Improving governance of tenure in policy and practice: The case of Myanmar

Louisa J.M. Jansen[a,*], Patrick P. Kalas[a], Marianna Bicchieri[b]

[a] *Food and Agriculture Organization of the United Nations (FAO), Viale delle Terme di Caracalla, 00154 Rome, Italy*
[b] *FAO Regional Office for Asia and the Pacific, Bangkok, Thailand*

ABSTRACT

With increasing pressures on scarce land and natural resources, responsible governance of tenure to protect rights and right holders of these resources becomes pivotal. Especially if the livelihoods of these right holders is directly linked to having access to and control over these resources. A human-rights based approach for the responsible tenure governance is needed, recognizing, respecting and securing tenure rights to resources of individuals, communities or peoples both in policy and practice. With wide ownership by and commitment of governments, civil society and private sector, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) represent an unbiased and consensus-based framework in which new policies are being influenced in participatory and inclusive ways. In Myanmar, the process of the National Land Use Policy enabled four aspects of implementation, which come with the greatest benefits when these are interlinked and mutually reinforcing, to come together. These aspects are awareness raising and common understanding, multi-stakeholder processes and platforms, system-wide capacity development, and supporting efforts embedding the VGGT in national policies and law processes. The quality of these aspects, and not their speed, determine the VGGT implementation process in achieving improved tenure governance in policy and practice. In Myanmar this concerns in particular recognition of customary, communal and ethnic tenure systems, and women's rights to land and natural resources.

1. Introduction and background: the global and national context

The competition for increasingly scarce resources -such as land, fisheries, forests, water and minerals- necessitates responsible governance protecting the rights and right holders of these resources, often the world's most vulnerable and marginalized people depending directly on these resources for their livelihoods (FAO, 2012; Beckh et al., 2015). Moreover, responsible governance of tenure becomes increasingly important considering that such livelihoods are affected by climate change, natural disasters, multiple layers of conflicts, migration, and resource degradation and/or depletion. To transform this situation, a human-rights based approach of responsible governance of tenure is needed recognizing, respecting, and securing tenure rights to resources of individuals, communities or peoples in policy and practice.

The endorsement of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (in short 'VGGT'), on 11 May 2012, by the Committee on World Food Security (CFS) was a historic landmark achievement. The VGGT carry legitimacy and authority because of the

broad, inclusive, participatory process of negotiation that led to their endorsement. The level of participation by government, civil society and private sector in the negotiation of every word in the final document sets it apart. This investment in the VGGT development process by the different actors may contribute to a greater transformative potential in the implementation process, and the likelihood that the actual practices may be altered (Beckh et al., 2015; Hall et al., 2016). The VGGT emphasize human rights and by this the obligations of states and the responsibilities of the private sector; at the same time they acknowledge the crucial role of civil society and call on states to support civil society activities to realize the VGGT implementation (Beckh et al., 2015).

The VGGT promote improving land tenure, fisheries tenure and forest tenure, and the adoption of a coordinated approach for administering the tenure of these resources. By encouraging collaboration across sectors, the VGGT constitute a basis for taking action on tenure in an integrated and inclusive way. They equally highlight the centrality of gender equality to responsible governance of tenure (Palmer et al., 2012). The VGGT aim at achieving food security for all and support the

progressive realization of the right to adequate food in the context of national food security. The VGGT contain well practised and proven, accepted, good practices. They aim at benefiting all people in all countries, with an emphasis on vulnerable and marginalized people.

The VGGT are part of a growing area of human rights norms, referred to as *soft law*, in reference to their voluntary nature. However, the legitimacy of a governance instrument does not necessarily correlate to the strength of the follow-up mechanism. In addition, the distinction between binding (hard law) and voluntary is, in reality, not so sharp. The VGGT refer to binding human rights obligations and provide guidance on how to ensure these are upheld: "*Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights*" (FAO, 2012, paragraph 4.8).

With the agreement of the 2030 Agenda for Sustainable Development, in September 2015, global recognition of the critical importance of tenure, access to resources and their governance to achieving sustainable development has been secured within a broad, comprehensive framework (e.g., the indicators 1.4.2, 5.a.1 and 5.a.2). The principles and good practices of the VGGT are gradually more embedded in the policy, legal and organisational frameworks of an increasing number of countries. Tenure is a crosscutting factor across a wide range of development issues. This provides an ever-expanding requirement to address governance of tenure openly and constructively, and now the agreed language to do this is there, namely the VGGT (Munro-Faure and Hilton, 2016).

In the Republic of the Union of Myanmar, access to land and natural resources is an important resource for rural households (Kapoor et al., 2018) because around 66–70% of the population is dependent on agriculture for their livelihoods (Namati/Landesa, 2015; World Bank, 2018). More than 20 % of households in each village are near landless and work as wage-labourers. These 20 % households own less than 0.40 ha of land (Srinivas and Hlaing, 2015). The agriculture sector, including fisheries and forestry, is also poised to be especially hard hit by climate change, as drought and extreme weather events happening in the country take their toll (Clapp et al., 2018, modified). Those making a living from agriculture, fisheries and forests have their livelihoods directly impacted by climate change.

In the 1990s, Myanmar was the world's largest exporter of rice. However, since the 1990s a decline in agricultural output happened. Out of Myanmar's total geographical area of 67.7 million hectares, about 17.2 million hectares (excluding forests) are suitable for cultivation. However, current cropland equals only 12.0 million hectares (UNESCAP, 2016). The majority of the cultivated areas are used for the production of basic grains for internal consumption and livestock feed with considerable potential to move towards a more sustainable production while conserving and sustainably use biodiversity (FAO, 2019a). Myanmar has been taking steps to gradually bring fallow and so-called 'cultivable wasteland' under cultivation, along with creating a favourable investment climate and the liberalisation of markets.

The country is marked by a rapid opening of its economy to foreign investment. The development of the agricultural sector, and investments in it, are crucial for achieving food security and nutrition for the country, as well as being a significant contributor to the economic output, export earnings and employment. The opening to foreign investment will impact especially the previously isolated border areas where Myanmar's neighbours are keen to (further) invest. This will require assessing the delicacy of the situation bearing in mind the local communities and peoples with often insecure tenure rights. The current development path is based on land-demanding investments by mainly state-owned enterprises and some foreign investors (e.g., agribusiness plantations, extractive projects in the energy and mining sectors, and special economic zones) (Scurrah et al., 2015).

Through a series of reforms since 2011, the government is changing the policy and legal frameworks. Access to and control over land and natural resources has a central place in the dialogue towards long-desired nationwide peace (Kapoor et al., 2018). Since 2012, various democratic, ethnic, and developmental issues were addressed in a number of legal and regulatory reforms (Namati/Landesa, 2015; Woods, 2015; Mark, 2016a;b; Oberndorf et al., 2017; Suhardiman et al., 2019). In 2012, the government started the development of the National Land Use Policy (NLUP), a document intended to provide guidance on how to approach land management issues and acting as a precursor to an 'umbrella' land law. Early drafts of the NLUP established the protection of tenure rights of smallholder farmers. Evidence from across Asia demonstrates that reform efforts prioritising and protecting secure tenure rights for smallholder farmers are more effective than prioritising large-scale commercial agriculture in achieving agricultural productivity and economic growth (e.g., in Japan, Taiwan Province of China, South Korea, China and Viet Nam (Namati/Landesa, 2015)). The NLUP followed a genuinely consultative and participatory process and includes provisions on recognition of customary, communal and ethnic tenure systems, and women's rights to land and natural resources. A Parliamentary Land Investigation Commission was established to investigate cases of dispossession of legitimate tenure rights and return unjustly expropriated land to the rightful land users. These reforms continued in 2016 under the new government.

The future of the peace process and reforms rests largely on the government's ability to address complex and sensitive issues, such as economic difficulty, access to and control over natural resources, participation in resource governance and transfer of power from national to regional and local levels (Scurrah et al., 2015). Reforms appear being caught between the centralizing tendency of national government and the democratic demands of a pluralistic and fragmented society (Suhardiman et al., 2019). Developing an effective land governance system is essential to the economic success as the government sets priorities and implements reforms (World Bank, 2018). This opens up the possibility to shape governance approaches not only to tenure, but also to agriculture, climate change impact, and to conserve and sustainably use biodiversity. Contemporary land reforms promise to build reliable legal frameworks, strengthen human and organisational capacities, and create land-based knowledge and information systems. These are all prerequisites for more informed, transparent, and accountable decision-making on the governance of responsible tenure and agriculture, fisheries and forests. Not only land reform is important, but also protection of existing tenure rights and restitution of rights to land, fisheries and forests to those who have been displaced internally or been unjustly expropriated. Fruitfully addressing governance of tenure is key to Myanmar's development path to shared prosperity for all citizens and to the national reconciliation and peace building process.

This paper will describe four interlinked and mutually reinforcing aspects of the country-driven VGGT implementation process in Myanmar in the context of the ongoing NLUP process. These aspects are awareness raising and common understanding, multi-stakeholder processes and platforms, system-wide capacity development, and supporting efforts embedding the VGGT in national policies and law processes. The more pluralistic landscape of reform has generated opportunities for human-rights based approaches, such as the VGGT, to support changes to the policy, legal and organisational frameworks that will empower smallholder farmers to make informed decisions about their land and natural resources and maintain secure tenure rights, while contributing to the alleviation of poverty and hunger.

