for farmers is an imperative for the government as the country's economy relies heavily on agriculture. These moves bring economic and social security to the whole country, and CBOs have a very important role to play in advocating land rights and securing land tenure for farmers, who feed the country. This research aimed to contribute the knowledge in international development studies as how we can increase Civil Society interests and participation in land issues. This thesis evaluated the effectiveness and positive changes that was considered as outcomes from CBOs working with farmers. It was important to identify that how the nature of CBOs and other factors do affected the operations of CBOs for grassroots farmers in community.

This research investigates the access to justice for farmers and CBOs in land disputes and dispossession and analyzes specific barriers impeding their success, from

weak land policy and inadequate dispute resolution mechanisms, to an absence of support from various sources. Furthermore, this research identifies the key obstacles to access to justice in Myanmar and suggests ways that CBOs can help to overcome these. The research contends that continuing barriers to progress lie primarily in the country's broken land management system, the failures of recent land laws to secure the protection of farmers' land rights, the failure of government bodies and authorities to perform their responsibilities unbiased from military influence, and the total impunity of the military due to the independent structure of the courts-martial. Moreover, CBOs take a more concerted focus on land rights violations working with farmers to support their appeals for justice. Finally, there are no academic studies that focus on the connection between the role of CBOs and land dispossession in Myanmar.

1.8 Research Limitations

One major limitation was gaining access to government officials and their documents related to land disputes in Maubin Township. Government officials were reluctant to give time for interviews and the only chance to see them was at events that they attended. They avoided answering questions and only said a few words to imply they were doing their best to tackle the disputes. They also refused to share their data and documents

1.9 Thesis Structure

In Chapter 2, the literature review of land tenure security in Myanmar, farmers' access to justice for land losses and right to land in Myanmar, and the role of civil society organizations in promoting access to justice and eliminating land issues will be discussed. In Chapter 3, it attempts to answer the first research question of the thesis by examining different strategies employed by Community-Based Organizations (CBOs) in their attempt to solve land disputes and identify their impacts. The Chapter 4 answers the second research question related to the Dynamic of Relationships between CBOs and Different Stakeholders. The Chapter 5 explores Mechanisms and Barriers for

Access to Justice by answer the last sub question of the research. The Chapter 6 is the conclusion chapter that discusses the main finding and recommendations.



CHAPTER II

LITERATURE REVIEW

Land conflict has had a long history in Myanmar. Land reform is essentially a political process as it involves interventions in local power relations. This chapter discusses three major themes; in section 2.1, Land Tenure Security in Myanmar, in section 2.2, Access to Justice and Right to Land in Myanmar, and the Role of CBOs in Myanmar in section 2.3.

2.1 Land Tenure Security in Myanmar

There are many laws related to land in Myanmar. The ones most related to agricultural land use are the Tenancy Law (1963), the Land Acquisition Act (1894), the Nationalization Act (1953), and the Agriculturist's Rights Protection Law (1963). All of these laws were removed by Thein Sein's new government in 2012 and replaced by the Farmland Law.

There have been both formal and informal ways by which farmers get access to land. The formal channel is for farmers to rent land from the government, who retain the ownership of all land. Farmers go through a process where they apply for the right to use land and pay taxes. Informally, a farmer may transfer or sublet his land by the acknowledgement of community leaders and with villagers as witnesses. A farmer who buys or rents land from another farmer through this process will have a document to assure his right to use the land. This is illegal in the eyes of the law because according to 1963 Tenancy Law in Myanmar it prohibits informal arrangements. However, farmers throughout the country have been using such informal channels for years.

Traditionally, people live and farm on land with a customary management in Myanmar. This may take on different forms of laws and agreements that often include recognition within an area. Many people have practiced these kinds of customary arrangements for decades, and even centuries. These forms of management are always informal in their nature and have had little to do with bureaucracy and administration

of the State. In many countries, local communities, including indigenous peoples, have also managed their land resources according to their traditions embedded in their belief systems, cultures, and their practices and knowledge of agriculture and livelihood. However, in recent times, States have started to intervene with these forms of local land management. According to land laws and policies prescribed by States, land ownership requires a legal document, or rather land title, to prove that one can live and farm on a piece of land. This has clashed with traditional land management of local communities while States, with their development projects and increasing population, are in need of more and more land use.

The two new land laws in Myanmar—the Farmland Law and the Vacant, Fallow and Virgin Wasteland Law—make land into a legal commodity. However, the laws have been used to allow investors to lease land concessions in wasteland and fallow, even though farmers have been using such land for generations with their own customary arrangements. The Farmland Law was made to create a system of securing rural land tenure through land use certificate and registration system. The legislative government has created a private land use property right, meaning the right to sell, right to exchange, right to access credit, right to inherit, and right to lease. Farmland Administration Bodies (FABs) have been set up to issue Land Use Certificates to farmers. The Farmland Law has a direct link to the Vacant, Fallow, and Virgin Lands Management Law (VFV) in 2012, which is another addition to land laws. VFV lands can be reclassified as farmland if it is recognized by FAB that the use of land is stable.

The tenure security provided under the Farmland Law is weak because the government retains sole ownership to all land, and can revoke land use rights if the conditions are not met. A few example of breaching the prescribed conditions include leaving the land fallow or building structures without permission. Moreover, there is no mechanism to land disputes to be heard by the judicial branch of the government. The VFV law is derived from the old Rules for the Grant of Waste Land (1861). This law allows citizens, private investors, government entities and non-profit organizations to apply for the right to use VFV lands for agriculture, development projects, mining and other purposes. One issue is what appears to be vacant land on the map used by the government has, in reality, been used by local communities for generations through

local customary arrangements. This has led to land disputes throughout the country.

Land tenure systems determine who can use what resources for how long and under what conditions. In Myanmar, there are different types of land rights for Myanmar citizens, each of which has its own rights and obligations. It can be categorized as agricultural land and non-agricultural land. The main categories related to this thesis are following;

Table 4: Types and Classes of Land in Myanmar

Category of Land	Meaning and Its Functions
Freehold Land	Known as ancestor land in Myanmar that can only be taken back by the Government, for State interest. Transferable and can only be taken back by the government, for State interest, and in accordance with the ‘Land Acquisition Act’.
Grant Land	Owned by the government and the most extensive form of land use right for state land and the lease period could range from 10 years to 90 years. Grant land is transferable and can be inherited within certain legal restrictions. Grant land exists almost everywhere in cities and towns but very few cases exist in villages.
Farmland / Agricultural Land	Owned by the Government and given to a Myanmar citizen for a particular purpose. With Farmland, a citizen is only permitted to cultivate paddies. Agricultural Land is not transferable in accordance with the 1953 Land Nationalization Act, Article 4. To legally obtain the right to use Farm or Agricultural land, farmers must apply for and obtain a Farm Land Work Permit (Form 7) from the Central Farmland Management Bureau (CMFB) granting the farmers the right to use the land.
Grazing Land	Different from the other types of land that were also made in the records of various Township Land Records Offices indicating and mapping the area of land designated as ‘Grazing Land’.
Vacant / Fallow / Virgin (VFFV) Land	Land has never been cultivated or has been abandoned by its owner. Such land may be used for agriculture, livestock, mining, or any other use permitted by the Central Committee for the Management of Vacant, Fallow and Virgin Lands. This land can be leased, sub-leased, or transferred with the Cabinet’s permission.

(Based on the source: (UNHABITAT & UNHCR, 2010, p. 3))

In Myanmar, Land Core Group’s legal review reported “The Laws remain designed primarily to foster promotion of large-scale agricultural investment and fail to

provide adequate safeguards for the majority of farmers who are smallholders” (Oberndorf, 2012). The system of land tenure in Myanmar differs fundamentally from that in many other countries.

After 2010, Myanmar is in the middle of a dramatic series of reforms that have the potential to create a more inclusive society. The land laws, however, were not enforced effectively in many regions. Overall the Laws lack clarity and provide weak protection of the rights of smallholder farmers in upland areas and do not explicitly state the equal rights of women to register and inherit land or be granted land-use rights for VFV land. As a result of these laws and their limited enforcement, legal tenure security has increased significantly while actual tenure security and household perceptions of land tenure security remain weak in many parts of Myanmar. According to Land Core Group (LCG) legal review, smallholder farmers are critical for pro-poor economic development and national food security (Land Core Group, 2012b). Economic growth tends to accelerate when people can access land fairly, equitably and efficiently, and when land tenure is secure for the rural population.

According to DFID (2007), powerful elites continue to use their discretionary power and influence over land allocation for political and personal advantage. Poor people are denied access to vital information and so are prevented from accessing land. This information encourages speculative land purchase by elites for massive profits. This is of particular relevance in Myanmar where investors have accumulated large landholdings and smallholder farmers lost land in recent decades. The farmers have faced barriers that prevent them from establishing secure tenure– rights to land and property.

2.2 Access to Justice and Right to Land in Myanmar

Firstly it is important to establish the relationship between Accesses to Justice and Right to Land. “Land rights refer to the inalienable ability of individuals to freely obtain, utilize, and possess land at their discretion, as long as their activities on the land do not impede on other individuals’ rights” (CEN, 2014). This is not to be confused

with access to land, which allows individuals the use of land in an economic sense. Instead, land rights address the ownership of land that provides security and increases human capabilities.

Land is a crosscutting issue and is not simply a resource for one human right in the international legal framework. Wickeri and Kalhan state “while rights have been established in the international legal framework that relate to land access for particular groups, numerous rights are affected by access to land (equality and nondiscrimination in ownership and inheritance), an explicit consideration of the legal implications of access to land for a broad range of human rights is necessary” (Wickeri & Kalhan, 2010). This includes increased land rights for impoverished people that will ultimately lead to the higher quality of life. Under the civil and political rights (ICCPR) and in the UDHR (Article 17) states that everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.

Ziegler (2002) argues that access to land is one of the key elements necessary for eradicating hunger in the world and notes that many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their properties are so small that they cannot grow enough food to feed themselves. He pointed the obligations of states with respect to the right to food, the necessity of land in protecting, respecting and fulfilling the right. Although land rights are fundamental in achieving higher standards of living and livelihood, certain groups of individuals are consistently left out of land ownership provisions. In order to reach equality for these groups, adequate land rights that are both socially and legally recognized are needed to obtain.

The primary subject of justice is the basic structure of society. Major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. If someone is unable to access court then he/she cannot seek justice. This clearly shows that the rule of law and access to justice are interdependent on each other for their existence. One of the leading works ‘Access to Justice and the Welfare State’ by Mauro Cappelletti explains the definition of access to justice containing two main elements:

- The system must be equally accessible to all
- It must lead to results that are individually and socially just. (Cappelletti & Garth, 1983)

The concept including the entire mechanism of law making, law interpretation and law application, and law enforcement. Otto (2002) states “access to justice is achieved when a person, not excluding any members of society, suffering from an injustice is able to gain assistance, either from state or non-state bodies, in order to resolve their grievance in accordance with the rule of law”.

The Farmland Administration Bodies are responsible for solving land disputes and the process takes place outside court. The 2012 Farmland Law states that the decision made at region/division level FABs is final, which means that a farmer cannot bring his case to court when he is not happy with the decision made by the FABs. This also means that the farmer does not have access to justice, and this system does not strengthen the rule of law. A report by (USAID, 2014) argues that including finality clauses in legislative drafting has become a pattern in Myanmar. A finality clause allows a designated committee to make a final decision outside court. This is exactly what is happening in land issues as FABs are making final decisions. Farmers will be affected by this pattern when decisions are not made impartially.

According to a survey conducted by the National Human Rights Commission, land confiscation and disputes over natural resource extraction were listed by over 95% of respondents, who felt that currently, the law offered no protection to aggrieved villagers. The survey also revealed that the Commission has received more than 6000 complaints since it was established in 2011, and that most of these complaints were about land confiscation by force (ASIA PACIFIC FORUM of National Human Rights Institutions, 2015).

Access to justice remains a debated question in underdeveloped countries with issues on access to courts, access to legal representation on this subject for the poor and marginalized. In Myanmar, following almost 50 years of military rule, the country's politics and economy is supposedly being loosened with military officials and their

cronies retaining firm control of the country's land sector. There are a number of formal and informal channels that may be utilized for redress when land has been confiscated or appropriated by another. Farmers can obtain compensation or re-claim their land, however, in practice it has been very difficult to secure land or compensation. While some of the land grabs are new in Myanmar, many of them originate in land confiscations under the previous military Government, which Myanmar people are now challenging through mechanisms provided by the Government. Karen Human Rights Group (March 2013) report that although the Parliamentary Land Investigation Committee was established in July 2012, there have had a small degree of success to obtain compensation or re-claim my land.

2.3 The Role of CSOs in Myanmar

There are numerous CSOs in Myanmar. Hlaing (2007) says that with respect to associational life, Myanmar counts the development such groupings since the colonial period to be student unions, trade unions, religious organizations, political parties and organizations, ethnic associations, social welfare organizations, professional associations, community-neighborhood-organizations and native place organizations. The new Constitution in Myanmar (2008) has a provision that allows Myanmar citizens to be represented and form social organizations. Currently, CSOs need to go through complex and unclear bureaucratic processes to be registered in Myanmar. Some CSOs prefer to seek registration as private companies or to simply use the umbrella of a registered organization to avoid direct control by the government. There is no official report on the number of active CSOs in Myanmar but there may be as many as 10,000 CSOs operating, most without registration. According to the information of Ministry of Home Affairs almost 300 local NGOs have been registered since the beginning of 2012 and about 10% of active groups (LNGOs) are implementing Registration Law programs with the financial aid of international organizations. The new Association Registration Law was enacted by the Union Parliament on June 25, 2014.

The neglect of social sectors by the Myanmar state has led civil society to attempt to fill the gap. Education is the most obvious example: out of the 86 National /

Local NGOs mentioned in the Capacity Based Initiative (CBI) directory, 39 have education activities. This sector is now emerging. The CSOs have managed to establish good working relations with various ministries and a few have been associated to the drafting of the 2009 National Sustainable Development Strategy for Myanmar. (U.S.Department of State, 2014) says civil society organizations from Myanmar are now more vocal than in the past.

A lack of human resources is a key issue, Callahan (2007) points that although there are highly skilled and trained professionals who run many organizations, they face great difficulty in recruiting additional personnel to help build capacity, which results from decades of inadequate education and constitutes the greatest hindrance to the growth of the civil society sector. Most donors disbursing funds with agreements with the government have issues to fund LNGOs and CBOs that are not registered and/or have limited reporting capacity. Funding mechanisms are often tailored according to international standards that local organizations cannot meet. Consequently, a diplomatically termed 'partnership' approach has developed where INGOs contract LNGOs and CBOs to implement projects or project activities.

CSOs play a limited yet vital role in the numerous social changes that are occurring in Myanmar, where authoritarian rule and poverty have not resulted in an incapacitated and passive society. On the other hand, CSOs have been able to promote the idea of empowerment and participation in communities' decision-making processes at the local level contributing to a wider effort for democratization.

