

RETURNS OF GRABBED LAND IN MYANMAR: PROGRESS AFTER 2 YEARS

DECEMBER 2015

Namati submits this briefing paper to assist the government of Myanmar and other interested parties in efforts to ensure the implementation of the 2013 recommendations of Parliament's Farmland Investigation Commission. The commission is tasked with scrutinizing land grab cases and to promote justice for Myanmar's citizens whose land was taken without due process or compensation.

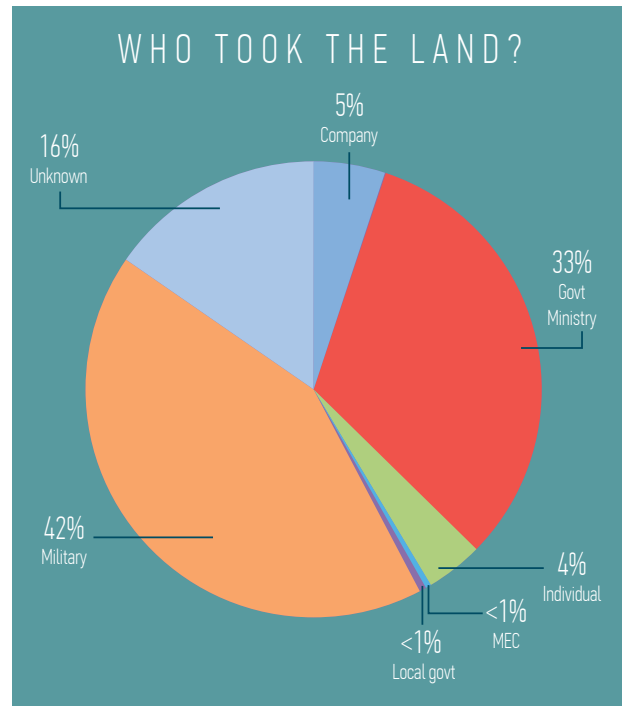
According to the Secretary General of the Farmland Investigation Commission, as of June 2015, approximately 30,000 cases have been submitted to the Commission, of which about 20,000 have been heard. Of those, a small number of cases (882 or 4%) have been found justified to receive compensation. Many of these are collective cases, and according to the 2015 report, the Commission has returned about 335,000 acres of urban and farmland to benefit 33,608 families.

Namati's own experience suggests that the number of cases justified to receive compensation or return of land should be much higher. We further recommend actions the government can take to help streamline the return and compensation of grabbed land and improve the likelihood that outcomes are fair and equitable. This briefing draws on Namati's experience using a network of community paralegals trained to use administrative procedures to resolve land grab cases in Ayeyarwaddy, Southern Shan, Sagaing, Magwe, and Bago between 2013 and 2015.