Though this paper addresses the country-driven uptake of the VGGT in policy and practice in Myanmar, the described VGGT implementation process may provide valuable entry points and lessons learnt relevant to many other countries. This paper is part of a series -in preparation- that will illustrate various aspects of the country-driven VGGT implementation process (Jansen 2020; Jansen et al., 2020a; Jansen and Kalas, 2020; Jansen et al., 2020b).

2. Methodology

The challenge is that there is no standard, or one-size-fits-all, approach to improving tenure governance in policy and practice. While the VGGT provide a framework with a set of principles and internationally recognized good practices on responsible governance of tenure, they do not inform how to apply these at country level. As such, the VGGT are not a methodology.

The participatory action research approach was used to research among multiple stakeholders, emphasizing participation and action. This approach seeks to understand the 'world' of tenure governance by trying to change it, collaboratively and following reflection. The country level implementation of the VGGT follows this participatory research approach that is aligned with, building on, and deepening established principles and approaches on development effectiveness (OECD, 2005), empowerment (Chambers, 1994; Sen, 1999), system-wide capacity development (Kalas, 2019), deliberative governance (Dryzek, 2010), and theory of change (Vogel, 2012).

The hypothesis is that participatory approaches are pivotal to create a conducive enabling environment for impactful and lasting improved responsible governance of tenure and security of tenure in line with the implementation of the principles and good practices of the VGGT. Participation, meaning a genuine and meaningful inclusion of relevant stakeholders, in Myanmar is crucial in achieving joint ownership of and joint commitment to the NLUP by all affected stakeholders, and will ultimately be imperative to its success and sustainability. Thus, this hypothesis is tested in a real world environment.

The main research question in Myanmar is, with the application of the combination of the aforementioned methodologies in practice, if and how these participatory approaches are in the critical pathway of delivering improved tenure governance and tenure security. The results obtained in Myanmar will, at a later stage, be compared with other country level results, and will hopefully also enhance the understanding about the critical pathways themselves.

The overarching goal of the theory of change, as developed at FAO (FAO, 2019b), is "*improved responsible governance of tenure of land, fisheries and forests contributes to food and nutrition security, poverty reduction, sustainable food systems, and sustainable management of natural resources[1] , for the benefit of all, with particular emphasis on the most vulnerable and marginalized people*". To reach this overarching goal, which is the objective in Myanmar, an enabling environment needs to be created conducive to achieving this goal. Multiple pathways can lead to creation of this enabling environment and, consequently, to the goal of improved tenure governance. The theory of change distinguishes between being inspired by VGGT principles and internationally recognized good practices, and undertaking efforts embedding the VGGT principles and internationally recognized good practices in the policy, legal and organizational frameworks related to tenure to achieve systemic change.

In order to improve tenure governance issues in Myanmar, two approaches were followed that centred on recognizing and respecting all *legitimate* tenure rights, one of the key concepts of the VGGT:

- Improving governance of land and natural resources through multi-stakeholder analysis of existing policies, legal frameworks and the organisational setting as enabling environment to promote policy and legal reform processes embedding the VGGT principles and good practices; and
- Improving governance of land and natural resources through multi-stakeholder analysis of customary tenure systems and their organisational arrangements in line with VGGT principles and good

practices, as governance can be practiced through a variety of social and power relations operating outside the law. These may be, depending on the context, the tenure rights of the most vulnerable and least protected under national law.

This approach sees the policy reform process as addressing multiple stakeholders' interests and strategies for the recognition of "*legitimate tenure rights*", i.e. legitimate through the law (legally recognized) and legitimate through broad social acceptance (even without legal recognition) (FAO, 2016a, pp. 19–25). States are encouraged to acknowledge, document, and respect all legitimate tenure rights in national law, policy and practice. At the same time, it is recognized that the reform is shaped by what already exists (e.g., administrative practices, organisational setting) that influence the pathway of reform.

Taking the NLUP implementation process in Myanmar as an example of a pathway of reform, it is illustrated how multiple stakeholders and 'change agents'[2] inspired by the VGGT principles and internationally recognized good practices embedded these in a participatory, consultative, multi-stakeholder manner in the NLUP process to achieve securing legitimate tenure rights for all and addressing social and historical injustices.

3. VGGT implementation process

Implementation of the VGGT in a specific country context implies some degree of interpretation. For instance, the concept of '*legitimate tenure rights*' is central to the VGGT, but what 'legitimate' stands for is to be defined at national level. Actors implementing the VGGT play therefore a role in interpreting how the VGGT are applied. It is, thus, important to see the implementation as a *process* opening up spaces for participation and dialogue by those that the VGGT intend to benefit, i.e. all people in all countries, with an emphasis on the vulnerable and marginalized. As stated by FAO et al. (2015), "*the greater the inequality in the distribution of assets, such as land, water, capital, education and health, the more difficult it is for the poor to improve their situation and the slower the progress in reducing undernourishment*". The same report shows that the proportion of undernourished people in the total population is decreasing fast in South-eastern Asia, from 30.6 % in 1990–1992 to 9.6 % in 2014 − 2016. Because more than 70 % of the world's food insecure people live in rural areas, the reference to and focus on 'national food security', makes the tenure position of rural food producers of specific interest.

Accountability in the implementation process is defined as follows: "*holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law*" (FAO, 2012, paragraph 3B.9). This is in line with the fundamental principles of international human rights (both binding and non-binding) that rests on the sovereignty of nation states, which are tasked with implementation, and must use their own systems of law to ensure accountability in the implementation process (Brent et al., 2017).

With wide ownership by and commitment of governments, civil society and private sector, the VGGT represent an unbiased and universally legitimate framework to identify national entry points and spaces for dialogue in which new conversations on tenure are taking place, new skills are being developed, organizations and institutions strengthened, and new policies are being influenced in participatory and inclusive ways. States can use the VGGT when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, private sector and citizens to judge whether their proposed actions and the actions of others constitute

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[1] The VGGT apply to land, fisheries and forests, as well as to water and mineral resources. See the Preface of the VGGT that is an integral part of the negotiated and endorsed document (FAO, 2012, page iv).

[2] Persons who voluntarily take an interest in the adoption, implementation, and success of a cause, policy, programme, project or product. They cause a change in the way things are done or the way ideas are viewed. Also called 'change advocates' or 'champions'.

acceptable international practices.

The VGGT are relevant to all country contexts as many examples of responsible governance of tenure and its administration are found around the world. They reflect the lessons learnt, by FAO and others, on responsible practices of tenure. Support for VGGT implementation includes assisting others to adopt such responsible practices, selecting the practices according to their needs and priorities while providing support to them so they can tailor and contextualize the VGGT.

Given the above, the VGGT are likely to be implemented differently in each country in accordance with country priorities, requirements and conditions. In each country, relevant topics and ways to initiate action in favour of governance of tenure will need to be identified in a participatory and inclusive process based on assessed needs. The VGGT encourage all parties, including States, development partners, civil society and private sector to collaborate in promoting and implementing the principles and practices, and to disseminate information on responsible governance of tenure. All actors have a role to play in improving governance of tenure (Arial et al., 2012).

To ensure synergy and complementarity at FAO, a global programme was developed[3]. This global programme 'Supporting Implementation of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*' encompasses the overall programme in support of the implementation of the VGGT and is currently in its second phase[4]. It provides the overarching framework for VGGT activities. The VGGT are "*the standard for use in all FAO's work on tenure*" (FAO Director General's Bulletin 2013/73).

FAO is working with the Government of Myanmar and other stakeholders since 2013 to raise awareness and common understanding as well as promoting the contextualized application of the VGGT. The increasing interest of Government and other stakeholders to dedicate VGGT activities to specific subjects for the relevant stakeholder groups is a sign that the implementation is gathering momentum. An ongoing effort is made by FAO and partners to coordinate and align the various country activities in order to use the synergy and complementarity between activities related to policy and practice and to strengthen the outcomes of each. The NLUP process is used to illustrate the VGGT implementation process to date, as well as to highlight what is needed to implement the NLUP successfully.

4. Interlinked and mutually reinforcing aspects of the support to the VGGT implementation process

The VGGT are innovative in that they provide a framework that can be applied when addressing matters of tenure at the interface of the sectors of land, fisheries and forests (Palmer et al., 2012). In Myanmar, the four aspects of the VGGT implementation process have come full circle as exemplified with the process of the NLUP. In this policy, intersectoral linkages are addressed and these interlinkages are important when working to improve the governance of tenure. Resources and their uses are interconnected. The livelihoods of many of the poor, and particularly the rural poor, are diversified and dependent on access to

several different natural resources. Moreover, the expansion of one type of use of a natural resource often comes at the expense of other uses and users and thus has an impact on resource rights. The potential efficiency of smallholder agriculture[5] relative to larger farms has been widely documented, focusing on the capacity of smallholders to achieve high production levels per unit of land through the use of family labour in diversified production systems (CFS-HLPE, 2013). Secure tenure rights are a requirement to achieve this. The NLUP process shows, in addition, the tension between democratic pluralistic demands for tenure governance by the people, and the centralizing tendency of the national government.