Although there are the explosive growth in the number and variety of development of LNGOs and CBOs in the countries, the difficulties of managing and operating CSOs raised concerns. Moore and Stewart says that collective self- regulation could make a significant contribution to solving four generic problems faced by development LNGOs and CBOs in poor countries, that depend to a significant extent on foreign funding. These are labeled the accountability, structural growth, evaluation, and economies of scale problems respectively (Moore & Stewart, 2000). It explains that some LNGOs and CBOs are not accountable and do not in practice use their budgets for the purposes that their financiers intend.

Myanmar Information Management Unit (MIMU) claim that they arrange to meet regularly with Myanmar LNGOs for better coordination and cooperation as well as sharing and updating their experience and work in the field. There are also Joint Coordination Meetings involving UN Agencies, INGOs and LNGOs as the platform/venue for them to meet, share, and update their work, experience and information as well as seek opportunities for projects and programs they can implement together.

Mack (1965) argues that group may tend to believe that their way of thinking and doing things is not only the best but the only right way. This belief is the ways of one's own group are superior to all others, sociologists call ethnocentrism. He explains that ethnocentrism is an important source of and a contributing factor to the continuity of conflict. In spite of the fact that in the ground/ communities in Myanmar, I personally find out that CSOs are less likely to cooperate and lack of transparency and information sharing each others. This is the heated question whether the performances of CSOs on Land Issues in Myanmar are the remedy or the pain to the communities.

Jackson et al state that groups may be in competition for a real or perceived scarcity of resources such as money, political power, military protection, or social status (Jackson, W, & U, 1993). The theory explains how groups' hostility can arise as a result of conflicting goals and competition over limited resources. The groups see the competition over resources as having a zero-sums fate, in which only one group is the winner. The 'winner' is that which obtained the needed or wanted resources and the others are unable to obtain the limited resource. Tensions tend to occur among groups that are competing for resources that are already limited and not always accessible to them.

As discussed above, CSOs are very often in tension with each other as well as with communities. The tension between an organization and a community may also be caused by a conflict of interests. Oftentimes, organizations come with their own agendas, which they may hide in the beginning, but the community will start to see it

as a threat to its interest. This may also occur among organizations. Sometimes, they experience conflicts because their work overlaps and sometimes because they want to push their own objectives in front of others and claim dominance over others. In some cases, some organizations may work with some form of dictatorships and do controversial work. This may pose threat to the security of other organizations and will become a huge challenge, as government-backed organizations tend to push forward their government's agendas, which may negatively affect people's lives. Other forms of tension among organizations include competition for funds among themselves. This not only creates distrust among themselves, but it can also result in communities distrusting them.

2.4 Knowledge Gap

In Myanmar, land disputes have been continuing for decades, paralyzing the agricultural sector of the country and the livelihoods of farmers. In response to this, civil society has started to engage in the reduction of land-related issues. It has been three years since civil society organizations have started to cooperate with farmers in their attempt to solve land issues by promoting their access to justice. CBOs are a significant component of the civil society working with farmers. However, there is no substantial research paying attention to their work on the ground. It is important that their strategies to promote farmers' access to justice are explored, analyzed and evaluated. The thesis aims to fill this knowledge gap, and the findings in this thesis may contribute to a better understanding of the role of CBOs in reduction of land disputes, and the analyses may offer to CBOs and other civil society organizations some concrete ideas on what can be improved in their work. Moreover, the evaluation of civil society movements can be reflected as a tool to land reforms and access coordination and networking channels of CBOs performances among the community, local and national level in Myanmar. This thesis also provides the recommendations for land reforms and the incorporation of CSOs including CBOs in the process of land reform in Myanmar. Land issues are a subject of discussion and debate in Myanmar. NGOs have written reports of the subject. However, there is no writing on the role of CBOs in battling land disputes. It has not been discussed extensively either.

CHAPTER III

FIDINGS: DIFFERENT STRATEGIES USED BY CBOs AND THEIR IMPACT

This chapter attempts to answer the first research question of the thesis by examining different strategies employed by Community-Based Organizations (CBOs) in their attempt to solve land disputes and identify which approaches are more effective than others. Firstly, an in-depth description of the work done by the three CBOs selected for this research is presented in section 3.1, followed by an analysis of their approaches and strategies. In section 3.2 and 3.3, the chapter presents two case studies of land disputes, Aung Hate village and Palong villagae in Maubin Township, in which the three CBOs have been involved. Their impact, financial resources, scope of involvement, skills, level of legal knowledge and relationship with other stakeholders are considered as key components to look at in evaluating their performance and strategies in these sections. In section 3.4, how the capacity of funding in their organizations can effect on the Performance of CBOs and section 3.5 is misunderstanding and incongruence between farmer communities and CBOs arising from a situation where CBOs are faced with barriers to yield results and farmers have expectations for these CBOs what are the possible ways to reduce harm in their communities and government. Finally, this chapter reaches a conclusion that the impact of the CBOs on land disputes varies according to different levels of their involvement and differences in their strategies and that these strategies are effective only to a small extent because CBOs have limitations to influence the decision making that is controlled of the government.

3.1 Selected CBOs and their Background

There are seven CBOs in Maubin working with local communities in an attempt to solve and reduce land disputes in the area. These CBOs come from various backgrounds and employ different strategies. This research focuses on the

performance of three CBOs - Pyo Khin Thit Foundation, Farmers and Fisherman Support Group, and Agriculture and Farmers' Federation of Myanmar (Maubin branch). Though they employ different approaches, these CBOs have the same goal to facilitate farmers in getting access to justice and eradicating land issues. All three deal with a wide array of land problems. They do not specialize in one area of land issues but rather cover all areas related land issues and land dispossession, from facilitating legal processes to organizing plow protests³. They also provide welfare support to farmers, for instance giving financial support to pay for education for the farmers' children, helping to organize farmer's saving groups and bringing in agricultural experts to share technical support and knowledge for sustainable agriculture. One thing to note is that not all of these groups are registered organizations. Many are founded and led by people who have community-based social relationships with farmers, and know the issues farmers are facing in terms of land and livelihoods, hence why they are engaging with farmers to try to solve these issues. A brief description about the activities of these CBOs is presented in the table 5.

Table 5: Characteristic of the selected CBOs in Maubin Township

	Pyo Khin Thit Foundation	Farmers and Fishermen Support Group	Agriculture and Farmer Federation of Myanmar (Maubin)
	<p>Started in 2012 with the membership of 30 Young people</p> <p>Set up a library</p> <p>Seen as a social activist group, people started to consult with them about issues related to labor and human</p>	<p>Founded in 2013 by Min Zaw, a member of National League for Democracy. In 2012, Min Zaw was assigned by the Member of Parliament of Maubin to collect information on local land disputes. After seeing the scope and</p>	<p>This network organization consists of community and village level farmers and groups. Each group is required to have 30 members minimum. In Maubin, there are</p>

³ In a plow protest, farmers who have lost land re-occupy their land by starting to use the land without any permission from the current land user or the authority. These protests might lead to arrests of the occupants according to the state's law against illegal trespassing.

	<p>trafficking</p> <p>Released bimonthly a newsletter that covered land issues in Maubin</p> <p>Provided farmers' communities with solar energy for household power consumption</p> <p>Organized trainings on Land Laws, Land Tenure and Land Registration etc. by bringing in land experts</p>	<p>intensification of land disputes, he decide to start this organization</p> <p>Organized farmers' protests</p> <p>Facilitated negotiations between farmers, present land users and FABs</p> <p>Involved in every step of negotiations. If these negotiations break down, they discussed with farmers about next steps</p>	<p>68 village level farmers' groups under one township level branch office.</p> <p>This group has been registered with Ministry of Labor and therefore, can operate legally.</p> <p>Community and village level groups send complaints gathered at community and village level</p> <p>Meetings are held on a monthly basis and the wellbeing of farmers is the focus of these meetings</p> <p>Member farmers are trained and equipped with organizing and mobilizing skills</p> <p>This organization has organized sustainable agricultural trainings in cooperation with a group of Japanese</p>
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			agricultural experts They organize these activities without any financial support from Central Farmers' Federation
Legal Status	Unregistered	Unregistered	Unregistered
Approaches on land issues	Negotiation, compromising, and using informal relationship with government	Mobilizing, organizing farmers' protests, and using informal relationship with government	Mobilizing, organizing farmers' protests, negotiation and compromising
Source of Funding	Library memberships Donations by library and community members (about 100 USD is collected very month)	No source of funding Farmers provide logistics for activities	No source of funding
Level of Legal Knowledge	They are not legal experts, therefore, they have difficulties	They are not legal experts, therefore, they have difficulties	They are not legal experts, therefore, they have difficulties

3.1.1 Pyo Khin Thit Foundation

The core members of Pyo Khin Thit Foundation met when they joined Garuna Social Group⁴ in 2008 and became involved in the group's rehabilitation program for the victims of Cyclone Nargis. They also campaigned for Aung San Suu Kyi in the

⁴ Garuna Social Group is a Maubin-based organization formed in 2008 to provide free funeral services to communities. The organization is initiated by local socially-minded people. Their work gained momentum after becoming involved in rehabilitation of the local people affected by Nargis Cyclone.

2012 elections. Garuna was not happy with their political involvement and party affiliation and as a result these young people resigned from Garuna and started their own organization, calling it a Foundation. The organization started with 30 members and they set up a community library in Maubin to bring young people together to read books, engage in meaningful discussions, address issues affecting society, and initiate activities that will contribute to the wellbeing of the local people. They maintained their activist characteristics as consequently people approached them to discuss social issues in the area. The members of Pyo Khin Thit Foundation are unpaid volunteers who focus their work on capacity building for young people through organized trainings, such as leadership trainings.

Htike Htike, one of the core founders of the organization, said:

“We are a small group with limitations as to how much we can do. So when work is too big for our capacity, we transfer it to bigger organizations that are able to take on the task.”

One of the key activities of Pyo Khin Thit Foundation, before they were forced to stop due to limited funding, was the publication of the Foundation newsletter. This newsletter was issued on a bimonthly basis but only ran until issue 9 in 2013 as they could no longer afford the expenses. They are now thinking of reviving it as an online version. The newsletter covered many issues including those surrounding land disputes and government departments. The newsletter was circulated in Maubin and neighboring towns in the Irrawaddy Delta. Thanks to this newsletter, many farmers have become more aware of land issues and legal issues in land disputes.

3.1.2 Farmers and Fishermen Support Group (FFSG)

In 2012, the Member of Parliament representing National League for Democracy (NLD) party in Maubin assembled an investigation commission to look into land disputes in the township. The MP presented the data gathered by this commission to the parliament in Nay Pyi Daw. Min Zaw, who would go on to start the

Farmers and Fishermen Support Group, was a member of this commission and led the data collection process. Throughout the process, Min Zaw was exposed to the plight of farmers and felt the investigation did not go far enough to solve these problems, which was when he resigned from the commission to start his own organization, Farmers and Fishermen Support Group, as a Community-Based Organization. He talked to community leaders and farmers, introduced his organization and invited them to work with him to eradicate land issues. Thus, the organization was born in 2013.

Farmers and Fishermen Support Group worked without charging for any services and did not raise funds. When it received complaints from farmers regarding land disputes, it provided consultation and facilitated the process of filing complaints with the Land Utilization and Management Committees, committees formed by the government to solve land issues. As the organization ran without funds, farmers had to spend their own money to cover expenses. The Group also help by bringing in lawyers for legal consultations.

3.1.3 Agriculture and Farmer Federation of Myanmar (AFFM-Maubin)

This network organization has spawned 65 network groups in Maubin since its inception in 2000. Each group is required to have at least 30 members and the network organization is registered with the Ministry of Labor, meaning it is run legally. The organization is formed over different levels, from division to village, and farmers take on leading roles in the groups. The organization is neither funded from the outside nor is financially supported by the Central Farmers' Union. Its work covers a wide range of issues from sustainable agriculture to farmer's wellbeing and has cooperated with a Japanese agricultural group and organized sustainable agricultural trainings for farmers. The organization does not focus on reforming land laws, but rather it works with farmers in land issues. There is a strong belief throughout the network that it should be farmers who work towards livelihood sustainability and wellbeing. According to Maung Win, the Secretary of the organization, the leaders of this group themselves are farmers who have solid knowledge of a farmer's life and an awareness of the problems farmers face, which gives the group strength.

3.2 Case Studies

This thesis explores the approaches of CBOs and their influence on land disputes by analyzing two cases of land disputes. These particular cases were chosen because the roles and involvement of different CBOs can be observed in each, giving a better understanding of their approaches, strengths and weaknesses. These cases also gained recognition inside the country because of their size and significance.

3.2.1 The Case of Aung Hate Village Tract

In 1992, the Ministry of Livestock, Fisheries and Rural Development confiscated 100 acres of land belonging to 16 farmers from Aung Hate village tract with the purpose of turning the land into fishponds. The Ministry argued that this land mass was low-lying flood land and therefore could not be farmed. At the time of the confiscation, 16 farmers, and 24 households, were living on the land and its confiscation led to landlessness and homelessness for these farmer families. In August 2013, 8 farming families tried to re-occupy the land claiming that only 1 acre of the total 100 acres was ever used after confiscation. They rebuilt their homes and started to farm the land but the Fisheries Department, under the Ministry of Livestock, Fisheries and Rural Development, sued the farmers in the court according to the criminal Trespass Law, Article 447.