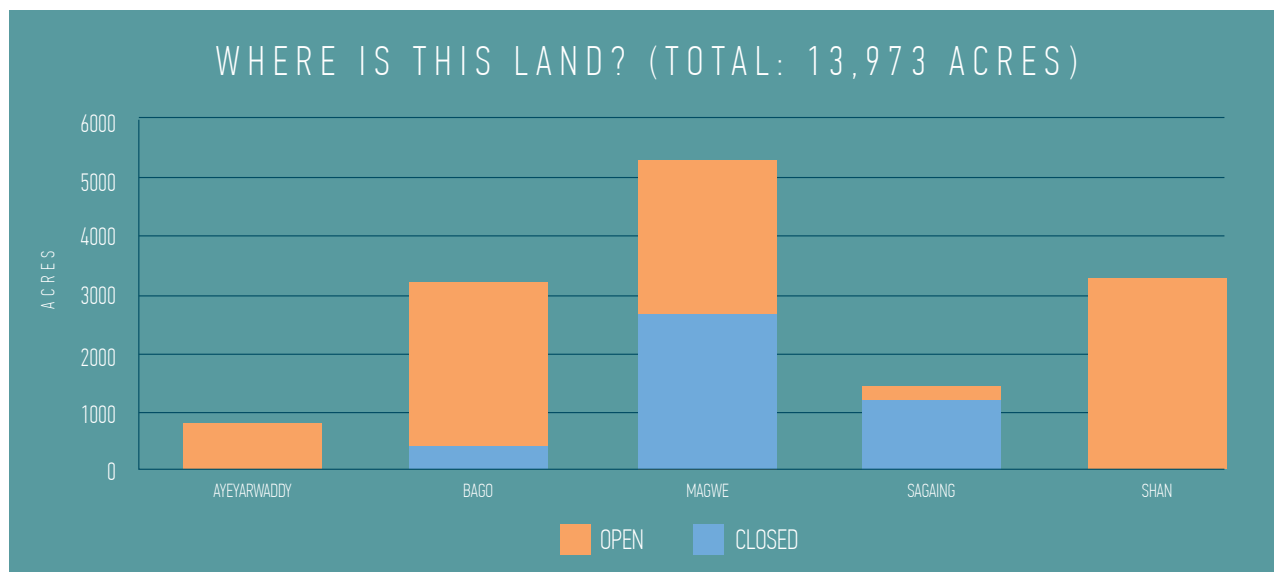
I. BACKGROUND

Since 2013, Namati and its local partner CPRCG have worked with community paralegals¹ on addressing over 150 “land grabs” in 5 of Myanmar’s states and divisions.² Some of these cases³⁴ involved just a few acres of land (median: 8.5 acres); some involved hundreds of acres (max: 2,700 acres). These cases total almost 14,000 acres of grabbed land and have affected over 1,800 farmers.

The majority of Namati’s clients in these cases are small-hold farmers, and more than 60% of clients do not possess other agricultural land—this means that adequate compensation or return of confiscated land is needed for secure livelihoods. Moreover, 63% of Namati’s cases include at least one client with documentation (e.g. tax receipts) supporting their possession of the land prior to confiscation. Of course, many of the other 37% who lack documentation have occupied and worked the land in question over generations.



Most of these land grabs occurred prior to 2011 and during the 1980s and 1990s when land was often taken without satisfactory cause or explanation by the previous government, military, its agents, or well-connected individuals. The negative effects of these takings continue to be felt today, and therefore many farmers who had their land taken in the past are now asserting their claims and attempting to obtain the return of their land for the first time.



¹Community paralegals are trained in basic law and skills like mediation, organizing, education, and advocacy. They can engage formal and traditional institutions to help individuals or communities resolve problems and benefit from the law.

²For more details on the methodology used in this brief, see Annex.

³The term “case” refers to an instance of land grab dispute for which a client (either collective or individual) seeks assistance from a paralegal. It does not refer to a court proceeding.

⁴“Resolved” and “closed” indicate cases that have received a government determination as of October 2015, or client withdrawal. Clients might seek further redress at a future time if policies or laws change.

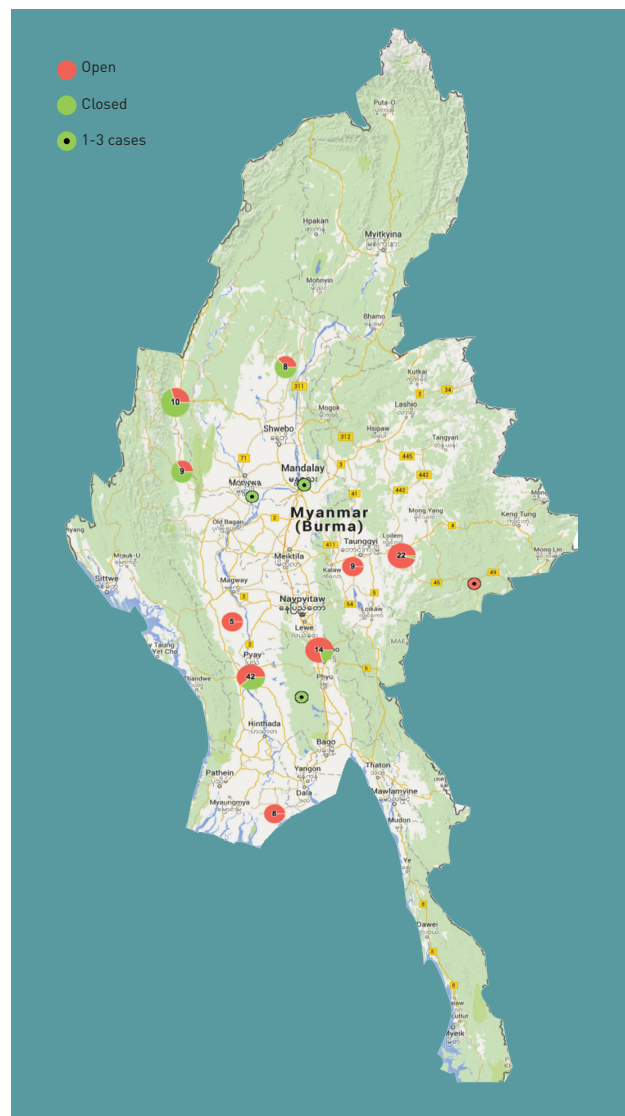
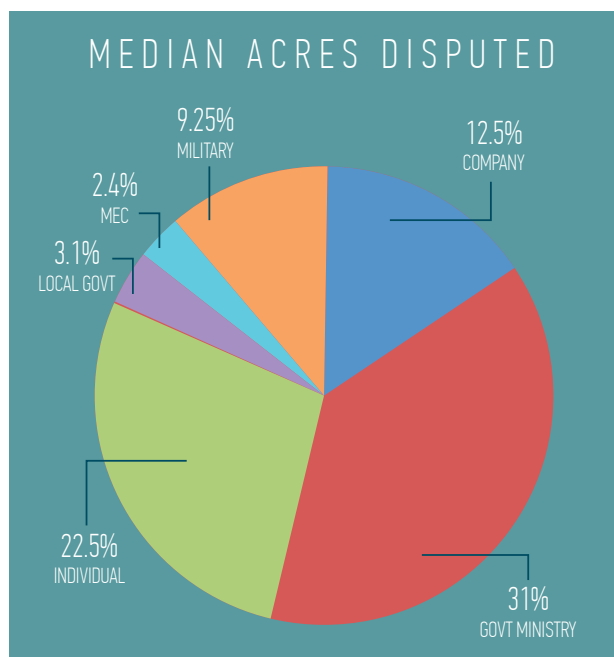
Across states and divisions there is also a difference in the number of acres treated in Namati's cases as well as in closure rates. The median acreage per case in Ayeyarwaddy is 25; it is 17.5 in Southern Shan State; 16 in Magwe; 6 in Bago; and 5.8 acres in Sagaing.