The approach to support the VGGT implementation process in countries like Myanmar centres on four aspects that come with the greatest benefits when these aspects are interlinked and mutually reinforcing. Each aspect is significant on its own, but the four aspects are closely intertwined and interact with and influence each other (Fig. 1). Having these four aspects in place in a country creates a win-win situation to improve the frameworks regulating the tenure of land, fisheries and forests. This, in turn, will lead to improved tenure governance. These four aspects are described in the subsequent paragraphs always starting with a more general part and then how it was contextually applied in Myanmar.

4.1. Awareness raising for common understanding, contextualization and internalisation

4.1.1. The aim and context of awareness raising

The VGGT are an international negotiated document on governance of tenure that establish 'common ground' for globally accepted principles and practices and legitimate entry points to foster multi-stakeholder dialogue to make progress on complex issues. Therefore, it is important that a range of stakeholders have access to and common understanding about the VGGT and are aware of accompanying documents (e.g., technical guides, e-learning modules, learning programmes, etc., in different languages and visualisations adapted to local contexts) that can assist in the development of strategies, policies, legislation and practical actions.

One of the first activities of FAO's work with partners is to raise awareness for common understanding across people as to how they can use the VGGT in their own situations, whether they work in government, civil society organisations (CSOs), private sector or research centres.

The attention then moves to raising awareness, contextualization and internalisation of how the VGGT can be applied in the specific local context. Facilitated awareness raising provides a platform for other activities and it is work that is ongoing – *it never stops*. One should realize that awareness raising, for example, for a policy concerns: (1) awareness raising for the development of the policy (policy formulation and adoption); (2) awareness raising on policy implementation (including enforcement); and (3) awareness raising on policy evaluation (Fig. 2). Thus, awareness raising follows the policy cycle closely. Each time there is a need for awareness raising, and each time it is a different kind of awareness raising.

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[3] The global programme (2012−2016) aimed at improving the frameworks for regulating the tenure of land, fisheries and forests based upon wide participation, non-discrimination, transparency and mutual accountability through the implementation of the VGGT based on five mutually supportive programme key outputs where FAO has a comparative advantage: i) awareness raising, ii) capacity development, iii) country support, iv) partnerships, and v) monitoring.

[4] The global programme (2016−2020) builds upon the foundation laid during 2012−2016 and integrates lessons learnt. It is based upon: (1) global level support through collaborative partnerships, by playing a significant role in the global dialogue (including monitoring the take-up of the VGGT), and by continuing to develop, distribute and promote VGGT technical materials for capacity development; and (2) (multiple) country level support aiming at concrete results in relevant policies, legal frameworks, and organisational and administrative arrangements.

[5] Defined as "*Smallholder agriculture is practiced by families (including one or more households) using only or mostly family labour and deriving from that work a large but variable share of their income, in kind or in cash. Agriculture includes crop raising, animal husbandry, forestry and artisanal fisheries. The holdings are run by family groups, a large proportion of which are headed by women, and women play important roles in production, processing and marketing activities. […] A smallholding is "small" because resources are scarce, especially land, and using it to generate a level of income that helps fulfil basic needs and achieve a sustainable livelihood consequently require a high level of total factor productivity, requiring in turn a significant level of investment*" (CFS-HLPE 2013).
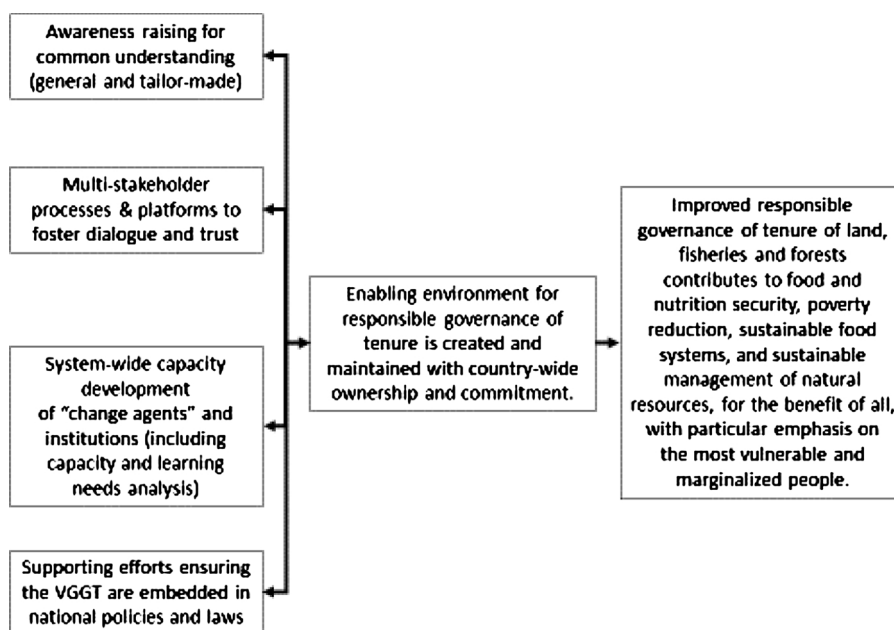
Fig. 1. The logic of how the four aspects contribute to the enabling environment in a country.
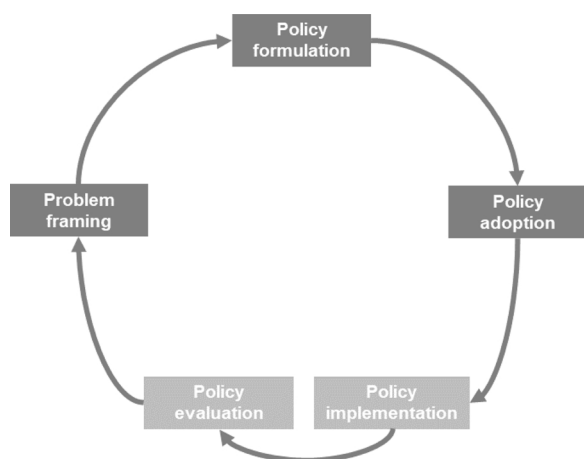

Fig. 2. The policy cycle in which problem framing, policy formulation and adoption have been completed for the NLUP.

4.1.2. The aim and context in Myanmar

Awareness concerning the VGGT has been raised in the context of the NLUP process, i.e. the steps concerning policy framing, formulation and adoption, to create a level playing field among all stakeholders, as well as platform or process, for subsequent activities (Fig. 2). These activities aimed at increasing the ability of Government and citizens to understand and administer tenure rights in accordance with the drafted NLUP and the principles and good practices contained in the VGGT. To facilitate such common understanding, the translation into Myanmar language of the VGGT was undertaken and was further improved by the Land Core Group and the USAID/TetraTech project.

Having the VGGT available in Myanmar language, facilitated –and facilitates– dialogue in the *public space* thereby allowing a diversity of viewpoints being expressed between several stakeholders (see paragraph 3.2). FAO facilitated creating and using such space by supporting the organisation of various national and dedicated workshops that helped in raising general and more specific awareness and common understanding (Table 1). In the process of joint diagnosis, joint learning and joint action and implementation, ownership of this process by stakeholders was enhanced, their commitment increased and their accountability was raised (see paragraph 3.3). One should note that

Table 1 only shows activities in which FAO was involved. Many other organisations and resource partners were active in the NLUP process because it received broad international support. These activities are not shown in the table.

Using the VGGT to strengthen the development of the NLUP illustrates some real headway in embedding the VGGT principles in the policy, especially considering provisions on recognition of customary, communal and ethnic tenure systems, and women's rights to land and natural resources, resulting in the adoption in January 2016 of a very different policy from that initially proposed (Hall et al., 2016; see also paragraph 3.4). The draft text moved away from bringing in foreign investment for economic development to a human-rights perspective with environmental and social justice considerations.

The recurring topics related to the NLUP process, and covered by the VGGT, were focusing on recognizing customary tenure systems as *legitimate* (VGGT General Principle 1 on recognizing and respecting all legitimate tenure rights holders and their rights; VGGT Principles of Implementation on non-discrimination, equity and justice, and gender equality; VGGT sections 9 and 17 on indigenous peoples and other communities with customary tenure systems, and records of tenure rights, respectively), restitution of land given to concession holders for land-based investments (VGGT sections 14, 16, 17 and 21 on restitution, expropriation and compensation, records of tenure rights, and resolution of disputes over tenure rights, respectively) and women's land rights (VGGT Principle of Implementation on gender equality). All these topics also addressed two other VGGT Principles of Implementation, namely transparency and accountability.

Another recurrent topic, and challenge, is having consistent and accurate data on land-use rights to allow responsible Ministries to make informed decisions. This corresponds to the governance of the administration of tenure with regards to records of tenure rights (VGGT section 17) and resolution of disputes over tenure (VGGT section 21). Many farmers do not have formal documents, and surveys to document tenure rights have covered only part of the country. This makes it difficult to do social justice and address historical injustice to either farming households without proper land-use right documents, and to those seeking to have confiscated land and natural resources returned. The discussions in the country are animated by the tendency of centralizing control over land and natural resources by national government and the peaceful democratising demands of civil society, ethnic

Table 1
Awareness raising activities facilitated with FAO support.