It was at this point that the farmers contacted FFSG, who then contacted Green Peasant Institute (GPI)⁵ for cooperation, updating the latter about the situation of the farmers. The Fishery Department had issued an order to take down eight houses belonging to those farmers accused of illegal trespassing. Two representatives from GPI came to Maubin and, accompanied by representatives from FFSG, went to the Fishery Department of Maubin for negotiation. GPI also made contact with the Fishery Department at the Division level to convince the officials not to take down the houses. They succeeded and the Division level Fishery Department issued an order to the township department stopping the demolition of the houses. The farmers

⁵ Green Peasant Institute (GPI) is a local NGO based in Irrawaddy Region. It was formed in 2012 and its main activities are providing capacity building programs for farmers in terms of livelihoods and legal knowledge for land issues.

were permitted to stay temporarily on the land and the prison sentence of the 8 accused was shortened from 3 months to 2 weeks. However, the farmers were unhappy with FFSG and blamed the organization for not being able to avert the prison term. According to Myo Naing, a government advocate who defended the farmers in court, there will always be a prison term for plow protestors because it is criminal trespassing under law. He said, “*They were lucky to have had to serve a two-week prison term.*”

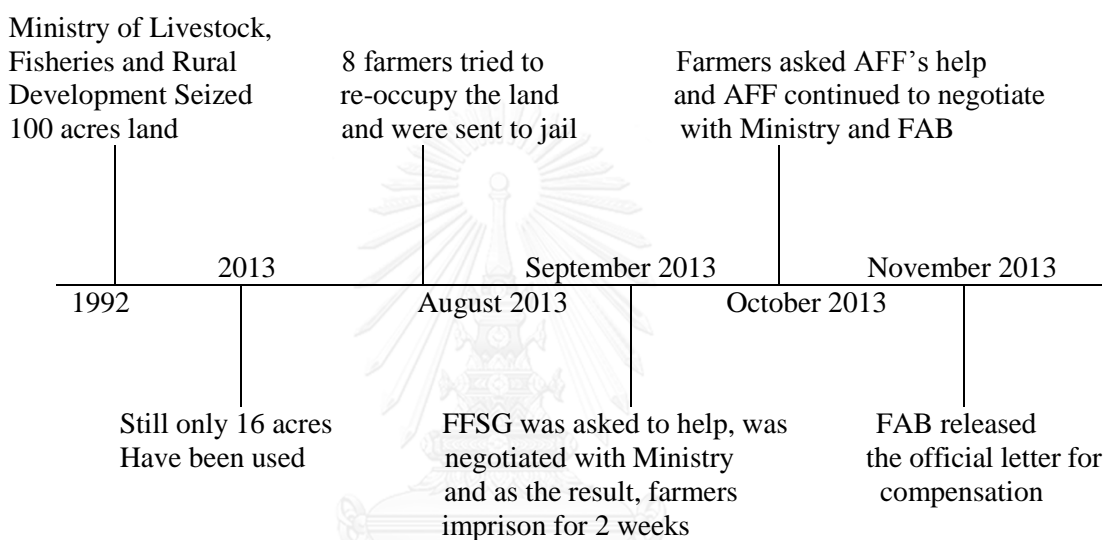


Figure 3: Timeline of Aung Hate Village Tract case

The farmers stopped working with FFSG and went to Agriculture and Farmer Federation (Maubin Branch) (AFF) for help. AFF engaged with the Fisheries Department and Township level FAB to negotiate compensation. In November 2013, the FAB released an official letter for compensation that states that farmers are entitled to compensation of 560,000 kyats (560 USD) per acre (see figure 4 below).

members of the Township level FAB. In August 2014, the Fisheries Department announced that the compensation would be awarded. However as of May 2015, the farmers are yet to receive any compensation.

In this case, two CBOs were involved at different times in different roles. FFSG were involved in the initial stages and provided assistance through negotiation with the Fisheries Department and court. They also brought in a lawyer to give legal consultation and to defend the farmers in court. However, it should be noted that the role and capacity of CBOs is limited within this context in which they face government departments with a bigger influence over the justice system. For instance, government departments use the bureaucratic system to delay the cases, remove them or simply refuse to respond and CBOs are unable to intervene. Besides, farmers often have expectations of CBOs that can lead to misunderstandings. Farmers may feel helpless and desperate for assistance and expect the CBOs to be able to solve all their issues. They may expect CBOs to be well connected with authority, or at least know how to approach authority and handle the cases more effectively than themselves, when this isn't always the case.

AFF also used negotiation approaches to settle disputes and as a result of negotiation, compensation was agreed. However, AFF were unable to follow up and further influence Fisheries Department to ensure the compensation was given. At this point the government has to be willing to fulfill their responsibility. In the case of the farmers from Aung Hate village tract, the farmers not only lost their land, homes and livelihoods but they also had to settle on a compensation far less than the actual value of their land. The farmers were offered 300 USD per acre when the actual value of their land is 3000 USD per acre.

Though this case has been officially closed by the government, it is questionable whether it is really over as the farmers are still awaiting their compensation. Through this case, the dynamism in the involvement of different groups can be studied. In the case discussed above, the key actors were the community with the actors outside the community being the two CBOs, one local

NGO in GPI and a lawyer. The involvement of outside actors was not static but rather it changed for a number of reasons, such as the CBOs limitations in specific situations and their available resources. In some cases, the relationship between them and the community may also determine the level of their involvement. In such relationships, trust plays an important role. Tin Lin Aung from GPI gave an interesting explanation about the dynamic of organizations involved in land cases:

“As for our organization, we have our ongoing activities, but sometimes, are asked by other organizations for some help. For instance, a CBO working with some farmers for a land case may call us to talk to a government department because we know someone there. I may accept to help, but we may not further engage with that particular case because we need to continue with our own work. When we talk about land cases, there are too many. So CBOs and local NGOs are using whatever resources they can get access to. It means different groups may engage with the same case, but in different times taking different roles.”

3.2.1 The Case of Pa Laung village

This case in the year 2000 involved the confiscation of 550 acres of land belonging to more than 100 farmers in Pa Laung village. Local farmers said this was part of a land transfer from the government to business sector. The farmers paid tax for the land and were entitled by law to use it, yet a company is currently using the land. The company completely transformed the 550 acres of land by building an earth bank over 220 acres and a 330 acre fish pond. However, according to the farmers the company did not raise fish in the pond but rather left it empty and after a few years the area became covered in grass and bushes, attracting snakes to build their nests there causing a danger to the communities living near the pond. The company claimed that it was farming fish in the organic way. The farmers reoccupied the land in early 2013 on the grounds that the company was not using the land for any economic reason. Over 200 farmers tried to demolish the bank around the pond in order to use the land but they were stopped by a large force of policemen with shields and guns, along with

around 20 people from the company.

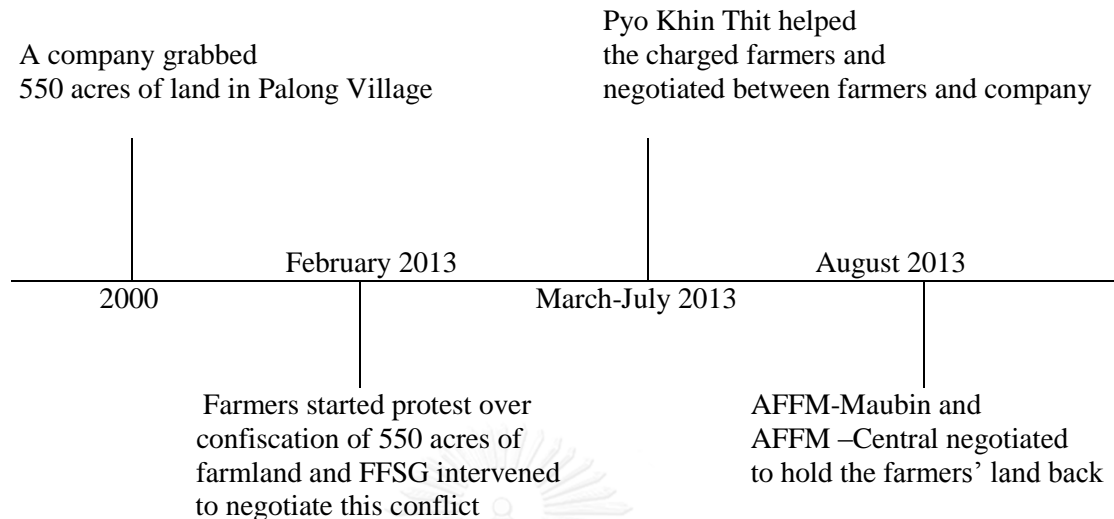


Figure 5: Timeline of Palong village case

The first CBO that got involved in this case was FFSG who came to facilitate the negotiations between the farmers and the company. After lengthy discussions the farmers agreed to return home in February 2013 and they agreed to solve the problem with assistance from the FAB. However, when the FFSG left a fight broke out between the farmers and the police, with the farmers claiming that the police started the fight by pushing and beating a village woman. The police denied the claims, saying the farmers started the fight that led to the death of a policeman and injuries to many farmers.

It was at this point that Pyo Khin Thit Foundation became involved in the case. They assisted in bringing the injured to hospital and became involved in the negotiation process between the farmers and the company, since FFSG refused any further involvement. Min Zaw said, “Our organization already had a few cases and therefore, were unable to get involved in this one.” This case has received national attention and on 28 February 2013, the Bangkok Post of Thailand reported on the violent crackdown of the police on the protestors with the headline “Policeman killed,

scores injured in Myanmar land clash”. They reported on the plight of the farmers saying, “Under the military government land was routinely appropriated across Myanmar without explanation or compensation and handed out to cronies for their own use or sold on to private companies.” As a result of the crackdown, three farmers were charged with attacking the police. Pyo Khin Thit Foundation started a long process of negotiating with the company and encouraged the farmers to ask for just 300 acres of the total land. However, while they were searching for a common ground between the farmers and the company, some farmers accused the organization of being biased in favor the company.

The leader from AFF visited the area to discuss with Pyo Khin Thit Foundation, which bred some disagreement. The Foundation believed that the case could only be solved by reaching an agreement through open negotiations. However, AFF believed that because the farmers lost their land, their livelihoods and were injured by the police, they should fight until they get all their land back and until justice is restored.



Figure 6: Farmer Protest in Pa Laung village

(Source: 27th, February, 2013, Irrawaddy News Magazine)



Figure 7: Injured farmers during the violent clash
(Source: 27th, February, 2013, Irrawaddy News Magazine)

A case of this size is complex and extremely difficult to solve, and the extent to which CBOs can be involved is limited. Different perspectives and approaches among involved actors can lead to further complications in the process. In the case of Pa Laung village, the Foundation was in support of reaching a compromise as the best approach, while AFF pursued a stronger approach backed by the farmers. As of May 2015, this case continues without any clear solution. The government has permitted the farmers to farm on the land temporarily which helps solve their livelihood problems for the time being.

3.3 The Three CBOs and their Approaches

The approaches employed by the aforementioned three CBOs in eradicating land disputes in Maubin Township have both differences and similarities. As the table has described (see the table No. 5), these organizations have different backgrounds, different political tendencies and different strategies, while they have one same goal that is to promote access to justice for farmers and to eradicate land problems. The CBOs' activities can be further contextualized in the conceptual model presented in

Table 2 of Chapter 1 (see in Section 1.4.3) where their different approaches can be categorized into three areas: Conventional, Disruptive and Violent that explained in the thesis to describe the wider image of CSOs' performances. All of these organizations use negotiation as a channel to reach an agreement between farmers who have lost land and present land users. While they also work with lawyers' groups to provide legal consultation to farmers, there have been cases, which they should have won, but lost them because of the limitations of their legal knowledge. It should also be noted that these organizations have different strengths and weakness. For instance, one of them may have better knowledge than the other two, and one of them may be better at mobilizing farmers and organizing protests.

3.3.1 Conventional Approach

3.3.1.1 Lobbying

CSOs and farmers' groups see the existing legal framework is inadequate protection on all land users (please see wider discussion in section 5.1 and 5.2 of Chapter 5) and they are lobbying for changes to strengthen protection for smallholder farmers. However as the level of community group, 3 CBOs do not involve the advocacy process to amend current land law and the developing of National Land Use Policy. According to Shwe Thein, Land Core Group, Myanmar Times Journal informed that

“A collective of more than 30 civil society organizations working on land-related issues and that is very unclear right now whether the two land bills: Farmland Law and VFV Law (See more detail will be reviewed in section 5.2 of Chapter 5). The by-laws have already been written and submitted to the Office of the Attorney General but the drafting process lacked consultation and transparency” (Kean, 2012).

3.3.1.2 Negotiation / Compromise

The nature of negotiation or compromising of the CBOs is the negotiation between the current land user or the latter such as company, a department of government or military unit and the previous user in that land. Moreover, CBOs used to involve the negotiation process between farmers and the Farmland Administrative Body.

Htike Htike from Pyo Khin Thit said land disputes are complicated in nature and it is difficult to say who is right and who is wrong. Farmers are not always right and neither are companies. Myint Twin, a lawyer and expert in land issues, opined that some activists and politicians have encouraged farmers to stage plow protests. He said,

“It is illegal for a farmer to occupy and farm on a piece of land that is being used by someone else. On the other hand, the farmer is entitled to this land by law and has paid tax for decades. However the government confiscated the land from him on the ground that he has not been able to fulfill the rice production quota imposed on him by the government.”

This form of land confiscation is not right either according to the law. (Further details unlawful land confiscation is discussed in chapter 5). Meanwhile, another person is using the same plot of land with a land title. Besides, this person is paying tax at present. This proves to be a big challenge for the Farmland Administration Bodies/Committee as it is difficult to make a decision as to who should own the land.

“In such a case, law does not apply. The Committee must make the decision based on the significance of each case and values such as sympathy and transparency should count”. (Myint Thwin, lawyer, Interview, 27. May. 2015)

Htike Htike argued that it is has been difficult for farmers and companies to negotiate in some cases because CBOS that work with those farmers try to protect their idealistic objectives by urging the farers to demand all of their land back or get compensation that equals the current value of the land.

“It’s all or nothing for these CBOS, and many cases have been dragging on because of that”. (Htike Htike from Pyo Khin Thit, Interview, 23. May. 2015)

He believes a compromise has to be made and both sides need to be flexible about what they want. However, in many disputes, both the farmer and the company are reluctant to compromise. For instance, the government confiscates 500 acres of land and sells the land to a businessman. The latter sells it back to another businessman. The land may go from one hand after another this way until the last businessman buys it. The last business would think it is not fair if he were to give the land back or compensate for it to the farmer as he has spent money on it and is paying tax. Htike Htike thinks in such case, it is difficult to say the business is wrong to not want to give the land back. He said a compromise could be made by the farmer asking some of the land back, say 200 acres.

One successful of reaching an agreement between a current land user and the community was the case of Thazin Ye Kyaw village from Maubin Township. According to Min Zaw from FFSG that was involved in the negotiation process, the Organization of Myanmar War Veterans has confiscated 400 acres from this village since around 2000. The Association has not used anything to the land for until farmers decided to claim their back land. FFSG facilitated the negotiation process along with the village level FAB. Finally, the Association of War Veterans agreed to give back 142.5 acres back to the farmers. This may be not be ideal, but can also be considered a good example of negotiation to some extent. But not all cases are like that. Min Zaw claimed that the Association gave back those acres because they are too remote and difficult to get access to water for irrigation. While some CBOs emphasize on negotiation, some might encourage farmers to claim back all of the land by saying he is entitled to all of it by law.

As discussed above, many cases of land disputes cannot be solve by law. Therefore, different forms of negotiation channels are needed to create a mutual consensus between the farmer and the present land user. Paralegal aid can also be used in facilitating a negotiation. National Federation of Paralegal Association (NFPA)

describes the definition of a **Paralegal** “A paralegal is a person, qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer”. Shwe Thein of Land Core Group said that, because land disputes are settled outside court by the Farmland Administration Body, lawyer cannot bring land cases to court. However, paralegals can contribute to negotiations between the farmer and the company by providing legal knowledge. Farmers can benefit from legal consultation provided these paralegals. Lawyers who want to be involved in land cases and go to rural areas are a small number and may charge a lot of money therefore, by training people to become paralegals, they can contribute to solving land issues. The goal of a negotiation should be to reach a win-win solution, said Shwe Thein.