When	Where and with what objective	Partners
March 2013	In Nay Pyi Taw, the first general awareness raising workshop was held to start a facilitated and interactive process and dialogue with meaningful, inclusive stakeholder participation[a]	The Forest Department of the Ministry of Environmental Conservation and Forestry (MoECAF) co-organized the workshop. MoECAF was dedicated to forestry and the environment. Its Forest Department was responsible for the sustainable management of the forest resources and for protecting and conserving biodiversity.
May 2015	In Yangon and Mandalay, a tailored training programme, including awareness, was rolled out in two workshops (TNI, 2015), to strengthen and increase the use of the VGGT by civil society and grassroots organizations according to the learning guide (FAO/FIAN International, 2017) (see paragraph 3.3). The capacities of CSOs and others were increased to enable meaningful participation in multi-stakeholder dialogues, working groups and forums, especially in the context of the NLUP.	TNI co-organized the workshops.
October 2015	In Nay Pyi Taw, general awareness was raised to continue a facilitated and interactive process, and a capacity analysis was held in the context of the draft NLUP (see paragraph 3.3) (FAO, 2015, 2016b). More than 100 persons from various constituencies, of which 40 % women, participated (FAO, 2015).	The Forest Department of MoECAF co-organized the workshop. They are responsible for the sustainable management of the forest resources and for protecting and conserving biodiversity. The Land Core Group contributed in kind.
December 2015	In Bangkok, a regional multi-stakeholder consultation on land governance in the Asia-Pacific Region was held in which government and CSOs representatives of 11 countries (including Myanmar) discussed strengthening of customary tenure and promoting responsible agricultural investments (FAO, 2016c).	FAO Regional Office for Asia and the Pacific with support from FAO Headquarters.
June 2016	In Yangon, a dedicated workshop focussing on awareness for safeguarding tenure when land-based investments are made was organised for private sector participants only (de Wit, 2016). Getting strong involvement of the private sector has proved challenging. About 33 persons, of which 51 % women, participated.	USAID, EU and DfID co-financed this workshop. The Land Core Group contributed in kind.
February 2017	In Nay Pyi Taw, awareness was increased and a common future with secure tenure rights envisioned with the adopted NLUP (Jansen and Tin, 2017). More than 100 persons from various constituencies, of which 18 % women, participated. The number of women participants from government was low, whereas other constituencies had a more gender-balanced representation.	The Land Core Group contributed in kind. It was the first time ever that both the Forest Department of MoNREC and the Department of Agricultural Land Management and Statistics (DALMS) of the Ministry of Agriculture, Livestock and Irrigation (MoALI) co-organized a workshop with FAO. DALMS of MoALI is responsible for land management and agricultural land administration including deeds registration, annual assessment of land revenue and land rent.
June 2017	In Nay Pyi Taw, and based on a recommendation of the February 2017 workshop, a dedicated workshop on the recognition of legitimate tenure rights and the administration of tenure in line with the VGGT principles and good practices was organized (Jansen, 2017). A dialogue on the tasks and responsibilities of DALMS, as well as the capacities for implementation of the NLUP, was started considering legal and socially legitimate tenure rights. Around 52 persons of government, CSO and academia, of which 32 % women, participated.	DALMS and FAO organized the workshop.

[a] The mission also included the formulation of the project 'Support for the formulation and implementation of a National Land Use Policy and Land Use Plans for Myanmar', to be funded by the Livelihoods and Food Security Trust Fund. The prepared project proposal was, however, not funded.

minorities and other communities.

During the awareness raising, international good practices promoted by the VGGT were shared because there is growing support for customary tenure systems being recognized at community level, especially for ethnic minorities and local communities. Such recognition offers a cost-effective and rapid process for recognizing the rights of communities to their land and natural resources through local systems of governance, especially when facing external threats (Jhaveri et al., 2016). Evidence from other countries also shows that promoting gender equality in land registration provides tenure security for women along with health, social, and economic benefits (Menon et al., 2013; Namati/ Landesa, 2015).

4.2. Multi-stakeholder[6] platforms and processes

4.2.1. Multi-stakeholder platforms and processes to foster dialogue and trust

Inclusive multi-stakeholder processes, integrating a variety of actors

in collective decision-making, are *the* important tool to obtain agreement and acceptance for the committed implementation and monitoring of the VGGT. Such multi-stakeholder processes create partnerships beyond technical disciplines or organisation types to trigger broad support (Beckh et al., 2015).

The increase of multi-stakeholder participation as approach in global governance is remarkable. The adopted 2030 Agenda for Sustainable Development underlines this trend. Such an approach aims to integrate multiple actors, i.e. stakeholders, in collective decision making. Principles such as inclusion, transparency and accountability – VGGT principles of implementation – are used to analyse the multi-stakeholder participation approach. The approach is seen, in general, as being more liberalizing as it promotes behaviour geared towards reaching a common understanding. This requires that actors are open-minded and able to change their point of view if better arguments are encountered. However, the existence of power asymmetries and lack of trust may hinder the access to voice discourses resulting in unequal

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[6] Multi-stakeholder and multi-actor are used interchangeably. See CFS (2018)

(footnote continued)
for a detailed discussion.

opportunities for all and should be acknowledged and addressed (see Kalas and Jansen 2018).

Because multi-stakeholder participation and consultation have become central features in institutions and processes of global governance, it is worthwhile to analyse what it means to use a multi-stakeholder approach. Such participation is seen as advancing the deliberative quality of institutions and thereby improving democratic quality, legitimacy and effectiveness of both the organisational landscape and the decisions made in it (Alves Zanella et al., 2018). However, it is important to be aware that multi-stakeholder processes and platforms have dynamics and inherent ambiguities that may relate to power asymmetries (e.g., who is participating and who is not; is communication allowed in formats such as reasoned argumentation, rhetoric, storytelling, humour, etc., or a combination of any of these?). Partial rectification of power asymmetries can be provided through a trusted and neutral convenor (Alves Zanella et al., 2018; Kalas and Jansen 2018; Nederhof et al., 2011; Rioux and Kalas, 2017), as well as targeted capacity enhancement activities (see paragraph 3.3) to provide all actors with the necessary technical, communication and negotiation skills to meaningfully engage and contribute to the multi-stakeholder process (Kurbalija and Katrandjiev, 2006; Kalas, 2007; Saner, 2007).

Alves Zanella et al. (2018) using Dryzek's Deliberation System Framework (Dryzek, 2000 and 2010; Dryzek and Stevenson, 2011) show that it is important to distinguish the following six elements:

1. Two types of spaces: the existence of a *public space* (already mentioned in paragraph 3.1) in which a diversity of viewpoints and wide-ranging discourses interact (ideally without legal restrictions), and the presence of an *empowered space* in which authoritative collective decisions get produced.
2. Two types of interactive feedback mechanisms: the public and empowered spaces need and feed each other through *transmission*, which is understood as the mechanism how deliberations in the public space influence those in the empowered space, and *accountability*, which refers to mechanisms whereby actors relating to the empowered space give an account and justify their decisions and actions.
3. Two capacities of the entire system: *meta-deliberation*, understood as the reflexive capacity of the system as a whole to deliberate with its organisation and reform, if needed, and *decisiveness* understood as when the collective outcomes generated by the system cause consequences.

Multi-stakeholder platforms and processes represent a fundamental change to how countries work on improving tenure arrangements. They provide a forum where different stakeholders – government, civil society, private sector and research centres – can have a conversation that might not have otherwise happened. In bringing them together, they provide a space to develop trust and consensus on priorities such as: what should be done to improve tenure governance, how, by whom, and when? In doing so, these platforms and processes reflect how the CFS works, and the importance of working in that manner, at the country level (HLPE, 2018).

There are a number of issues one should realize when working with multi-stakeholder platforms and processes. Developing full multi-stakeholder representation is challenging, as some sectors or groups are difficult to include in national platforms and processes, particularly the vulnerable and marginalized. Getting strong involvement of the private sector has also proved challenging. Therefore, multi-stakeholder processes and platforms may fail to include all distinct groups and perspectives on the priority at stake. Accountability of the multi-stakeholder representation, participation and decision-making in platforms may be an issue, in addition to power asymmetries within the platform and within each stakeholder group that have an impact on decision-making. The multi-stakeholder platform may jointly generate consensus but this consensus is not necessarily applied in practice.