3.3.1.3 Using informal relationship with Government

Some CBOs have used a multi-stakeholder approach in which they try to work closely with the government sector, with an idea that if different stakeholders including the government representatives are involved, there can be more solutions and those stakeholders may be able to contribute to the problem solution within their different capacities. Besides, this would build trust between CBOs, farmers and the government.

One example of CBOs that have used this approach is Farmers and Fisherman Support Group led by the social activist Min Zaw. He took in the Maubin district administrator, an executive committee member from Union Solidarity and Development Party (USDP), and a representative from National League for Democracy (NLD) as board members of his organization. He explained that some land cases would be solved better and more quickly with the assistance of these board members. He also claimed that his organization does not have party biases, but rather aims to bring different stakeholders with a common goal despite their different political ideologies and party affiliations. The advantage of having the district administrator, he reckoned, is that the government official may be able to positively influence the process of access to justice for farmers although there have been criticism that this official joined hands with Farmers and Fishermen Support Group (FFSG) for his political gain such as promoting the popularity of this party. People who prefer to not associate with the

government also criticize FFSG for working with the government official. However, Min Zaw conceded that this approach has not yielded the results as he has expected. The administrator has offered to look into the cases, but in reality, he has not provided any intervention and assistance.

Tin Ko Lin from Green Peasant Institute (GPI) said:

“I have tried to cooperate with government officials. They welcome you. They even join the farmers’ conferences and meetings. But they wouldn’t do anything tangible. They don’t provide solutions that they promise to. They join hands with CBOs and farmers and give false promises so that farmers will vote for them in the coming elections. Farmers are the biggest majority in Irrawaddy division, that’s why, they need votes from them if they were to maintain their positions.”

Tin Ko Lin’s statement reflects the motives and agendas of government officials. Since the 2011 elections, the new government has adopted a more diplomatic approach in dealing with civil society actors. This approach enables government officials to maintain a good relationship with different groups of civil society actors and keep “a good face” in media. In reality, they may not act upon the demands of people and civil society groups. Even when they do, it may just be something that does not amount much. But they may make an exaggeration to promote their political profile. It can be concluded that their less aggressive yet more diplomatic approach is for their political gain.

3.3.2 Disruptive Approach

There are two different types of land protest in Maubin. They are a protest that is initiated by Farmers, themselves, and by CBOs.

3.3.2.1 Mobilizing and organizing protest initiated by Farmers

Since 2012, many farmers have taken to the fields to peaceably fight and propose for the return of their farmland. Even though they have complained to Farmland Administration for long time, they have not yield any result. In the end,

farmers chose the demonstration way in order to gain public awareness.

A villager from Maubin shared his experiences of protest in Maubin:

“ I have complained to Township level of the Farmland Administration Body in Maubin for long time ago. Whenever I asked to the staff of this committee, they replied that they have already informed to higher level of land management body. I received their answer that they are also still waiting the decision of them. So, my colleagues who are also suffering land grabbing in my village and nearby. We have planned to organize the farm protest in Maubin Town. We arranged the street protest from the downtown of Maubin to Township Administrative Office in Maubin.”

However, there is a barrier to prevent the farmers’ protest is the Freedom of Expression bill. Regarding freedom of expression, Article 354 of the Myanmar constitution states that “every citizen shall be at liberty to express and publish freely their convictions and opinions” and “to assemble peacefully without arms and holding procession”. But according to Article 142 of the Penal Code (1957), unlawful assemblies include any group of 5 or more people that has one of various vague purposes, including resisting the execution of any law, to commit any mischief, or to compel any person to do what he is not legally bound to do. Article 18 of the 2012 bylaw related to the right to peaceful assembly and peaceful procession prescribes that permission from government authority must be sought in advance (e.g. 48 hours) for participation in any assembly. The decree allows government authority to deny an assembly in order to protect “public tranquility” or “existing laws protecting the public”. For instance, farmers from a village may apply at the township police station for a permission to organize a protest. They will need to provide the police with required details such as the number of protesters, the date and time of protest and what the contents of the protest placards and slogans would be. However, farmers are very often denied the permission, and in such a scenario, they may consequently decide to protest without permission. As a result, they will be detained after the protest. In some cases, farmers are not denied the permission by the police, but they never hear back from

them.

The government has been using Article 142 of the Penal Code (1957) and Article 18 of the 2012 bylaw to crack down on farmers' protests. Many farmers who have taken to the street and joined the protests without the permission police have been arrested and jailed throughout the Irrawaddy Division. The police have used the Article 142 and the Article 18 in these arrests. Aljazeera reports that, " Since 2012, thousands of farmers have taken to the fields to peaceably fight for the return of their farmland — a phenomenon that government officials and human rights activists said will continue if the administration of President Thein Sein does not properly address it " (Aljazerra American, 2014).

3.3.2.2 Mobilizing and organizing protest initiated by CBO

Another supporting factors which the farmers is protesting is some CBOs that support and work for farmers help organize these protests. CBOs also help with publicizing these protests and farmers' voices. For instance, a member of Farmers and Fishermen Support Group is a journalist. He covers these protests and sends his new reports to other media outlets inside and outside the country. CBOs also invite journalists who are interested to cover farmers' protests and land issues to document the protests. In this way, farmers' issues can reach larger public and provoke public opinion while state-owned media largely ignore the issues. Farmers' interviews with journalists are also instrumental in bringing attention to the public.

In the last several years, common protests in which farmers take to the street and voice their demands, express their grievances and showed their disapproval of injustice regarding land issues. However, Some of the CBOs have recently changed their mind about plow protests.

Htike Htike from Pyo Khin Thit Foundation opined,

“Personally, I don't support the idea of a protest in the street or plow protest because the government has never been shaken up by these protests. It never paid attention to what farmers ask through these

protests. When it is willing to do something for people, a small letter of complaint is more than enough. There have been examples for such behavior. But for what they are not willing to do, you can go ahead and protest for months. Nothing will happen. Protests are no longer effective. We need to think about alternative measures”. (Interview, 23. May. 2015)

Land In Our Hands is a network group whose members are CBOs from all over the country⁶. Si Thu from Land In Our Hands supports Htike Htike’s perspective on protests. He said protests do not yield many advantages, but get farmers into trouble. However, as a CBO, his organization does not prohibit farmers’ communities from organizing plow protests. He also believes that it is time that farmers and CBOs come up with different strategies. Min Zaw from Farmers and Fishermen Support Group is among people who have started to disagree with the idea of protest. He admitted that there has been requests for his organization to help organize plow protests, which he has turned down.

“ We, Farmers and Fishermen Support Group, have done plow protests before, but never got the results,” (Interview, Min Zaw from FFSG, 18. May. 2015)

3.3.3 Violent Approach

The other type is commonly known as plow protest among farmers. As like protesting in the public, farmers are fatigue of complaining to the committees. Farmers may believe that they have no other option to have chance expect plow protest.

“Plow protests are necessary measures, and my organization has organized these protests. Before occupying the land, the organization sends a letter of warning to the local Land Utilization and Management Committee demanding that the committee solves the disputes effectively and quickly, otherwise, farmers would occupy and farm on the land. I

⁶ Note: the three CBOs focused in this thesis do not work with Land in Our Hands.

would rather not use the word ‘plow protest’. Farmers are not occupying land in protest, but they occupy it from those who unjustly have grabbed it and for their livelihood, which is their right”. (Maung Win, secretary of AFF-Maubin, Interview, 25. May. 2015)

Some of the CBOs have recently changed their mind about plow protests. A plow protester is subject to arrest and imprisonment. Myo Naing, a government advocate from Maubin, said there are 20 trespassing cases within the township. These farmers filed complaints to the Farmland Administration Bodies after they lost their land inherited from their parents. Even though some may have won their cases, many of them have lost and these farmers responded with plow protests to the decision of the Committee that they deemed unfair. The plow protests have resulted in farmers’ arrests and imprisonment under the law against criminal trespassing. The prison terms are usually two to three months.

Land In Our Hands network does not work directly with communities or implement projects. It provides CBOs from all over the country with trainings for capacity building, information and it coordinates among different organizations on land issues and land law reform. Si Thu, network leader of Land In Our Hands, opined that it is not useful to cooperate with the government in solving land issues. He said that CBOs join the meetings with the government in their attempt to pressurize the government to make good land policies. However these meetings have not delivered results. He opined,

“A parallel approach should be applied to put pressure on the government. One involves land rights activists and advocates holding discussions and negotiating with government. The other is for farmers and activists to adopt stronger strategies such as protests and using media to ‘blame and shame’ the government, and these ‘ soft’ and ‘ hard’ tactics should go hand in hand.”

3.4 Funding and Its Effects on the Performance of CBOs

CBOs need resources for their work in order to be able to engage fully with land issues. These resources are anything from transportation and general daily expenses to the physical and mental energy required for the work. The three CBOs in this thesis rely solely on external funding. This sometimes means they have limited access to required resources and in many cases the group members are forced to spend their own money and work in their free time. Sometimes farmers may contribute transportation and food, and sometimes the CBOs may ask for donations from local contributors. The CBOs have no desire to raise funds, a trait which could be linked to the lack of fund raising tradition within these communities. According to Min Zaw from FFSG, in some cases farmers end up spending an amount of money equal to the value of their land throughout the course of the case. This is especially the case for farmers who live in remote villages which are difficult to reach. Since CBOs do not have funds to go to such places, farmers have to pay for their transportation and general expenses. After a case is sent to the FAB, farmers are required to go to town to meet with the Committee and they may have to go several times, costing money each time. If cases are prolonged for a year or more, expenses can amount to a large sum that may equal the value of their land. Having to pay large sums of money can give farmers unrealistic expectations of what the CBOs can achieve, and may expect to win the case that does not always happen.

Htike Htike from Pyo Khin Thit argued an alternative view, saying that it would be wrong to ask farmers to spend money to cover the organization's expenses. His organization prefers to use only the resources available to them, asking nothing from the farmers. This can inevitably affect the momentum of their work, if resources are not available. A lack of continuing resources may lead to a lack of specific work plan that, in turn, may affect their long-term ability to commit to work and have sustainability. CBOs play an important role in land movement, a kind of work that needs to be sustainable in order to multiply positive outcomes in the reduction of land issues. Therefore, it is important for CBOs to consider instilling a structure supported by long-term organizational strategies. Accumulation of organizational resources should be part of these strategies.

3.5 Performance of CBOs and Expectations of Communities

After 2010, Myanmar started to open up and a slew of groups formed by socially engaged civilians emerge. These groups know and understand the plight of people that has continued for years. People have perceived these groups as agents of change and welcomed them with open arms; they have also expected them to reduce social issues and provide communities with their basic needs. Likewise, people from Maubin Township have expected local CBOs—that are involved in battling land issues—to solve their disputes and restore land to them. A farmer from Aung Hate Village Tract said:

“We went to a CBO for help. We rely on them because they are based in towns and have connection with government departments. Look at us, we can’t even write a formal letter of complaint to submit to the land management committee. So we think that if CBOs help, our cases will be solved.”

CBOs have made efforts to make their work effective; the three CBOs this research focuses on have admitted they wish to cement a good reputation. However, land disputes are complicated and there are barriers (See Chapter 5 for more details about barriers and challenges) that weaken the work of CBOs and disrupt their process. Htike Htike from Pyo Khin Thit observed that farmers tended to put blame on CBOs and misunderstand them when cases are lost because of these barriers. He said:

“I bring in and facilitate a negotiation process between the farmer and the current land user. I don’t take bribe from either side, and naturally, I want to perform well for the interest of the farmer. But you need to be aware that in land disputes, you don’t get your land back even though you are the rightful owner. The land in question has been handed over and over again from one owner to another within the span of 20 years. Those different owners have tried to make their ownership valid and legal too. That’s why it’s very difficult to get the land back. Sometimes, the farmer thinks because he is the rightful owner and there’s a CBO on

his side, he will win the case. This has led to misunderstanding and because it happens more frequently now, we avoid to be involved in some cases.”

Based on the in-depth interviews with individual farmers and focus group discussions conducted in Aung Hate, the researcher has come to a conclusion that only a few farmers and villagers hold a positive perspective for CBOs. Most of the farmers have run out of their patience for the prolonged negotiation between CBOs and government departments without any visible outcome. They said they would take to the street and make demands on their own. This shows that there is incongruence between farmers with high expectations and CBOs faced with barriers to perform their tasks. CBOs act according to the needs of communities and this kind of incongruence and misunderstanding may lead to them to strategize their work and to plan for the long-term commitment.

That kind of situation involves understanding the power dynamics and social relations. It governs the relationships between CBOs and diverse communities, working to achieve social justice. Min Zaw from FFSG said:

“We explain the current situation of land cases to farmers before we work with them so that they know the reality. This is our attempt to reduce harm as much as possible. Of course, we will work hard to get back their land, but they also need to know they might lose their cases. We try to not create a situation where farmers misunderstand us or misunderstand each other.”

The main approach of CBOs to this work is a belief that communities acting together have a great capacity to improve their own circumstances and what needs to happen to change the whole condition for the better. A member of AFFM said:

“We try to include all farmers concerned in the discussion when we need to make decisions as to what we need to do to get compensation

and how much it should be. We facilitate the discussion and make sure that they are happy with the amount of compensation. We don't decide for them at all; it's them who decide. But a lot of farmers don't have a habit of telling their opinions in front of people. This can backfire later". (More details have been discussed in section 4.6 of chapter 4).

The findings from this thesis show that it is much easier for CBOs to solve cases when farmers make decisions together and are happy with their decisions. In any situation, CBOs should let the communities play a decision-making leading role in defining the issues and developing the solutions through their collective involvement. This kind of decision-making culture helps reduce misunderstanding among communities, between them and CBOs as well as between them and the government.

3.5 Conclusion

Land disputes are frequent in the Irrawaddy Delta and many farmers from Maubin Township have been negatively affected by unresolved disputes. CBOs have pursued different strategies in their attempt to eradicate land issues, such as negotiation, compromising, mobilizing farmers, and organizing protests. They have taken on the role of mediator while spreading awareness of land issues to the rest of the country through formal and social media channels. They have also worked with lawyers, government officials and Land Utilization and Management Committees to overcome land problems. While they have succeeded in helping some farmers to get compensation, there are still thousands of farmers waiting for compensation and reallocation of their land. CBOs are limited in the extent to which they are able to influence the government and companies in decision-making. There can also be conflicts among CBOs and between CBOs and farmers because of incongruence in their approaches and political biases. Farmers often have expectations for CBOs and this has led to misunderstandings when CBOs are not able to yield results farmers want because of barriers imposed on them. However, it is the responsibility of the government to make decisions to ensure that there is a working justice system. In many

land cases, the decisions made by FAB and government departments are based on biases, and there is a lack of accountability by the companies involved in land disputes. CBOs and farmers need to review their strategies and approaches to ensure they are doing all they can to get access to justice.



CHAPTER IV

FINDINGS: THE DYNAMIC OF RELATIONSHIPS BETWEEN CBOs AND DIFFERENT STAKEHOLDERS

This chapter tries to answer the question of how CBOs work in network with different stakeholders. In chapter 3, the role and strategies of the CBOs were explored and an analysis was made as to whether these strategies contribute to positive outcomes. However, their cooperation and relationship with other stakeholders will also influence the results. Therefore, this chapter looks at how their relationships and cooperation work and what impact they have on the results. To understand their cooperation, networking and dynamic, this chapter explores and discusses the relationships among different stakeholders involved in reduction of land issues at different levels, and the findings are explained throughout the whole chapter. In the section 4.1, relationship and cooperation among CBOs in Maubin Township are discussed, extending to their relationship with LNGOs (section 4.2), national NGOs (section 4.3), INGOs and donor organization (section 4.4), the government (section 4.5) and communities (section 4.6) in the following sections. Weaknesses and different forms of cooperation among these organizations are analyzed to see what impact they may have on their work and goals. This analysis puts CBOs at the center and map out the patterns of cooperation between them and other stakeholders. The clashes of different approaches, interests and goals of these stakeholders are also carefully looked at, and the chapter reach its conclusion in section 4.7 by summing up the strengths and weaknesses of their relationship and cooperation as well as the achievements coming out of this dynamic. These relationships, cooperation and networking are extensively discussed in this chapter because these can influence on the outcomes and goals of CBOs that is to promote access to justice for farmers, and they also shape the dynamic of the social movement around land issues. See the Table 1 of section 1.4.3 for more information on The Different Forms of CSOs.

4.1 Relationships and Networks among CBOs at the Township Level

In Maubin, there are seven CBOs that focus their work on land issues. This thesis has selected three CBOs that have little or no political party affiliation, with the remaining four being part of development wings of political parties. Their support for and engagement with farmers in land issues serve two different purposes: the first is to give strength to farmers in their struggle to maintain wellbeing and the second is to promote the reputation and popularity of their political parties. The following observations have been made with regard to their engagement with farmers in land disputes.

4.1.1 Lack of Demarcation for Target

There are 76 village tracts in Maubin and 470 villages in total. The three CBOs that this thesis focuses on have not demarcated their target areas because these groups do not wish to limit their work to one particular boundary. They have accepted to engage with almost every case that was put forward to them by farmers from all over the township. A representative of AFF said,

“We have not set any target area or group. We would talk to any farmer who comes to us for our help.”

A lack of demarcation may result in the following problems:

1. The effectiveness of their work may be reduced due to it being widely dispersed scattered over many places.
2. Their work may overlap.
3. Their work may be saturated in one area while other areas that need support may be neglected.
4. There may be competition and friction between the organizations.
5. Overlapping work in one area may cause confusion for funders which may result in less funding opportunities.

Observations such as this may not be discussed among Myanmar CSOs, but this is the reality experienced at ground level. The lack of demarcation for target areas among CBOs may present an obstacle to achieving their goals. Problems resulting from this are discussed in section 4.6, along with the relationship between CBOs and communities.

4.1.2 Lack of Creation of Space for Sharing Information. Exchanging Experience and Coordination

These CBOs have little or no opportunity to meet together to share information or exchange experiences. Min Zaw from FFSG said:

“Pyo Khin Thit invited us to join the trainings they organized. Apart from that, we do not meet each other very often. We do not need to meet regularly because everybody knows everybody else in this small town.”

Maung Win from AFFM explained:

“Different groups come across each other at the local teashop in the morning. We say hello and move on. We know which group is doing what because these news circulate easily in this small place.”

Informal communication may seem to work on the surface, but it may create misunderstandings among the CBOs as the information is not shared effectively. If they do not keep each other updated on their activities, they may not be able to provide feedback or discuss issues openly. In some cases, there may be unresolved grievances that are not discussed as they want to maintain a good social relationship. Instead, these grievances may transform into rumors and be spread among the network. One important thing to note is that they do not experience issues with funding access because none of the three CBOs rely on external funding. As of May 2015, none have attempted to establish systematic forms of communication for coordination or sharing information and experience.

4.2 Networking between CBOs and LNGOs

There are five local NGOs based in Irrawaddy Division. The three CBOs have connections with these LNGOs, but informal connections similar to the kind they have among themselves. There are two forms of affiliation between the CBOs and the LNGOs. The first form involves the CBOs transferring cases to the LNGOs when cases reach the Division level FAB. However, this does not happen with all CBOs and some CBOs may continue to engage with cases even at the Division level. According to Min Zaw, FFSG has transferred some of their cases to a LNGO when those cases reached the Division level and the cooperation between them is of an informal nature, and sometimes neither the CBOs nor the LNGOs follow up the cases. Though LNGOs may have a good relationship with the local government at the Division level, the extent of their support is limited. One successful example of the involvement of LNGOs can be observed in the case of land disputes in Aung Hate Village Tract (see the case 1 in the chapter 3 for the details). The Fishery Department issued an order of demolition of the houses and relocation of the farmers. FFSG became involved on the request of the farmers and asked a well-connected LNGO, Green Peasant Institute (GPI) to intervene. GPI were able to successfully convince the Fishery Department to withdraw the order of demolition and allow the farmers to stay.

Tin Lin Aung from GPI explained the nature of cases transferred from CBOs:

“Most farmers lose cases at township level, and those who are disappointed with the result come to us to settle their cases at division level through CBOs. But results at the township level are hardly reversed at division level, and we as LNGOs cannot do anything about it.”

Whether it is a CBO or a LNGO, the extent to which they can influence the decisions made by the FABs is limited. (See the chapter 5.1 for more information on the functions of FABs). The decisions of the Division level FABs are final and farmers have no option but to accept them. One big challenge for farmers to continue their efforts to get access to justice is the lack of financial resources. As discussed

above, there is no organized structure or formal agreements between CBOs and LNGOs with regard to transferring cases, so this approach cannot be considered the most effective. Moreover, LNGOs may not commit to cases transferred to them from CBOs because there is no official process for the transfer. Min Zaw expressed his reluctance to encourage farmers to pursue their cases further at the Division level. He noted that the Division level FAB, in most cases, reaches the same decision as the Township, meaning that farmers may be wasting time and money in pursuing a Division level decision.

Another area of cooperation between CBOs and LNGOs is the organizing of what they call social accountability workshops, where farmers get to discuss with government officials of the Division level. These workshops are intended to build a communication bridge between local government, CSOs and communities and such workshops have taken place in some townships of Irrawaddy Division. However, the three CBOs featured in this thesis have not helped to organize any workshops so far, and the level of cooperation between these three CBOs and LNGOs has only reached as far as transferal of cases.

4.3 Relationship between CBOs and National NGOs

Most national NGOs working on land issues are based in Yangon, the former capital of Myanmar. Their focus areas include provision of paralegal aid, building networks with CBOs in their bid to reform land laws, organizing workshops and provision of consultation for pending land use policies. They work more closely with CSOs and other stakeholders at the Division level than organizations working on the ground. Shwe Thein from Land Core Group (LCG), a national NGO that dedicates its work to advocacy and policy making, explained that the organization's role is not to work directly with grassroots organizations or help solve land cases, but rather to help build the capacity of grassroots organizations, give financial support and provide technical knowledge.

It is observed that most CBOs, however committed they are to helping and working with farmers, do not have sufficient knowledge of past and present land laws. This leads to an inefficiency in understanding and analyzing land disputes in relation to relevant laws. According to Htike Htike, when a farmer seeks help from his organization, he would ask the farmer to explain the case and to show evidence that he has worked on the land in dispute. People from his organization would also crosscheck the details of farmer's testimony with the village head and people from the village of the farmer in question. His organization will only provide assistance when the farmer has a strong case. Htike Htike admitted that they need technical support and knowledge input from lawyer groups such as MLAW⁷, whose members include Myanmar lawyers. However, because land cases are settled by FABs outside court, the range of support that lawyers can give is limited. Kyaw Myint, one of the founders of MLAW, said:

“We are always happy to provide legal knowledge to farmers, and that in order to go to communities and work closely with farmers, there is a lack of resources.”

With regard to getting legal support from lawyers, Min Zaw said that his organization FFSG encouraged farmers to contact lawyers themselves. The main reason for this is when a CBO recommends a lawyer to farmers, they often have high expectations that this lawyer will succeed in winning their case. When the results are the opposite, farmers become frustrated and may put blame the CBO and the lawyer. For this reason, FFSG prefers that farmers and lawyers talk directly.

It is important that CBOs build strong networks among themselves to share their experience because land disputes are occurring throughout the country in almost every division and state. Paung Ku Program has facilitated CBOs in building such a network named Land in Our Hands with 53 CBO members. There is a management

⁷ MLaw is Myanmar Legal Aid Network (MLAW) who has been formed since 2012. It objects to strengthen Rule of Law in Myanmar providing legal aid and legal empowerment program

committee under this network, formed with 13 elected members who meet every three months. The key objective of this network is to make policy recommendations and pressurize the government to change land policies, while its members also focus on facilitating communities to get access to justice in land disputes. The network also organizes capacity building trainings and seminars on land issues, which around 200 CSOs in Myanmar join. However, CBOs from Maubin have never joined these activities. Htike Htike from Pyo Khin Thit said:

“I have heard about this network, but have not thought about joining hands with them, but it hasn’t occurred to me that I should work with them.”

This demonstrates a lack of networking and cooperation between the CBOs from Maubin and those from other parts of the country. It means that the CBOs from Maubin do not utilize the strength of networking with other CBOs in order to share information and together from each other’s experience, which will keep them well informed and make their work more effective.

4.4 Relationship between CBOs and INGOs & Donor Organizations

Some INGOs work with farmers affected by land issues through their agriculture and livelihood programs. However, very few of them directly work with CBOs to tackle land disputes. Namati Myanmar, an INGO working in Myanmar, is now reaching out to community leaders as they start to focus more on land issues. The three CBOs from Maubin have no connection with any INGO, and there is no INGO working in Maubin regarding land issues.

Pyoe Pin is a program under Department for International Development (DFID), and it gives technical and financial support to people and organizations that are working in policy areas. Aung Kyaw Thein, strategic advisor from Pyoe Pin, said:

“We focus on engaging with the government to change land policies,

and that we do not work directly with farmers to tackle land issues. One reason why we do not work with them is we are investing most of our resources in policy development. We also believe that laws and policies need to be established as soon as possible so that we can be rid of land issues in the future.”

Pyoe Pin asks the government to cooperate with CSOs from all over the country so that land issues can be solved and cases reduced. The relationship between CBOs, INGOs and donor organizations intersects in the policy area, especially when they work together to create better land policies for the long-term benefit. As of 2015, they have met six times to formulate National Land Use Policy, and CSOs from all over the country have actively engaged in the discussion, showing their solidarity as well as faith in the process.

Meanwhile, for farmers, their urgent need is their livelihood, and without land, this need cannot be fulfilled. Nyein Maung, a farmer from Pa Long village said:

“I don’t much understand laws. All I want back is my land that I lost many years ago. My parents were farmers, and I am a farmer. Farming is the only profession I know. Now that I don’t have my own land, I am working as a hire hand on a neighbor’s farm. I don’t want to migrate to the city to work. I just want my land back. I don’t want any compensation but my land back.”

One important reason for INGOs and donor organizations to work towards changing land laws and land policies is that once laws that protect the good of the public—in this case, farmers—are established and enforced, land issues will be reduced and the wellbeing of farmers will be restored. Another reason is that land is a crosscutting issue in development and therefore land issues negatively affect development projects implemented by CSOs. Even though CSOs and donor organizations have invested a great amount of money in rural livelihood programs to reduce rural poverty and strengthen the resilience of rural communities, these

programs have not been able to achieve their development goals because land issues pose a great threat to these goals.

4.5 Relationship between CBOs and Government

Building a good relationship with the government is important in addressing land issues. FABs from the village to the division levels are made up of government officials who make decisions regarding land disputes (see functions and formation of FABs in Chapter 5.1). There are example cases in which CBOs are able to help solve disputes quickly because of their good relationship with the government officials. Htike Htike from Pyo Khin Thit said his organization has become known to some officials over the course of several years. When his organization decides to get involved with a case, they would commit to it until it is solved and the enthusiasm with which members go to offices and talk to officials has earned them a reputation with some government employees and officials. As they become more familiar with each other, the members can ensure that their complaints are not ignored and facilitate the bureaucratic procedures. They also meet at events and meetings. As a strategy, Pyo Khin Thit approaches officials in order to address a land case, though Htike Htike admitted that some employees reserve dislike for them.

However, one cannot take for granted that a good relationship with the government will always help. Min Zaw argued that CBOs have to be careful when they communicate with government officials because communities might misunderstand this relationship and assume CBOs collude with the government for their own interests. The government welcomes the emergence of CBOs and uses situations like this to make it seem that they are working with CBOs to battle land issues. When government officials talk to media, they highlight the number of CBOs in their constituencies to claim that they are on the same side as CBOs. However, government employees also exploit these situations to make money by creating a corrupt system that charges farmers in every step of the process.

In a speech made at a meeting of farmers and fishermen organized by GPI on

20th May 2012, the Agricultural Minister of Irrawaddy Division praised the government collaboration with CBOs in their combined effort to better the life and livelihood of farmers, saying collaborations will be fruitful. He also stressed that the government, CSOs and the public must join hands in their march to development. This speech signals the government's desire to cooperate with CSOs in battling land disputes. It also indicates that the government does not neglect the ongoing plight of land issues but is willing to bring about a change that is both sustainable and positive. On the other hand, critics may argue that this speech can be interpreted as an empty promise made by the government purely for the benefit of the public. CSOs and the public have a responsibility to create a good system of checks and balances to follow up these promises.

Tin Ko Linn from GPI comment his organization has a good relationship with the divisional government. According to him, ministers and government officials are happy to attend meetings and accountability workshops in which the public can have a dialogue with them and clarify issues. Some officials not only listen to the voices of farmers, but also take action according to recommendations made by the farmers and CSOs, though that may not be the case for all officials. These meetings open up opportunities for farmers, CSOs and government officials to address problems and find solutions, opportunities that never existed in the past under the rule of the military government. There have been times when government officials respond to recommendations and demands of farmers by issuing compensation orders, but past cases show that this does not mean that farmers will receive compensation in reality. Interviewee farmers have complained that they have not been compensated despite the order from the Minister. As a result, many farmers have little to no faith in the promises made by government officials.