Despite its limitations, there are also factors responsible for successful platforms and processes (Kalas et al., 2017). There is no single factor that is responsible for success, instead a combination of mutually reinforcing factors are likely to exist, such as:

- The platform or process must be a *truly multi-stakeholder* one. Every stakeholder group has a role to play. Without government on board, things will fail. Without civil society, the interests of a large portion of the population will be ignored. Without the private sector, efforts will remain limited in scope and economically unsustainable.
- The platform or process must be *linked to a national priority*. There has to be a specific reason for the platform or process to exist and that sets the agenda. Otherwise, the platform will simply be a place for people to talk but nothing will be accomplished and over time, people will lose interest. Thus, there needs to be a common focus so there is one conversation but the topic can be either broadly defined or be more specific. The particular focus in each country is different and is defined by national priorities.
- The platform or process must be *sustainable over the long-term* and represent a sustained endeavour of continuous events and interactions. It takes time to have a conversation and develop common understanding as well as consensus. It requires an ongoing relationship between the stakeholders. This means that:
- o Time is needed *to build and continuously nurture trust between different stakeholder groups*. The platforms and processes are often the first time that people with different interests gather. Thus, time is needed to develop a common understanding, mutual respect and to learn how to cherish commonalities, respect diversity and reconcile different views into a common programme.
- o There is also often a need to *build trust within particular stakeholder groups*. Too often the different groups within a constituency see each other as competitors.
- There is a need to keep the *momentum* in order that activities continue over the long term. This means there needs to be people and organisations who drive things forward as leadership is key:
- o A small group of 'change agents' at the beginning may be important to move forward.
- o It is also important to institutionalise the movement with appropriate resource allocation and build a strong core who can meet regularly.
- o Over time, different types of involvement can be required. For example, a Steering Committee, or a Technical Working Group, or a Secretariat, each to carry out particular functions.
- There is a need for *external support* particular at the beginning that may include a catalytic financial resources allocation. Sometimes the platforms and processes are new to a country and they have queries. Moreover, in all cases, the group of 'change agents', steering committee, or secretariat, and so on, are people who already have their own fulltime jobs, whether in government, civil society or elsewhere.
- The platform needs to be established and grow organically with and by country stakeholders with a need for broad ownership, commitment and *political will* (Kalas and Jansen 2018). Earlier, it was mentioned that it is important to link the platform or process to a national priority. But for this to be effective, there needs to be ownership of and commitment to the process as well as political will – otherwise policy and legal reforms will not take place, and there will not be any changes on the ground (the role of the *empowered space* mentioned earlier). In many cases, the political will needs to grow, which is why the long-term sustainability and continued momentum is important. The platforms and processes can play an important role if they are established organically, meaning stakeholders are involved throughout the development process including the diagnostic stage why the platform needs to be established, how it will be operationalized, etc. As more and more people from different stakeholder groups participate in these platforms and

processes, they attract more and more attention creating a critical mass. As the popular base of support for the platforms and processes grows, politicians begin to recognize that the topics are important and ministers start to see that they and their agencies need to play an active role. The wider the base of the political will, the greater the chances of continuity after changes in ministers or in governments.

4.2.2. The multi-stakeholder process related to the National Land Use Policy

In Myanmar, a multi-stakeholder process formed around the development of the NLUP. This multi-stakeholder process entails a fundamental shift from the traditional 'top-down' ways of doing business in government to a more 'bottom-up' approach that brings people together, empowers them, to provide a forum for dialogue. It is worth noting that no multi-stakeholder *platform* was formed. However, if we look at the different elements of Dryzek's Deliberation System Framework, one may conclude that there was:

- The existence of a *public space* in which various stakeholders could express their viewpoints and have discourses on the various elements included in the NLUP (e.g., shifting cultivation and recognition of customary tenure rights, women's rights to land and natural resources), and the presence of an *empowered space* formed by a multi-ministerial body that led the NLUP development representing all concerned Government ministries and agencies directly involved in land administration and land-use management. There was interaction between the *public space* and *empowered space* because stakeholders succeeded in having customary tenure systems recognized in the policy. Such areas cannot be defined as 'vacant' land. Restitution issues and rights of Internally Displaced People to return are established as a policy principle (Hall et al., 2016).
- The responsible ministry and the committee that drafted the NLUP were aware of new approaches and were supportive enough to include a broad multi-stakeholder consultation process for the NLUP, perceived as a national priority. Initially, the national government intended to conduct an internal consultation at national and regional levels (Suhardiman et al., 2019). However, demands from CSOs for extra time to allow a well-informed public consultation process were accepted. There was political will to effectively link the consultation process to the development of the NLUP. CSOs were intensely involved in this process and provided systematic feedback throughout this consultation process. The Land Core Group and Land In Our Hands were important to drive this process forward and the Mekong Region Land Governance (MRLG) project for providing external support. The scope and timeframe for the consultations was even extended by one year in order to allow enough time for full participation by stakeholders and to cover the entire country. This may have allowed wider inclusion of all distinct groups and perspectives. The process included *transmission* because the collected systematic feedback of approximately 900 comments influenced the empowered space and, subsequently, changes in the drafted NLUP were made. These changes included clauses on tenure rights of ethnic groups and customary tenure systems related to shifting cultivation practices, though there was no elaboration as to how these would be implemented. The degree of *accountability* concerning these changes in the draft NLUP is debatable as the authors do not have information concerning information sharing, reporting and justification, among other things, that would allow assessing the level of transparency in revising the drafted policy. Nonetheless, the NLUP is the product of an inclusive and transparent countrywide process with participation of multiple stakeholders, resulting in a common vision for the future land sector.
- With the formulation of the Agricultural Development Strategy (ADS) in late 2016, a similar process of consultations on this strategy took place in 2017. Thus, the multi-stakeholder process for the

NLUP is serving as a model. The NLUP process involved different stakeholders but to what degree it could be termed *meta-deliberation* is arguable because it concerns a multi-stakeholder *process* and not a *platform*. Fact remains that the consultation process led to consequences, therefore *decisiveness* was practiced.

4.3. System-wide capacity development

4.3.1. Developing capacities of 'change agents', 'boundary spanners', organizations, institutions and the enabling environment

To maximize country ownership, commitment and mutual accountability for more sustainable results at scale, system-wide capacity development across people, organisations, institutions and the enabling policy environment, based on jointly assessed country needs, is essential (FAO 2011; Kalas et al., 2017; Kalas and Jansen 2018). Capacity development is much more than training. It is a process rooted in empowerment (Sen, 1999) that starts with a participatory capacity analysis covering three dimensions: (1) across the individual level (e.g., skills and knowledge); (2) organisational level (e.g., coordination mechanisms, roles and mandates, among others); and (3) the enabling environment (e.g., policies, laws, governance structures, institutional political economy, etc.). This is followed by a contextualized design of capacity development interventions based on a validated analysis report and roadmap across these three dimensions, followed by jointly monitoring results. Throughout the process, the aim is to foster country-ownership, commitment and mutual accountability through inclusive and interactive dialogue among all stakeholders. Capacity analysis brings together the key 'change agents' engaged in tenure governance.

For people from government, civil society, private sector and research centres to participate effectively and meaningfully in the multi-stakeholder platforms and processes, there is often a need for them to strengthen the human and organisational capacity to do so (Kurbalija and Katrandjiev, 2006; Kalas, 2007; Saner, 2007). Thus, the platforms and processes themselves become a useful forum for providing opportunities for people to develop capacities. This helps the stakeholders to meaningfully and effectively participate in the development and implementation of policies and processes. Moreover, to contribute to country-ownership and commitment, human and organisational capacities of 'boundary spanners' is enhanced throughout the capacity enhancement process. Boundary spanners can be individuals, organizations or institutions that have the ability to reach across borders, scales, sectors or stakeholders to create strategic alliances, networks or partnerships in order to manage complex problems. Boundary spanners have the ability to build sustainable relationships based on interdependence, manage through negotiation and seek to understand the motives, interests, roles and responsibilities (Williams, 2002). In the multi-sector, multi-stakeholder and multi-level area of the governance of tenure, 'boundary spanners' together with 'change agents' can play a critically catalytic role.

4.3.2. Jointly analysing and strengthening capacities in Myanmar

Two different types of system-wide capacity development activities were undertaken. Firstly, FAO and TNI rolled out a tailored *training programme*, in two workshops in May 2015 (Table 1), to increase the capacities of civil society and grassroots organizations to use of the VGGT by utilising the FAO/FIAN International (2017) learning guide. With reinforced capacities, CSOs and others could participate meaningfully in NLUP multi-stakeholder dialogue.

Secondly, a *national participatory capacity analysis* was facilitated in October 2015 (Table 1) in the context of the NLUP to create a space for dialogue looking at the following capacity development dimensions (FAO, 2015 and 2016a): (1) the relevant national policies and laws for the governance of tenure; (2) the organizations, organisational set-up and coordination mechanisms for the governance of tenure, including the mapping of coordination mechanisms; (3) the technical capacities for governance of tenure (related to planning, operations and

communications); and (4) the implementation capacities for the VGGT. This national capacity analysis allowed stakeholders to self-assess their current capacities in order to define the existing baseline and desired future situation. It is the basis for further VGGT activities in the country in the context of the NLUP implementation process. Moreover, the multi-stakeholder workshop was organized jointly between FAO, the Land Core Group (LCG) and MoECAF (Table 1). The workshop design deliberately envisioned for the LCG to facilitate the discussions, which constituted a critical success factor. Through enabling and empowering the LCG, a nationally highly respected non-governmental organisation, and key 'boundary spanner' was empowered within the system to drive the national process. Therefore, through investing in this critical 'boundary spanner', not only were the immediate outcomes of the workshop achieved, an equally important longer-term effect is that the LCG is expected to now continuously play a central role during the NLUP process, including its implementation, thus increasing the likelihood for a more sustainable effort.

4.4. Supporting efforts ensuring that the VGGT principles and best practices are country-driven and embedded in national policies and laws

4.4.1. Factors influencing supporting efforts to embed the VGGT principles and best practices

Supporting efforts to embed the VGGT principles and best practices can look very differently in specific countries depending on a range of factors. The levels of possible engagement in the process of supporting the development and implementation of policies and laws can range from a general assessment, to policy and law formulation, human and organisational capacity enhancement for the implementation, and the implementation at national and then at local level. Throughout this process, some key factors have emerged that have contributed to an enabling environment for the successful development and implementation of policies and laws:

- The development and implementation of laws and policies are strongly dependent on ownership, commitment and *political will,* as already mentioned, and the willingness of governments for conducting land assessments, reviewing and changing policies and laws in their country based on the VGGT. Political will and leadership can help drive these processes, creating an environment that opens discussions on tenure aspects and that is offering possibilities and/or opportunities for enabling a change in policies where needed.
- As the process of policy development progresses, more and more stakeholders become involved. To be sustainable and successful, policies and laws need to be drafted from the start with the *participation and consultation of many different stakeholders*. National platforms and multi-stakeholder processes can provide an enabling setting for ensuring participatory development and implementation of new laws and policies.
- Implementing the VGGT in a country's policy framework needs to correspond closely with the *national context and priorities of the country*. This will create joint ownership of and joint commitment with mutual accountability to the new policy, without which there is little chance of a successful and sustainable implementation. The national platforms and multi-stakeholder dialogues provide a viable opportunity for defining this linkage to national priorities.
- For a successful implementation of policies or laws, the design of a policy framework needs to be *based and tailored to the available local capacity*. A 'one-size-fits-all' approach is inadequate.

4.4.2. Factors in the national land use pNational Land Use Policy process

The adoption of the NLUP by Parliament in January 2016 is a good example of how the VGGT principles and good practices were embedded in a national policy through a country-driven process. The NLUP is a milestone achievement in policy development and can be seen as a response to strengthen land tenure security of vulnerable

communities and to improve the land governance framework (Oberndorf et al., 2017). Engagement of CSOs in the NLUP consultation process was an important landmark shaping state-civil society relations around policy formulation (Scurrah et al., 2015), and this experience may serve as an example to future policy or law formulation processes. Since 2013, FAO played a critical catalytic role through providing inputs in response to a request for support in relation to developing the land use policy. Partners such as the European Union, UK Department for International Development (DfID), Land Core Group, MRLG project, Swiss Agency for Development and Cooperation (SDC), and USAID were key players in the development and consultation process.

The guiding principles of the NLUP are fully in line with the VGGT:

- Enhancing sustainable land use in the development and implementation of policies and legal frameworks related to land and natural resource management;
- Ensuring transparency and accountability in land and natural resource governance;
- Promoting people's consultation and participation, particularly ethnic nationalities, women and smallholder farmers in decision making related to land and natural resource management;
- Recognizing and protecting private and communal tenure rights as included in the Constitution;
- Making efforts to promote appropriate international responsible practices in land and natural resource governance.

Tenure is about how people can get access to land and natural resources, who can use what resources, for how long, and under what conditions (FAO, 2012, page iv). According to the VGGT, this refers to all tenure rights sanctioned by state and non-government authorities. Often the legitimacy of tenure rights is established, or re-established, through negotiation and overcoming conflict. The increased attention in Myanmar to land disputes and (multiple layers of) conflicts across space and time is not negative *per se* because it may be seen as an expression of new political freedom and openness in the media and at the same time, as indicated by Scurrah et al. (2015), it is an opportunity for government to show commitment to human rights and peaceful democratic governance. Woods (2015) also mentions that conflict drivers interact with one another and the socio-cultural, political-economic, and agro-ecological systems within which they operate. Important is to understand who has authority to sanction rights to access, use and control land and natural resources, and on what this authority is based. Through institutions that will grant, administer and guarantee tenure rights, the relevant laws exemplify an approach to state formation. If the state has the ability to secure property for people, the state will be able to show to be the primary organisational actor that guarantees tenure rights (Mark, 2016a).

5. Way forward: national land use policy implementation

With the NLUP adopted, all stakeholders are much better equipped to move forward to address the next steps in the policy cycle, i.e. implementation and evaluation. Already prior to the adoption of the NLUP, FAO and the MRLG project initiated work on the challenges and opportunities of recognizing and protecting customary tenure systems, a key component in the NLUP. The resulting 'Policy Brief' comprises the following four key messages (FAO/MRLG, 2019):

1 In accordance with the NLUP, develop a single, new *Land Law* and its implementation guidelines with the broad participation of CSOs and local communities, outlining clear mechanisms and procedures for recognizing customary tenure systems in Myanmar.

The reform of a fragmented legal framework with a single *Land Law* takes time. Therefore, the current legal framework can be used and changes can be made to implementing rules and guidelines, or a change

in emphasis of implementation, to enable farmers in the interim period more freedom of choice on decisions about crop choice and growth cycles (World Bank, 2018).

2 Promote harmonized documentation and mapping activities of customary tenure at the community level, and make use of the resulting provisional maps for declaring interim protective measures.
3 Develop and test pilot procedures for respecting and protecting customary tenure systems, and the potential registration of customary lands.
4 Review the 2012 *Farmland Law*, the 2012 *Vacant, Fallow and Virgin Land Management Law*, and the 1992 *Forest Law*, based on the principles of the NLUP, and taking into account the views of all stakeholders, including local communities, smallholder farmers, women and other vulnerable groups.

In January 2018, the National Land Use Council (NLUC) was established as the body responsible for implementing the NLUP, which means the NLUP promulgation. What is truly remarkable is that the NLUP process started under the previous government and was adopted by it in January 2016, subsequently its promulgation took place under the new government in January 2018. Certainly the inclusive, participatory and consultative process used for the NLUP contributed to its promulgation. The NLUC was formed to create a coherent approach on land, yet sub-committees are spread across a range of ministries, with varying interests. It consists of 25 government departments representing different ministries and led by the Second Vice President. However, currently representatives from CSOs, farmers organisations, ethnic minorities and private sector have not (yet) been included as envisioned by the NLUP (World Bank, 2018). Furthermore, amendments to existing legislation in 2018, such as the *Farmland Law* and the *Land Acquisition Act*, without reference to the NLUP, indicate reservations by the current government about the NLUP (Suhardiman et al., 2019). It has now become crucial that the NLUP is implemented in a significant manner in a setting where citizens are asking for peaceful democratisation and opening up of reform processes to a pluralistic society.

On 2–3 October 2018, a NLUP Forum was organised to explain and initiate discussion on supporting the NLUP implementation. The NLUC shows commitment to implement the NLUP in its fullness (i.e. including gender equality and customary tenure rights as suggested by FAO/MRLG (2018)) and to undertake the process of drafting a *National Land Law* in a transparent and consultative manner, as well as harmonise between existing land-related laws. Key committees and working groups have been formed to make the NLUP happen (Land Core Group, 2018). Local CSOs, representing rural communities in the regions and ethnic states, are applying pressure on the NLUC to have the community voices and views included, as well as asking for opening up further the process for consultation and participation.

The drafting of a *National Land Law* will be pivotal in providing a constructive way forward to resolve conflicts and avoid possible disputes. The existing legislative framework (e.g., the *2012 Farmland Law* and the *2012 Vacant, Fallow and Virgin Lands Management Law*) comprised limited provisions for formally recognizing and protecting the variety of existing customary tenure systems (Jhaveri et al., 2016; Htoo and Scott, 2019). Currently, civil society (e.g., the joint Land In Our Hands/Myanmar Alliance for Transparency and Accountability statement endorsed by 346 CSOs (Htoo and Scott, 2019)) and international organisations have been active in the context of *2018 Law Amending the Vacant, Fallow and Virgin Lands Management Law*, passed in September 2018, as this law has repercussions for those that use the land without formal documentation (e.g., local ethnic people having customary systems). The application of this amended law may cause an increase in land disputes, in particular in the ethnic areas, threatening the peace process. Furthermore, lack of data on the amount and location of land falling under this law hampers informed decision-making, putting

smallholder farmers at risk of dispossession (Htoo and Scott, 2019; GRET, 2019).

Having an efficient and equitable responsible tenure governance system is hampered by the existence of multiple strata of revoked and active laws layered on top of each other over time, often creating conflicts and contradictions in the legal framework (Mark, 2016b). Individuals and communities, defending their land and other natural resources, use not only current laws, but also older laws and policies, some of which may no longer be active. The drafting process for the *National Land Law*, which has just started, and which FAO is supporting together with Landesa, may provide an opportunity early-on to introduce the principles and internationally recognized good practices of the VGGT, and to see if the drafting process can be opened up, as requested by several CSOs, to allow more stakeholders taking part in it. The more so as this law, when part of an inclusive and participatory legislative process, may solve some of the issues around the *2018 Law Amending the Vacant, Fallow and Virgin Lands Management Law*.