4.6 Relationship between CBOs and Communities

CBOs that focus on land issues have to make effort to familiarize themselves with communities and show that they are willing to work with farmers to promote their access to justice and solve land disputes. The strategies they use for their entry into

communities may differ depending on their different backgrounds. FFSG used two methods for their entry. The first method is inviting community leaders and village administrators to their office and explaining their objectives, goals and approaches. Another method is to go to the villages, talk to farmers about their work and invite them to collaborate with them. The members of Pyo Khin Thit are known in Maubin as activists because of their involvement with Garuna Group to provide free funeral services. Farmers go to them hoping the members will work with them on the issue, which is how Pyo Khin Thit started their engagement in land issues. In most cases, farmers approach CBOs and ask for help as discussed in Chapter 3.3. Farmers also make decisions as to which organization they want help from. According to a farmer from Aung Hate Village Tract, farmers do not tend to consider party affiliation and political involvement as an important factor when choosing a CBO but instead approach a CBO based on its reputation and success in the past in tackling land issues. This suggests that communities are not much concerned about what interests and agendas CBOs have as long as they can deliver the results they want.

As discussed in the beginning of this chapter, there are issues arising from the lack of demarcation of target areas among CBOs in Maubin, sometimes leading to friction among CBOs and distrust between CBOs and communities. For instance, in 2013 farmers from Thone Gwa Kyoon village asked FFSG for support. At the same time, some other farmers from the same community approached AFFM for help. The farmers did not consult with each other, but rather followed their own agendas and when FFSG arrived at the village, AFFM was already there, causing discomfort to both organizations and resulting in a heated discussion in front of villagers. Rivalry among CBOs can have a negative impact on their reputation and their work, while disharmony among villagers can disrupt the strength of the community that is important in their attempt to claim back their land.

It is important to understand the nature of land cases to understand how it can be linked to disharmony and conflicts among villagers. When a company or a government department takes land, they do not take a plot of land belonging to a farmer, but a large swathe of land belonging to a group of individual farmers, or

belonging to farmers from several communities. When farmers try to claim back their confiscated land, they try to claim in collectively and therefore need to make a collective decision as to which organization they want to work with. Herein lies the conflict, as farmers may have different opinions. Such conflicts happen more often when hundreds of acres of land belonging to several different communities is involved and less in cases where less amount of land and communities are involved. More conflicts may arise when farmers are offered compensation. Farmers, again, may have different opinions on this, with some not willing to take compensation but want their land back while some other are happy with compensation. Even in cases where they all agree to accept compensation they may find it difficult to reach an agreement about the amount. Conflicts between CBOs and farmers as well as among farmers can be observed in both Aung Hate village (case 1, see section 3.2.1) and Palong village (case 2, see section 3.2.2). According to the focus group discussion, in case 1, some farmers were not happy with the performance of FFSG that resulted in eight farmers being jailed for two weeks, a result which some think was avoidable. There are also cases in which farmers put blame on each other.

In Palong village case, after the clash between farmers and the local police force in which one policeman was killed and many farmers got injured, Pyo Khin Thit took the injured to the hospital. Farmers involved in this clash appreciated the work of the CBO in taking care of the injured. However, when compensation was offered to the same villagers after the CBO acted as the negotiator for them, some farmers misunderstood the CBO thinking it was biased towards the company. Pyo Khin Thit had encouraged the farmers to reach an agreement with the company to avoid having to engage with FABs and risk losing the case. The CBO thought it would be preferable for the farmers to accept compensation. However, some farmers believed the CBO to be colluding with the company and wanted to fight the case until they got their land back. This caused a division among the farmers with two major groups disagreeing with each other. Due to the large size of the group, with 100 farmers from Pa Long Village involved, this disharmony led to a prolonged process.

The administrator of Pa Long Village said distrust between farmers and CBOs as well as disharmony among farmers has a negative impact on the process and the work of CBOs themselves, which may have a further implication. Myanmar has been ruled by a succession of military juntas over the past 50 years, taking away democratic processes and traditions of electing leadership and impartial decision-making. When conflicts occur, people tend to quietly blame each other rather than discussing the issue openly. While they may work directly with CBOs, they may have distrust towards them but not bring their grievances to light. This may be a negative legacy left behind after years under the military dictatorship that instilled distrust and disharmony among people. This behavior can be observed in many communities in Myanmar. This not only paralyzes the strength of the community, it also disrupts the work of CBOs in the aforementioned cases.

Htike Htike from Pyo Khin Thit said the public from Maubin Township does not feel it is necessary to help affected farmers and communities. They are willing to donate money for funerals and donate medicine and blood for the sick, but they do not feel it necessary that they should help farmers. They also perceive members of CBOs as politically motivated people and often perceive them in a negative way. This perception may be spawned from the fact that some members of CBOs have been involved in political movements against the military junta, and some are affiliated with political parties today.

Some people may have sympathy for affected farmers, but they do not wish to get involved because land issues are related to government officials and departments. Htike Htike said that local funders may feel conflicted in supporting farmers because it is uncertain whether these cases will be solved and desirable results will be achieved. Therefore, it can be difficult to earn the support of the public. Further complications arise when members of CBOs do not get mandates from the local communities because of issues in their personal life or their pasts. People are more inclined to trust organizations comprised of members with good reputations within their communities. Occasionally, CBOs make promises and that may heighten the expectations of communities, and when they cannot deliver results the trust

between them and communities will suffer. Htike Htike stressed:

“People cannot just start up a CBO because they have 10 members, and that those members need to be trustworthy in the eyes of the public.”

4.7 Conclusion

CSOs and farmers may not have achieved their desired results from their cooperation, but the multi-stakeholder approach they have employed by building networks and cooperation among different CSO groups and donor organizations have led to formulating substantial policy recommendations that reflect farmers' voices. These forms of cooperation should be continued to build solidarity and democratic processes that will have long-term positive impacts on the society. However, It has been found that CSOs dedicate their entire work to pushing forwards the National Land Use Policy and do not work enough with CBOs. Given the discussion of section 3.3 and 3.4 of Chapter 3, CSOs should support CBOs' work by providing monetary and technical support, and by creating a stronger network, so that CBOs will be able to engage with farmers more effectively before the government approves the proposed land use policy. CBOs' work with farmers will be more successful if they are supported by CSOs. Disharmony and conflicts among different groups also pose a big challenge to their work and affect their goals, and as discussed in Section 3.1, there is very limited networking among CBOs as well as between them and other CSOs. Therefore, all the stakeholders should work together to address their weaknesses, build a stronger network and support each other.

CHAPTER V
FINDINGS: MECHANISM AND BARRIERS
FOR ACCESS TO JUSTICE

The 2008 constitution states clearly that the state owns land, waters, and air within its territory, making it the sole owner of all land including vacant, fallow and virgin lands. This ownership should be paired with specific responsibilities for the state to uphold good standards in its land management and make equitable land laws in order to protect the rights of people whose lives and livelihoods depend on land. As discussed in chapter 3 and chapter 4, CBOs and other stakeholders engage with land issues on different levels; CBOs work closely with communities to seek justice and other stakeholders push forward the reformed land use policy for the long-term gain. These different groups also work in a network, and even if their network and cooperation are strong, they may not be able to produce good outcomes if the country's legal mechanisms and policies pose barriers for farmers to get access to justice. In making an attempt to explore factors contributing to success and failure of CBOs in promoting access to justice for farmers, this chapter discusses the existing legal platforms and mechanisms for access to justice in section 5.1. In doing so, this chapter examines the performance of land management committees in charge of solving land disputes. In section 5.2, this chapter discusses the gaps in land laws and policies, past and present, giving an analysis and description of these laws, informed by political history of the country. The role and opinions of civil society organizations in reforming land laws and policies are also explored and overall, this chapter gives an evaluation of laws and policies, past and present, to see how these can affect or benefit farmers. Finally this chapter reaches its conclusion by summing up the complexities and gaps in laws and legal platforms that influences the work of CBOs.

5.1 Mechanisms and Legal Processes for Access to Justice

5.1.1 The Farmland Administration Bodies/ Committees and Their Performance

On August 8 2012 the government formed Land Investigation Committee and continued to form The Farmland Administration Bodies (FAM) at village, township, district and region/division levels in order to tackle land disputes. Normally, a case starts at the village level and if the case is not resolved at this level, it is transferred through the levels. The village level FAB is made up of five members: the village administrator, the officer-in-charge of the Settlement and Land Record Department, an office clerk and two village representatives. The village administrator is usually in charge of a village tract that may include several villages. The officer-in-charge from the Settlement and Land Record Department works for a cluster of villages and the office clerk usually undertakes administrative duties. The village representatives are chosen by the members of the village tract where they are from, and very often, these representatives are farmers. A farmer with a land case would file his complaint with this committee and the committee would crosscheck the evidence the farmer provides and make a decision within 15 days. If the case is unsuccessful at this level and the farmer wants to go further, he has 30 days to take the case to the township level FAB.

The township level FAB is comprised of five members: the township administrator, the chief officer of the Settlement and Land Record Department, the chief officer of the Township Planning Department, the chief officer of the Livestock Breeding and Veterinary Department, and the chief officer of the Irrigation Department, all of whom hold township level positions. If the farmer is again unsatisfied with the decision made by this committee, he can take the case to the district level within 30 days. The district level FAB consists of five members similar to those in the township level FAB, with one exception being that the district level committee members hold district level positions. The farmer can take the case to the division/regional level within 60 days of the decision made at the district level. However, according to the interviews very few cases reach the division/regional level. The first reason for this is that most farmers cannot afford the time and money needed for the long process. Based on the interviews with farmers and CBOs, the

researcher found another reason is that by this stage, farmers do not feel hopeful for their cases anymore, having lost their cases at the district level.

As discussed above, a case is filed with the village level FAB first, and the committee is responsible to reach a decision within 15 days. According to a village administrator who is also a member of a village level FAB, cases that involve relatively smaller companies can be solved by reaching an agreement between the farmer and the company through a negotiation process facilitated by the committee and village leaders. However, if the case involves more high profile actors such as a high-ranking military officer or a government department, the committee usually transfers the case to the township level FAB. The village administrator said:

“When it comes to dealing with a big company or a government department like the Ministry of Livestock, Fisheries and Rural Development, we cannot do anything. We have to send the file to the township. There are many cases we have sent along, but we haven’t heard anything back. It’s been months since we have sent those cases.”

It can be asserted from this statement that the township level committee does not always fulfill its responsibility to reach a decision within 30 days. This has caused a lot of frustration among farmers and community-based-organizations (CBOs) working with farmers. The limitations and performance of the village level committee can also be examined. According to Min Zaw from FFSG, cases are either lost or unresolved at the village level, and he implied that the village level committees have low-level power. Despite having farmers on the committee, oftentimes when facing big companies they do not have the power, resources or connections to win the case. This is one reason why committees often decide to transfer cases to higher level committees.

There have been cases in which township level committees did arrive at a decision in favor of farmers. These committees would release their verdicts requesting companies to give compensation to farmers, but in many such cases,

companies or government departments withhold compensation. As a result, farmers must report to the village level committee again, who go on to report to the township level regarding the withheld compensation. This makes for a very long and futile process. Many farmers in Maubin currently hold verdict papers and are awaiting compensation, some for many months. Many government officials who take action against companies are involved in corrupt dealings with high profile actors their own business and financial interests. Cases of unpaid compensation are often left unresolved as many high profile actors have strong links with high-ranking military officials and FABs members who do not have enough authority to pressurize them into paying. The same village administrator said:

“It’s the higher up who can make things happen, not me, not the committees’ members. We have done what we could. We sent the complaints up the ladder. It’s their call to take action.”

The 1963 Land Tenancy Law and By-Laws allowed the then Command Commanders of divisions/states to be in charge of all affairs at the division/state level including land management. They also took the position of chairman the Divisional the Farmland Administration Body. Likewise, the present Ministers of states and divisions who were elected to the positions in accordance with the 2008 Constitution are the chairmen of Division and State FAB. There exists a direct link between the former Command Commanders of division/ state and the present Ministers because they all have the same military background, with the latter serving under the former military officers. Many of the present Ministers have not only been chosen by their seniors, but they have also inherited the same responsibilities to protect the interests of the Myanmar Army and its officers. Therefore, they have no power to intervene in the land cases that involve former military officers. It should also be noted that the final decision in land disputes will be made at the state/division level FABs and cases cannot be taken further. Impartial justice process at the division and state level are one of the biggest challenges for farmers in getting access to justice, and the present Ministers of division and state level FABs are more likely to protect the interests of the former military officers, thereby obstructing justice.

5.2 Laws and Their Gaps

5.2.1 Previous Laws

To be able to fully comprehend the situation of land laws in Myanmar, analyzing disputes originating in the time of the military junta is not enough. One needs to understand old land laws because it is the inherent weakness of those laws and policies that are often the source of disputes today. It may not be considered fair to solve today's disputes using laws and policies that were created by corrupt officials that do not protect smallholder farmers. The following analysis is made of past land laws and policies by reviewing these laws and using information drawn from the interviews with lawyers whose expertise lie in land issues, and farmers who have relied on the land for their livelihoods for many years.

After Myanmar gained independence from the British in 1948, the new Land Tenancy Law and Land Nationalization Act were drawn. These laws stipulate that only those who work on the land are entitled to the land, and these laws allow the government to make land acquisitions and distribute it to the landless. When these laws were put into effect and enforced, there were gaps and difficulties in practice. Land acquired by the government needed to be utilized effectively and to best benefit the country. However, instead the government offered tenancy back to farmers and created schemes such as loans and profit-sharing agriculture through which the government exploited farmers. In profit-sharing agriculture, the government gave loans to farmers as well as seeds, often of low quality, and agricultural tools. After the harvest, farmers were required to sell the rice to the government at a price determined by the government, a price lower than the market value. When crops failed, farmers had to pay back the loan to the government and many farmers were forced to borrow money from loan sharks, resulting in indebtedness. In many cases when farmers could not pay back the debt, the government confiscated their land and they were jailed. This proved to be a system filled with corruption and exploitation, contrary to any laws in place. It was found that officials granted the possession of land to non-farmers, having a detrimental effect on the lives of real farmers. Officials distorted laws to carry out illegal land distribution. In an attempt to ensure the 1953

Land Nationalization Act was being enforced properly, the government initiated an Investigation Commission but by 1959 the problems were not decreasing.

After the Revolutionary Council started ruling the country in 1962, the land laws were amended to fit the socialist economic framework. The socialist government passed Land Tenancy Act and by-laws in 1963, and amended them in 1965. The new laws made the State the sole owner of all land, and turned farmers into tenants. However, the 1963 Law Safeguarding Peasant Rights named stipulations for the government to abide by in order to protect the wellbeing of farmers. According to these stipulations, the government is required to restore the livelihood of farmer families by providing substitute land and compensation. This can be considered a gap in the laws in terms of protecting the benefits of farmers. This law made strict demands of the government to abide by the law procedures in land acquisitions to, for instance, provide fair compensation. These laws also prescribe in what cases land can be acquired by the State, and ensure that if the State fails to utilize the acquired land, it will be required to distribute it back to the original owner. However, until today compensations are yet to be made to farmers according to these laws and this is a key issue in land disputes in Maubin and throughout the country, said Myint Thwin of M Law. He also observed that the compensation offered by land owners and the government are often unfair, for instance offering 300 USD for the land that has a current market value of 3000 USD.