Myanmar Government Officials have visited several countries. Though the conditions in each of these countries vary - concerning customary, communal and ethnic tenure systems, and women's rights to land and natural resources - important lessons and good practices are informing the development process of the *National Land Law*. Landesa led such study visits to India (January 2016), Taiwan Province of China (April 2016), Washington D.C. (April 2017), and Cambodia (December 2017). FAO and Landesa partnered in the study visit to Viet Nam (July 2019). The participants of these study visits included the leadership of the Upper House of Parliament Farmers Affairs Committee, Members of other pertinent Upper House Committees, Union General Attorney's Office, as well as representatives from MoALI and MoNREC. All these participants play a part in the empowered space in which authoritative collective decisions get produced. Jhaveri et al. (2016) documented experiences in Cambodia, Lao PDR, Malaysia, Indonesia and the Philippines that are useful for the process in Myanmar, especially concerning decentralisation of legislative powers, and streamlining the steps in the registration process to make it accessible and transparent. Keeping the process simple and short, and in line with the VGGT principles and good practices, using participatory, consultative and low-cost approaches suited to the country context will be key to securing legitimate tenure rights for all and addressing social and historical injustices. The full implementation of the NLUP will be a key foundation upon which to build genuine, nation-wide peace.

6. Discussion and conclusions

Responsible governance of tenure should reflect the interests of rural households, and ensure that all people are able to exercise their tenure rights and duties. Improving governance of tenure in Myanmar requires long-term concerted efforts from committed partners with mutual comparative advantages and mandates using a participatory action research approach from increasing meaningful, genuine participation and raising awareness to capacity development and technical support for different stakeholder groups and sectors.

Four aspects, i.e. awareness raising, multi-stakeholder processes and platforms, system-wide capacity development, and supporting efforts embedding the VGGT in national policies and law processes, are significant on their own, but they are actually closely intertwined and interact with, mutually reinforce and influence each other. The quality of each of the four aspects, and not their speed, determine the VGGT implementation. Multi-stakeholder processes, such as the NLUP process, bring people together in a space for dialogue to discuss, gain common understanding and reach consensus on a commonly defined goal concerning the VGGT implementation, as well as identify the needs for capacity development across people, organisations, institutions and the enabling policy environment. Capacity development, in turn, enables and empowers stakeholders to develop a better understanding of and ability to improve tenure issues in their county, strengthen

organisations, networks and multi-stakeholder interactions to drive the policy development and implementation process sustainably and at scale. The formulation of the NLUP is hence strongly informed by multi-stakeholder processes and capacity development. With the promulgation of the NLUP, and the NLUC in place, these four interlinked and mutually reinforcing aspects will enter a new phase in the policy cycle in which each one can contribute, and where transmission between the public space and empowered space is taking place.

Together the four closely intertwined, interacting and mutually reinforcing aspects of the VGGT implementation process create a critical mass of 'change agents', as well as empowered key 'boundary spanners', in Myanmar and when aligned to a contextualized change process, such as the NLUP process, bring about collaboratively, following reflection and by learning from each other and other countries, improved frameworks for regulating the tenure of land, fisheries and forests. These critical mass of 'change agents' and 'boundary spanners' is crucial in achieving ownership of and commitment to the NLUP process by all affected stakeholders, and will ultimately be imperative to the success and sustainability of improved governance of tenure of land, fisheries and forests. The relevance of applying the VGGT principles of respecting and protecting all *legitimate* tenure rights is critical, not only for improved tenure governance, but also for climate change, natural disasters, conflicts, migration and resource degradation and/or depletion.

The participatory and inclusive approaches are pivotal for creation of an enabling environment: first, by creating an environment inspired by the VGGT principles and internationally recognized good practices; and secondly, by embedding the VGGT in the NLUP process by the created multi-stakeholder committees and working groups working on the formulation of the new *National Land Law*, including recognition of customary tenure systems and gender equality, as well as the harmonisation of existing land-related laws. This process is ongoing and will hopefully lead to systemic change and achieving impactful and lasting improved tenure governance and tenure security, while also addressing social and historical injustices.

The ongoing reform process in Myanmar is not only a matter of getting the right policy, legal and organisational frameworks in place, but also about these frameworks being in line with people's interests and requests to deliver equity and justice (e.g., resolve disputes and conflicts, access to agricultural extension and credit). Legal and regulatory reform alone is insufficient to meaningfully implement the NLUP. To do so will mean, in the current transition period, to continue creating civic space for societal priorities for more democracy and decentralisation. The NLUP can enable deliberative decision-making processes for transforming the country into one that is accountable to public main concerns.

The role of FAO and partners is one of support by working in synergy and complementarity and thereby facilitating the enabling environment to make improved tenure governance happen. This while deepening country-ownership, commitment and mutual accountability to achieve sustainable results at scale.

7. Disclaimer

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views of the Food and Agriculture Organization of the United Nations (FAO). In addition, the views expressed herein are not to be taken to reflect the official opinion of any of the donors.

CRediT authorship contribution statement

Louisa J.M. Jansen: Conceptualization, Methodology, Writing - original draft, Writing - review & editing, Visualization, Supervision, Project administration, Funding acquisition. **Patrick P. Kalas:** Conceptualization, Methodology, Writing - original draft, Writing - review & editing. **Marianna Bicchieri:** Writing - review & editing.

Declaration of Competing Interest

None.

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Appendix A. Supplementary data

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References

Alves Zanella, M., Goetz, A., Rist, S., Schmidt, O., Weigelt, J., 2018. Deliberation in multi-stakeholder participation: a heuristic framework applied to the committee on world food security. Sustainability 10, 428. https://doi.org/10.3390/su10020428.

Arial, A., Palmer, D., Vidar, M., Garcia Cebolla, J.C., Romano, F., Shamsaifar, L., 2012. Governance of tenure: making it happen. Land Tenure Journal 2012 (1), 63–75.

Beckh, C., Gärtner, E., Windfuhr, M., Munro-Faure, P., Weigelt, J., Müller, A., 2015. Taking stock after three years of adoption: experiences and strategies for implementation and monitoring of the UN Voluntary Guidelines on Tenure (VGGT). Int. Soil & Water Conserv. Res. 3, 324–328.

Brent, Z., Alonso-Fradejas, A., Borras Jr., S.M., Colque, G., Sauer, S., 2017. The 'tenure guidelines' as a tool for democratising land and resource control in Latin America. Third Quarterly. https://doi.org/10.1080/01436597.2017.1399058.

CFS-HLPE [Commission of World Food Security High Level Panel of Experts on Food Security and Nutrition], 2013. Investing in smallholder agriculture for food security. A Report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security. CFS, Rome, Rome, pp. 111pp.

Chambers, R., 1994. The origin and practice of participatory rural appraisal. World Dev. 22 (7), 953–969.

Clapp, J., Newell, P., Brent, Z.W., 2018. The global political economy of climate change, agriculture and food systems. J. Peasant Stud. 45 (1), 80–88. https://doi.org/10.1080/03066150.2017.1381602.

De Wit, P., 2016. Responsible Land-based Investments in the Agriculture Sector: Due Diligence in the Myanmar Context. Note for the file, June 2016. FAO internal unpublished document. pp. 4pp.

Dryzek, J.S., 2000. Deliberative Democracy and Beyond: Liberals, Critics, Contestation. Oxford University Press, Oxford.

Dryzek, J.S., 2010. Foundations and Frontiers of Deliberative Governance. Oxford University Press, Oxford.

Dryzek, J.S., Stevenson, H., 2011. Global democracy and earth system governance. Ecol.

Econ. 70, 1865–1874.

FAO, 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Committee on World Food Security/FAO, Rome, pp. 40pp.

FAO, 2015. Summary Report on National Workshop and Light Capacity Needs Assessment to Improve Governance of Tenure With the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. 9-11 October 2015, Nay Pyi Taw, Myanmar. pp. 36pp.

FAO, 2016a. Responsible governance of tenure and the law. A Guide for Lawyers and Other Legal Service Providers. Governance of Tenure Technical Guide No. 5. FAO, Rome, pp. 19–25.

FAO, 2016b. Results of the Light Capacity Needs Assessment to Improve Governance of Tenure with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. 9-11 October 2015, Nay Pyi Taw, Myanmar.. pp. 56pp.

FAO, 2016c. Regional Multi-stakeholder Consultation on Land Governance in the Asia-pacific Region. 14016 December 2015, Bangkok, Thailand. Report. FAO, Bangkok, pp. 24pp.

FAO, 2019a. Biodiversity for Sustainable Agriculture. FAO's Work on biodiversity for food and agriculture, Rome.

FAO, 2019b. Theory of Change in Support of the Implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land. Fisheries and Forests in the Context of National Food Security (VGGT), Rome, pp. 8pp Unpublished internal document. FAO Land Tenure Unit.

FAO, IFAD, WFP, 2015. The State of Food Insecurity in the World. Meeting the 2015 International Hunger Targets: Taking Stock of Uneven Progress. FAO, Rome, pp. 57pp.

FAO/FIAN International, 2017. Putting the Voluntary Guidelines on Tenureinto Practice: A Learning Guide for Civil Society Organizations. FAO, Rome, pp. 92pp.

FAO/MRLG [Mekong Region Land Governance project], 2019. Challenges and Opportunities of Recognizing and Protecting Customary Tenure Systems in Myanmar. Policy Brief. pp. 12pp.