In 1988, the military took power from Burma Socialist Programmer Party, established State Law and Order Restoration Council (SLORC) and abolished the socialist economic framework. The government declared an economic reform in the manner of market oriented economic system. However, farmers did not see any benefits from this new open market system, as all benefits went to large-scale investors because of the State Economic Enterprise Law, instituted in March 1989, which allowed the government to control important economic sectors. Even with the liberalization of domestic marketing of agriculture commodities, the government monopolized the market through the Rice Merchants' Association which controlled the price of rice. In those days, commodity prices, including rice, fluctuated often

due to the monopolization of the government and their merchants. They used many different methods to manipulate the market. When rice merchants bought rice from farmers, they set a low price but raised the price in the market. At times, they hoarded rice and restricted sales in the market to deliberately create a high demand. Many farmers were in debt and were forced to sell their land while the government was also seeking to acquire land from farmers for its economic and development projects.

Throughout the history of land issues in Myanmar, government bureaucracy and corruption have worsened the country's situation. According to a representative of Settlement and Land Record Department of Maubin, disputes today are rooted in the past where government officials and staff did not fulfill their responsibilities. For instance, land record staff were supposed to record everything that happens to each plot of land, including changes of ownership and the history of the land utilization by different land users each year. However, rather than fulfilling their responsibilities they abused their positions to make money. In addition, military officers who were trained to serve in the army had no knowledge of land management were given positions as Township Administrative Officers in the land record departments. They colluded with the business sector to take advantage of their positions. Corruption and inefficiency of staff and high- ranking officers have led to incomplete land records today, further complicating disputes among land users. It is argued that these negative behaviors are still rife in the system, and if there is to be any hope of reducing land disputes the government needs to eradicate corruption and give jobs to those who are knowledgeable and capable of carrying out their responsibilities.

The 2008 Constitution includes the three following articles with regards to protection of land tenure, land security and property:

- Article 356: The Union shall protect according to law movable and immovable properties of every citizen that are lawfully acquired.
- Article 357: The Union shall protect the privacy and security of home, property, and correspondence.

- Article 372: The Union guarantees the right to ownership, the use of property and the right to private invention and patent in the conducting of business if it is not contrary to the provisions of this Constitution and the existing law.

However, the following article seems to state a contradiction to those above: Article 37: The Union shall:

- (a) Permit all economic forces such as the State, regional organizations, co-operatives, joint ventures, private individual, so forth, to take part in economic activities for the development of National economy

Upon close analysis, Article 37 seems to have deprived citizens of their rights and benefits to land and property granted by the first three articles, allowing the government and private sector to take advantage of this Article by acquiring land as they deem fit. It can be further argued as a violation to the basic human rights, particularly Article 17 which states: “Everyone has the right to own property alone as well as in association with others and No one shall be arbitrarily deprived of his property.” These laws as stipulated in the 2008 Constitution are filled with controversy and bring the whole Constitution into question.

5.2.2 The Farmland Law (2012)

Article 43 of The Farmland Law officially revoked the following laws: 1953 Land Nationalization Act; 1963 The Disposal of Tenancies Law; 1963 The Agriculturist's Rights Protection Law.

According to the Constitution, ‘Agriculturist’ in these laws means any person who is in compliance with any one of the following conditions:

- (1) Is or was engaged in agriculture (or) livestock breeding (or) both as his principal means of livelihood (or);
- (2) Supervises the land use for agriculture (or) livestock breeding (or)

both as his principal means of livelihood during years concerned;

(3) Invests capital and engages directly or supervises in the production of seasonal crops, orchard, perennial crops (or) commercial livestock breeding as his principal means of livelihood (or);

(4) Engaged in agriculture (or) livestock breeding;

The scope of this definition covers people who invest in and supervise long-term food crops and large-scale animal husbandry. However in most of the land disputes today, large agricultural investors, most of who are well connected with the government, are engaged in confiscating land from small and subsistent farmers. It is debatable whether military conglomerates, high profile actors, capitalists and foreign investors should be defined as ‘agriculturist’ according the definition provided by the Farmland Law. Though large-scale farmers should have their due rights and opportunities, the law has been manipulated by big companies and investors in a way that affects lives and livelihoods of small scale farmers. This definition may serve as a tool for them to expand their business and affect smallholder farmers, depriving them off their rights and benefits that should otherwise be protected by the laws and the State. According to the Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law of Land Core Group, the tenure security provided under the law (the Farmland Law) is weak, due to the fact that the Government retains ultimate ownership of all land, and can rescind land use rights if the conditions of use are not met.

5.2.3 Vacant, Fallow and Virgin Lands Management Law (2012)

Article 10 of the Vacant, Fallow and Virgin Management Law passed on 30 March 2012 prescribes that with a view to developing business opportunities and development of the country’s economy, the Central Committee can work on or utilize vacant, fallow and virgin lands for cultivation of perennial plants, orchard produce, seasonal crops, and industrial seasonal plants and to do other related business

projects:

- (1) If perennial plants, allow a maximum area of 50,000 acres.
- (2) If orchards produce, allow an area not exceeding 3,000 acres.
- (3) If industrial seasonal plants, allow a maximum area of 50,000 acres.

While the private sector, both local and foreign, are permitted to use a maximum area of 50,000 acres, individual citizens including farmers are only permitted between 10 and 50 acres of land. This law is in favor of both local and foreign investors, with local companies having the upper hand, as they can gain access to land for corporate purposes and transfer it to or cooperate with foreign investors. Any high profile actors with close relationships with the government will have first control of the land protected by this law. This law has been established in the name of developing the country and betterment of people's lives. However, as discussed above, it is arguable whether people and small farmers will benefit from it. This is linked to the government's move to widen access for international investment to promote the country's economy. Who will benefit in the long run is debatable, and the limited access to land for individuals may affect their potential to promote their livelihoods.

Article 36 (b) of the 2008 Constitution states that "the Union shall protect and prevent acts that injure public interests through monopolization or manipulation of prices by, an individual or group with intent to endanger fair competition in economic activities." This is another contradiction in the Constitution, as the 2012 VFV Management Law seems to have widened access for corporations and the business sector in violation of the aforementioned Article 36 (b). It is reasonable that vacant, fallow and virgin lands should be utilized for the country's economic interests, but local people should be employed to manage these lands and there has to be an inclusive process for making decisions and laws.

In Legal Review of Vacant, Fallow and Virgin Land Management Law released by LCG, Oberndorf (2012, p. 22) argued that overall the Laws lack clarity

and provide weak protection of the rights of smallholder farmers in upland areas, and do not explicitly state the equal rights of women to register and inherit land or be granted land-use rights for VFV land. The Laws remain designed primarily to foster promotion of large-scale agricultural investment and fail to provide adequate safeguards for the majority of farmers who are smallholders. In particular, tenure security for farmland remains weak due to the Government retaining power to rescind farmland use rights leaving smallholders vulnerable to dispossession of their land-use rights.

5.2.4 Land Use Certificate or Form No.7

In the past, there were two kinds of land users: farmers who registered their land with the Land Record and Settlement Department and paid tax, and those who used land with a traditional arrangement such as community recognition. However, both kinds of land user have been victim of land acquisition, and both are entitled to apply for Land Use Certificate according the new law. Submitting cases of right to use farmland to the relevant FAB is permitted under the 2012 Farmland Law. Farmers who have tax receipts can show them to prove their land use, while those with traditional land use arrangements can ask their communities to back them when they apply for the certificate. The procedure includes seven stages and if any individual passes the seventh stage, he will be issued a Land Use Certificate. The certificate holder can enjoy the right to sell, pawn, lease, exchange, or donate, in whole or in part, his right to farming in accordance with the prescribed disciplines. People relying on farmland for their livings can therefore submit this certificate to the Township Land Records Department Office, passing it through the relevant Ward or Village Tract FAB. It is here that land disputes start between farmers who have lost land and the current landowners, as both parties try to get the certificate. However, Land Use Certificates will not be granted for those in disputes until the disputes are settled. FABs are responsible for helping to solve these disputes and the rightful owner will be awarded the right to use the land in question upon.

If one wishes to sue a Land Use Certificate holder based on the accusation that the certificate holder has unlawfully taken his land, he may file a complaint at the court. Unlike land disputes that are handled by FAB outside court, cases against Land Use Certificate holders are settled in court and lawyers can give legal support to farmers. However, the process can be time-intensive and costly for smallholder farmers—the plaintiff needs to pay an advance of 500 USD to the court. Farmers can access assistance from lawyer groups such as M Law, but access is limited considering the amount of disputes within a small township such as Maubin. When farmers do bring cases to the court, wins are rare and Land Use Certificate holders win all cases according to GPI. There are a few farmers in Maubin who have brought their cases against Land Use Certificate holders in court. These cases are still in the process and the verdicts are yet to be made. However, Tin Lin Aung from GPI said that he has seen farmers lose their cases throughout the Irrawaddy Division. This has a twofold effect on the lives of farmers as many not only do not receive compensation but also are at risk of losing their land forever. These problems are compounded by corruption among officials and current land users.

According to the interviews with CBOs, there have been cases of corruption within FABs at the township and village levels that has led to conflicts among farmers. Corruption cases include village administrators and officers of the Settlement and Land Record Department colluding with companies to create fake receipts to show the company has paid tax and used the land when really they have not. These receipts can be used to apply for the Form No.7. The lawful procedure is if a person wants to apply for the Form No.7, he has to start at the village level by sending the application to the village administrator with signatures from villagers who approve the applicant has worked on the land for years, together with the tax receipts. According to Nu Nu Aung, a land activist and member of 88 Generation Students Group, companies do not follow this procedure, but collude with village administrator and officers from the Settlement and Land Record Department to get this land use certificate, resulting in farmers losing land. This is a serious case of corruption within FABs, and poses a significant challenge for farmers to get access to justice.

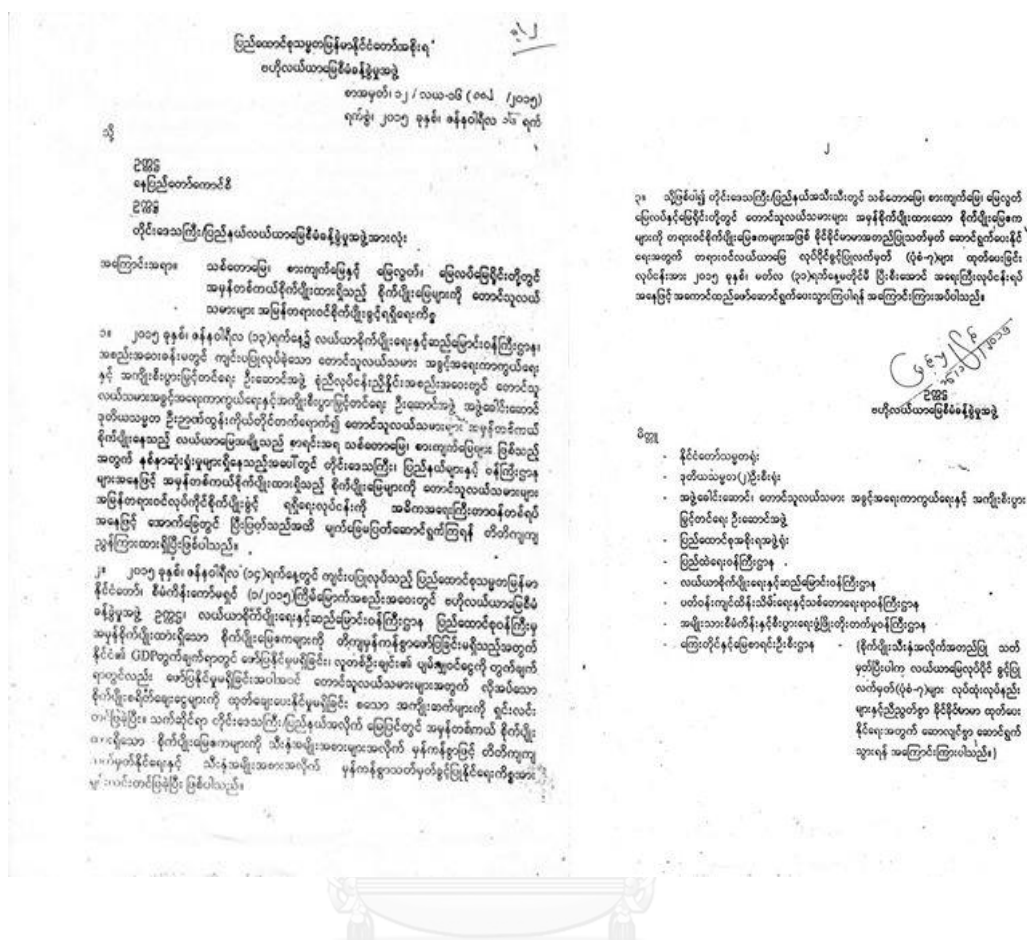


Figure 8: Statement of the Central Farmland Management Body to issue Land Use Certificates to rightful landowners. The document is signed by Minister Myint Hlaing, Chair of the Central Farmland Management Body.

On 16 January 2015, the Central Farmland Management Body released a statement that instructs all level FABs to issue Land Use Certificates to current land users before 31 March 2015. The statement also confirms that this should a top priority in order to restore livelihoods of farmers. As this instruction urges, FABs started to accelerate issuing of Land Use Certificates and the certificates have been granted to current land users with haste. The researcher observed that these certificates have been issued in Maubin, and CSOs encouraged farmers to apply for it, as that would confirm their right to land use. This opportunity has been taken by current land users including farmers and companies. GPI have conducted workshops in which the facilitators raise awareness around this certificate and encourage farmers to apply for it immediately.

These workshops have taken place in 20 townships in Irrawaddy Division, including Maubin.

As discussed above, when farmers take cases to the court, there have been few cases in which smallholder farmers win and current land users lose. Therefore, it can be concluded that farmers are fairly helpless if the land is in the hands of the wrong users. Meanwhile, civil society groups—lawyers, foreign donors, and other NGOs focusing on land issues—are formulating the National Land Use Policy and are negotiating with the government at the national level to ensure laws and policies can protect the rightful landowners. These moves, though positive and good for long-term, are still in process while the Central Land Management Body is overseeing and accelerating the issuing of certificates which can affect the rightful landowners, putting into question the justice of the current processes. The researcher observed that the National Land Use Policy should be immediately approved and put in effect if rightful landowners are to be protected, but even if this were to happen there would still be many farmers who have lost their land irreversibly. However, such loss may be inevitable and the government should go on with approving this policy for the sake of the long term. The large number of stakeholder CSOs who took part in the formulation of and lobbying the government to approve this policy believe this is an important step for the future of the country.