GRET, 2019. As Of 11 March 2019 – the Date Marking the End of the Six-month Grace Period of the Amended Vacant, Fallow, and Virgin Land Law – Millions of Farmers Are at Risk of Being Considered Trespassers on Their Own Lands. Myanmar Land and Livelihoods Policy Brief No. 1. GRET, Myanmar, pp. 4pp.

Hall, R., Scoones, I., Henley, G., 2016. Strengthening Land Governance: Lessons from Implementing the Voluntary Guidelines. LEGEND State of the Debate Report 2016. pp. 62pp.

HLPE [High Level Panel of Experts on Food Security and Nutrition], 2018. Multi-stakeholder Partnerships to Finance and Improve Food Security and Nutrition in the Framework of the 2030 Agenda. A report by the High Level Panel of Experts on Food Security and Nutrition (HLPE) of the Committee on World Food Security (CFS), Rome.

Htoo, S.A., Scott, F., 2019. How the Myanmar Government's Repressive Land Laws are Catalysing Conflict and Insecurity: An Analysis of the Vacant, Fallow and Virgin Land Management Law. New Challenges and Strategies in the Defense of Land and Territory LRAN Briefing Paper Series No. 4. pp. 35–44.

Jansen, L.J.M., 2017. Dedicated Workshop on the Recognition of Legitimate Tenure Rights and the Administration of Tenure in Line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security Principles and Best Practices. 8-9 June 2017, Nay Pyi Taw.. pp. 23pp.

Jansen, L.J.M., 2020. Improving Governance of Tenure in Policy and Practice: Monitoring in a Space for Multiple Views. Submitted to Environmental Monitoring & Assessment.. .

Jansen, L.J.M., Kalas, P.P., 2020. Improving Governance of Tenure in Policy and Practice: A Conceptual Basis to Assess Multi-stakeholder Partnerships Illustrated With an Example From South Africa. Land Use Policy under revision. .

Jansen, L.J.M., Bicchieri, M., Kalas, P.P., 2020a. Improving Governance of Tenure in Policy and Practice: Recognizing and Safeguarding Customary Tenure Systems While Investing in Agricultural Land in the Mekong Region. In prep. .

Jansen, L.J.M., Kalas, P.P., Bicchieri, M., Nicodemi, C., 2020b. Improving Governance of Tenure in Policy and Practice: Capacity Analysis of the Enabling Environment. institutional and individual levels in Cambodia, Myanmar, South Africa and Viet Nam In prep.

Jansen, L.J.M., Tin, N.L. (Eds.), 2017. Third National Workshop to Improve Governance of Tenure with the Voluntary Guidelines on the Responsible Governance of Tenure of Land. Fisheries and Forests in the Context of National Food Security, Nay Pyi Taw, pp. 20pp 15-16 February 2017.

Jhaveri, N., Litz, V., Girard, J., Oberndorf, R., Mercedes Stickler, M., 2016. Community Land and Resource Tenure Recognition: Review of Country Experiences. USAID Tenure and Global Climate Change Program, Washington, D.C, pp. 60pp.

Kalas, P.P., 2007. Multi-stakeholder partnerships and diplomacy in communications technology for development at the global policy level. A Study of the UN Working Group on Internet Governance. Diplo Foundation, Geneva, Switzerland Discussion Paper.

Kalas, P.P., 2019. System-wide capacity development for sustainable food and

agriculture. In: Campanhola, C., Shivaji, P. (Eds.), Sustainable Food and Agriculture-An Integrated Approach. Elsevier Publishers, pp. 458–463.

Kalas, P.P., Jansen, L.J.M., 2018. Country-level implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in South Africa. HLPE, 2018. Multi-stakeholder Partnerships to Finance and Improve Food Security and Nutrition in the Framework of the 2030 Agenda. A report by the High Level Panel of Experts on Food Security and Nutrition (HLPE) of the Committee on World Food Security (CFS), Rome.

Kalas, P., Abubakar, A., Chavva, K., Gordes, A., Grovermann, C., Innes-Taylor, N., Ketelaar, J., Laval, E., Phillips, S., Rioux, J., 2017. Enhancing Capacities for a Country-owned Transition Towards Climate Smart Agriculture. Climate-smart Agriculture Sourcebook, 2nd ed. FAO. Rome. (See C1 - paragraph 2.2.2).

Kapoor, M., Soe, N.N., Viswanathan, V., 2018. Midcourse Manoeuvres: Community Strategies and Remedies for Natural Resource Conflicts in Myanmar. Centre for Policy Research/Namati, New Dehli, pp. 108pp.

Kurbalija, J., Katrandjiev, V. (Eds.), 2006. Multi-Stakeholder Diplomacy – Challenges and Opportunities. Diplo Foundation.

Land Core Group, 2018. National Land Use Policy Forum – Summary of Outcomes. Unofficial summary/unpublished document. pp. 6pp.

Mark, S.S., 2016a. Fragmented sovereignty' over property institutions: developmental impacts on the Chin hills communities. Independent J. Burmese Scholarship (1), 125–160.

Mark, S.S., 2016b. Are the odds of justice 'stacked' against them? Challenges and opportunities for securing land claims by smallholder farmers in Myanmar. Crit. Asian Stud. 48 (3), 443–460.

Menon, N., Rodgers, Y., Kennedy, A., 2013. Land Reform and Welfare in Vietnam: Why Gender of the Land-rights Holder Matters. Available at. pp. 44pp. http://landwise.landesa.org/record/1822).

Munro-Faure, P., Hilton, A., 2016. FAO's global implementation programme on the voluntary guidelines on the responsible governance of tenure of Land, fisheries and forests in the context of national food security: progress, challenges and outlook. In: Paper Prepared for the 2016 World Bank Conference on Land and Poverty. 14-18 March 2016, Washington D.C.. pp. 31pp.

NAMATI/Landesa, 2015. Recommendations for Implementation of Pro-poor Land Policy and Land Law in Myanmar: National Data and Regional Practice. October 2015, Myanmar. pp. 34pp.

Nederhof, S., Wongtschowski, M., Van der Lee, F. (Eds.), 2011. Putting Heads Together. Agricultural Innovation Platforms in Practice 396. KIT Development, Policy & Practice Bulletin, pp. 123pp.

Oberndorf, R., Thein, U.Shwe, Oo, Thyn Zar, 2017. Developing the national land use policy in Myanmar: the importance of inclusive public consultations and close donor coordination. In: Paper Prepared for the 2017 World Bank Conference on Land and Poverty. 20-24 March 2017, Washington DC.. pp. 10pp.

OECD, 2005. Paris Declaration on Aid Effectiveness and Accra Agenda for Action. Paris. .

Palmer, D., Arial, A., Metzner, R., Willmann, R., Müller, E., Kafeero, F., Crowley, E., 2012. Improving the governance of land, fisheries and forests. Land Tenure Journal 2012 (1), 39–60.

Rioux, J., Kalas, P., 2017. Capacity Development at Multiple-levels for Effective Implementation of Sustainable Land Management. In FAO. Sustainable Land Management (SLM) in practice in the Kagera Basin: lessons learned for scaling up at landscape level. Rome. pp. 82–85.

Saner, R., 2007. Development diplomacy by non-state actors: an emerging form of multi-stakeholder diplomacy. In: Kurbalija, J., Katrandjiev, V. (Eds.), Multi-Stakeholder Diplomacy - Challenges and Opportunities. Diplo Foundation.

Scurrah, N., Hirsch, P., Woods, K., 2015. The Political Economy of Land Governance in Myanmar. Mekong Region Land Governance (MRLG) project, pp. 27pp.

Sen, A., 1999. Development as Freedom. Oxford University Press, Oxford.

Srinivas, S., Hlaing, S., 2015. Myanmar: Land Tenure Issues and the Impact on Rural Development. FAO/National Action Plan for Agriculture project, pp. 112pp.

Suhardiman, D., Kenney-Lazar, M., Meinzen-Dick, R., 2019. The contested terrain of land governance reform in Myanmar. Crit. Asian Stud. 1–18. https://doi.org/10.1080/14672715.2019.1630845.

TNI, 2015. Increase the Use of the Voluntary Guidelines on the Responsible Governance of Tenure of Land. Fisheries and Forests among CSOs and grassroots organizations in Myanmar Final report 18 August 2015.

UNESCAP, 2016. Myanmar Agricultural and Rural Statistics System and Development Plans. pp. 17pp.

Vogel, I., 2012. Review of the Use of Theory of Change in International Development. UK Department for International Development, London. http://www.theoryofchange.org/pdf/DFID_ToC_Review_VogelV7.pdf.

Williams, P., 2002. The Competent Boundary Spanner 80. Public Administration, pp. 103–124.

Woods, K., 2015. Intersections of Land Grabs and Climate Change Mitigation Strategies in Myanmar As a (post-) War State of Conflict. MOSAIC Working Papers Series No. 3. MOSAIC Research Project/. International Institute of Social Studies/RCSD Chiang Mai University, pp. 38pp.

World Bank, 2018. Towards a Sustainable Land Administration and Management System in Myanmar. Washington, DC.. pp. 35pp.