5.3 Conclusion

Current land disputes are the results of laws and policies that do not protect the rights of farmers, and it will take time to reform them. As discussed in Section 3.5 of chapter 3, these laws and policies restrict the work of CBOs and their impact, and as discussed in chapter 4, most CSOs and other actors engaged in the reduction of land issues pay more attention to policy creation and work more closely with the government at the national level. Myanmar has experienced significant political changes throughout its history with different governments implementing different political and economic reforms including the country's agricultural sector. Despite the differences in political and economic frameworks whether it be military or

dictatorial, socialist or market-oriented, the same forms of exploitation, corruption among government officials and collusion with the private sector have constantly existed. Farmers are the largest group of the population and they, from generation to generation, have suffered from these. The country has always lacked good laws and policies to protect their rights and livelihoods; even when there were good laws, they were neglected, distorted or manipulated as it happened both during General Ne Win's government and SLORC's economic reform. The tradition has continued until today even when the new government is trying to reduce land disputes by setting up land management committees and mechanisms that are inadequate and still rife with corruption and complication resulting from the gaps in the implementation of laws in the past. As the evidence and findings indicated above, while they have been set up to solve land disputes, land management committees are both power-limited and greatly influenced by big companies. In such a situation, it will be very difficult for farmers to have their cases solved impartially. The government has created laws and mechanisms one after another, however, they have only been used to protect the interests of themselves and their 'nearest and dearest'. Today civil society groups are engaging with the government and different stakeholders to develop laws and policies that can effectively protect the wellbeing of farmers in the long term. This is important because without such laws and policies, farmers will always be denied access to justice and protection of their rights.

CHAPTER VI

CONCLUSION

This chapter offers a conclusion on the analyses made throughout the thesis in section 6.1, followed by recommendations for different stakeholders (in section 6.2) such as the government (in section 6.2.1), CBOs (in section 6.2.2), CSOs (in section 6.2.3) and farmers (in section 6.2.4). In Section 6.3, Theoretical Implication & Discussions is discussed and section 6.4 provides recommendations for future research in the field.

6.1 Conclusion

The main research question that this thesis seeks to answer is: “how do CBOs facilitate the community to get access to justice regarding land dispossessions and disputes?” In order to answer to this, the researcher used the concepts of land tenure security, access to justice and the role of community-based organizations. Guided by this research question, this thesis used CBOs in Maubin Township as key community-based actors involved in the promotion of access to justice for farmers, and expands the analysis to explore their strategies, their cooperation with different stakeholders and their strengths and weaknesses.

In Chapter 3, different strategies of CBOs, their impact on the reduction of land issues, the dynamic of their involvement and their weaknesses were discussed by looking at three CBOs from Maubin. These CBOs came from different backgrounds but used similar approaches, the most common being negotiation with landowners through land management committees or informally. There can also be cases of using different strategies, for example, Farmers and Fishermen Support Group recruited to the board different influential people including Maubin’s district administrator. This is to draw out the official’s influence and connections for the benefit of farmers. However, as it was observed, government officials today show willingness to work with CBOs and CSOs as a strategy to polish their image. In reality, they do not give much support and do not create collaborative space. They may give promises, but such promises

cannot be considered to be substantial. While CBOs are great help for farmers, their limited resources and their informal or casual way of working, in turn, limit their work and call their commitment into question. Another factor affecting the commitment of CBOs is farmers' impatience and misunderstanding for CBOs; farmers often expect CBOs to resolve their cases and CBOs have challenges to push the cases because of the complexities of case and their limitation to influence authorities. An excess of expectation and dependency may lead to conflicts and doubt between CBOs and farmers, and affect trust they have for each other. Therefore, it is imperative for CBOs to create a process for harm reduction and to manage expectations.

CBOs have also been involved in demanding compensation for farmers. As a result, land management committees have approved compensation, but companies have failed to follow the instruction of the committees. Herein lies one of the major weaknesses of land management committees. They are unable to influence companies as well as the government departments who have also acquired land from farmers. Some farmers pursue their cases further by going to district and divisional levels but the process has proved to be very taxing for them both financially and emotionally. Committees often collude with companies, making corruption a major obstacle for farmers to access justice. These committees are the only legal platform for farmers to claim justice and they have not been functioning effectively enough to ensure justice is served.

Chapter 4 explored and discussed the relationships between the three CBOs and other stakeholders at different levels. At the township level, there is a lack of demarcation among the CBOs and they have a very fluid way of working with different farmer groups. The lack of demarcation has resulted in reduced impact of their work, activity and area overlapping, and misunderstanding and conflicts among CBOs and farmers. However, given the complexity of land cases CBOs and farmers need to employ various forms of cooperation, which can lead to informal or unstructured patterns. Another aspect weakening the work of CBOs is the lack of space for sharing information, exchanging experience and coordination among themselves. The cooperation between CBOs and LNGOs mostly involves

transferring cases lost at the district level to the division level where LNGOs take over the cases and facilitate farmers in engaging with the division level land management committee. As for national NGOs, they, along with other CSOs and donor organizations, commit to developing new land laws and policies. They do not work directly with farmers but rather provide paralegal aid, financial assistance and capacity building activities. National NGOs believe the creation of substantial land laws and policies will eradicate negative traditions of corruption, bad bureaucratic management and unjust land acquisition.

Chapter 5 looked at mechanisms for and barriers to accessing justice. This chapter paid attention to the performance of the Farmland Administration Bodies/ Committees (FABs) as the only legal platform for farmers to access justice and explored the gaps in land-related laws and policies, new and old. The decision making process for land disputes are designed in a centralized manner and the FABs have little power to influence decisions. Decisions are often made in favor of companies and government departments, laws are manipulated to favor investors, and farmers are not provided with sound legal mechanisms and processes. Similarly, gaps have been found in current land laws and policies. The country has experienced political turmoil over the decades with a succession of military governments ruling the country. Land has been an important asset for both political and economic power of these governments but it has often been exploited and used for benefit of the government, paving way to a culture of corruption, favoritism and poverty, which has created legacies of discontent until the present day. Despite having good laws and policies in the past, they were not enforced, and very often, these laws and policies were rife with gaps and contradictions that have enabled the people in power to use them for their own interests. Even though the new government has reformed land laws, the new Farmland Law is problematic and, like the old laws, filled with contradictions. The product of these laws is land disputes today, and it is vital that land-related government bodies function with transparency and accountability and that corruption is suppressed effectively and civil society groups and farmers work together for both short-term gain, such as promoting their access to justice, and long- term gain, such as creation of stronger land laws and policies. These will contribute to the sustainability of the

country's economy and the wellbeing of farmers.

6.2 Discussions & Theoretical Implication

The lessons learned from the experience of this land issues can be used to contribute to the larger debate on effective land management mechanism that can bring important policies and land laws in the future. Besides, solving land disputes more transparently and impartially as well as the creation of a fair system for land distribution and land use should be the core guiding principle for land reform and land use rights. The implications of the Academy's experience to the post-2015 development framework on land issue that has been an ongoing discourse among stakeholders around the world are identified as the following:

- Land tenure security is a guarantee that the land user has a long-term access to a specific plot of land for his livelihood means. Owing to this guarantee, the land user is able to use the land to fulfill his livelihood needs and economic potential. He is allowed by this tenure security to expand his production and increase investment to achieve both economic and social development. The adequate land tenure security will lead to an increased in incentive for those seeking to invest in agricultural sector.
- The creation of access to justice takes an environment, or rather a condition that promotes and upholds the recognized norms of justice. Currently, the Farmland Administrative Bodies that have the final say in land disputes are the only platform for farmers to get access to justice. The procedure is done out of court, therefore lawyers are not able to challenge the rulings of these committees. Meanwhile, the judiciary branch fails to perform its role in overseeing decisions made by these committees. Myanmar's judiciary is not independent from political and executive branches of the government, and lacks the capacity or resources to deal with complicated land disputes.
- Ongoing land disputes and farmers' protests—although these protests are not a solution for the long-term gain—are a testament that decisions of these committees for disputes are biased and do not take into account the interest of smallholder farmers.

- CSOs are working with farmers to bring about the much-needed land reform, and farmers are the most important and fundamental stakeholder group for the government and the rural poor in creating the land reform process. Therefore, farmers should be able to amplify their voices.
- Amidst difficulties, CBOs have pursued positive moves with a strong commitment. It is fair to claim that the government holds the biggest responsibility to create sound legal mechanisms to tackle land issues.
- Relationship with government informally can be one of the significant tools to lobby the reforming process of land sector in Myanmar.

6.3 Recommendations

The following recommendations are made with the intention of making a contribution to the eradication of land issues, restoration of farmer's livelihoods, and the development of the country's agricultural sector in a sustainable way:

6.3.1 Recommendations for Government

The following recommendations are made for the government with the intention that they can be included in any future plans for land management.

- There should be more legal channels and approaches besides the centralized leadership of Land Utilization and Management Committees, for example, in court.
- There should be another channel for solving land disputes at village level. Village tribunals should be established, as suggested by the proposed National Land Use Policy, to utilize the villagers' and community leaders' knowledge of land ownership.
- The government should work towards the reduction of corruption and biases among its officials and bodies involved in land management, and this should be done immediately. The government should form an anti-corruption unit to address this issue.

- To pass and implement National Land Use Policy should be a priority of the government. The government should immediately address and improve the weaknesses of existing Land Laws including (A) The Farmland Law (2012) (B) The Vacant, Fallow and Virgin Lands Management Law (2012).
- The government should encourage the emergence of farmers groups that can function freely to address land issues and protect farmers' rights.
- The government should make an important step to reduce landlessness among farmers by allocating land to small farmers who want to use the land, instead of transferring vacant lands to big companies. Existing land laws prescribe that farmers can have access to land if they wish to use it, but in reality, it has not been enforced properly, leading farmers without land to resort to seasonal work and working as hire hands.
- As land is a crosscutting issue, there should be cooperation and a better relationship among government ministries to be able to address the issues in a more holistic approach.

6.3.2 Recommendations for CBOs

The provision of capacity building programs for CBOs should be accelerated so that these groups will be equipped with skills and engage in land issues more effectively.

- CBOs should attempt to adopt good organizational structures to sustain their work and impact.
- CBOs need to engage in a wider scope when it comes to land issues by expanding their work to include other factors contributing to land issues such as the situation of the local economy, local politics and the environment.
- In order to give strength to their work, CBOs from Maubin should adopt a system to demarcate target areas among themselves, which will help them to avoid implementing overlapping activities.
- The work of CBOs from Maubin will yield better results and contribute to positive outcomes at the national level if they build a strong network for

coordination, sharing information and giving support among themselves as well as with CSOs outside Maubin.

6.3.3 Recommendations for CSOs

- While working vertically to make better land laws and policies, CSOs should also reach out to CBOs and strengthen cooperation because CBOs play an important role by working closely with communities.
- Donor organizations should make effort to strengthen farmers' groups and CBOs by allocating more funds to the grassroots land movement.

6.3.4 Recommendations for Farmers

- Farmers should be provided with basic knowledge of land laws and legal procedures so that they can respond to problems more effectively.

6.4 Future Research

- One topic for future research is to look at the old land laws and policies in more detail to understand their relevance to the present day land conflicts. It is important to establish how the laws that existed in previous times of farmer's land loss should inform land conflict resolution in the present time, including by understanding how the current Land Utilization Management Committees interpret how they should interpret the past laws. A suggested research question could be: "How should past land laws and land policies be interpreted and incorporated into resolving historical land disputes?"
- Another potential research area is the short-term and long-term impact of land issues on the economic and social wellbeing of farmers. It is important to differentiate between and investigate the scope of short-term and long-term economic and social changes within farmers' communities. The findings will reveal the realities on the ground and uncover how farmers have or have not been able to cope with these changes. The analysis can be linked to how these

changes affect the country's agricultural sector and economy. The research question should be: "What are the short term and long term impacts of land issues on farmers' economic and social life, and the country's economy?"

The newly installed Land Use Certificate is another important research topic. The 2012 new Farmland Law states that the certificate holders may sell, pawn, and transfer their land. Whether farmers will sell their land and pursue other livelihoods is an interesting point for discussion. If they did change their livelihoods, it would be important to see how that would affect the country's economic policies. The research question should be: "Does the issuing of Land Use Certificates support or jeopardize Myanmar's agricultural sector, land use and food security?"



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APPENDIX

Appendix A: List of Key and Expert Informants

Name	Place/ Organization Working For	Position	Date of Interview
Min Zaw	Farmers and Fishermen Support Group	Secretary	29.05.2015
Htike Htike	Pyo Khin Thit	Founder	16.05.2015
Maung Win	Agriculture and Farmer Federation of Myanmar (Maubin)	Secretary	24.05.2015
Myo Naing	Government Advocate (Maubin Township)	Lawyer	25.05.2015
Myint Thwin	Member of M-Law	Lawyer (Land Expert)	27.05.2015
U Kyaing	Village Administration Office, Ma latt To Village	Village Administrator	25.05.2015
Thein Tin	Land Record Department (Maubin)	Deputy Chief Officer	30.05.2015
San Maung	Ministry of Agriculture, Irrawaddy Region	Agriculture Minister	20.05.2015
Tin Lin Aung	Green Peasant Institute	Director	22.05.2015
Si Thu	Land in Our Hands (Paung Ku)	Leader	22.05.2015
Shwe Thein	Land Core Group	Interim Executive Director	28.05.2015
Kyaw Myint	M Law	Founder	28.05.2015
Aung Kyaw Thein	Pyoe Pin (DFID)	Strategic Advisor	21.05.2015

Ye Myint	Namati	Project Officer	27.05.2015
Nu Nu Aung	88 Generation	Land Activist	22.05.2015



Appendix B: List of Farmers Interviewed

No. of Villagers	Village Address	Date of Interview
Villager 1	Aung Htaike Village	15.05.2015
Villager 2	Aung Htaike Village	24.05.2015
Villager 3	Aung Htaike Village	24.05.2015
Villager 4	Aung Htaike Village	24.05.2015
Villager 5	Aung Htaike Village	24.05.2015
Villager 6	Aung Htaike Village	24.05.2015
Villager 7	Aung Htaike Village	15.05.2015
Villager 1	Pa Laung Village	25.05.2015
Villager 2	Pa Laung Village	25.05.2015
Villager 3	Pa Laung Village	25.05.2015
Villager 4	Pa Laung Village	25.05.2015
One committee member	Pa Laung Village	25.05.2015



VITA

Nwe Ni Soe (b. 1981) is a social activist and development worker from Myanmar. Since 2006, she has worked for several International Non-Government Organizations including World Concern (Myanmar), Help Age International, ACTED and Association for Aid and Relief (AAR-Japan). She has knowledge and work experience in community development, anti-drug abuse and rehabilitation, HIV/AIDS prevention and care, harm reduction, emergency relief programs, community-based rehabilitation for the disabled, and land issues. In 2014, she took up Master's in International Development Studies at Chulalongkorn University in Thailand.