While our cases are not necessarily representative of the general population (e.g. we would expect our resolution rates to be much higher than the population norm due to efforts of paralegals), based on geographic coverage, involvement with both collective and individual cases, and involvement with different types of grabbers, we believe the cases still provide an accurate snapshot of how the government is currently handling land grabs in Myanmar.

II. PROGRESS RESOLVING LAND GRAB DISPUTES

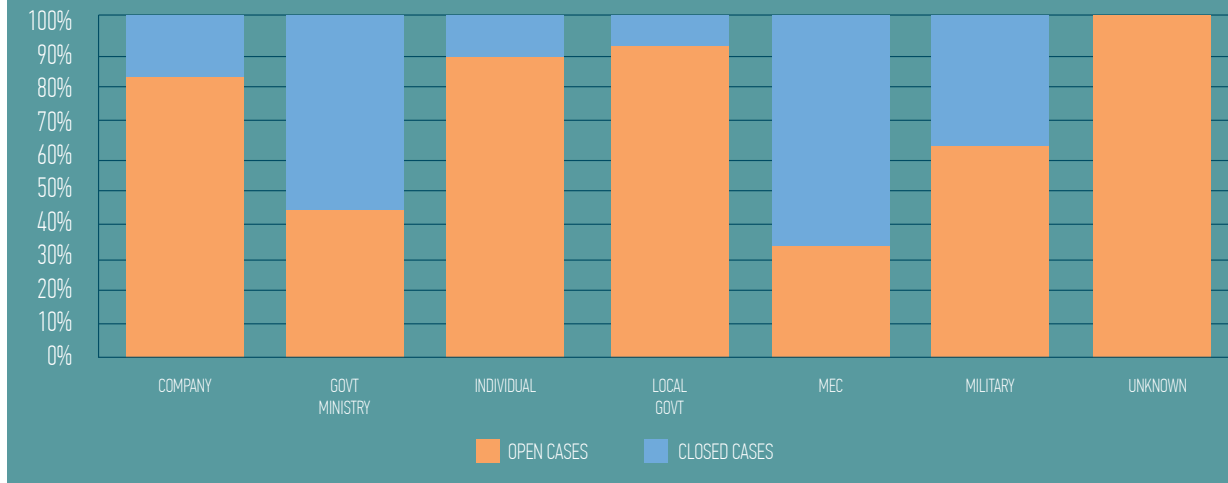
Since 2013 there has been some progress in resolving land grab disputes.

In 44 of Namati's cases, the government has found justification for some type of remedy for 4,400 acres, and 500 affected farmers (compared to 4% of the total cases heard by the Farmland Commission). However, there are noticeable variations across regions and also across "grabber" type. The largest number of acres have been returned in Magwe and Sagaing, but no cases have been resolved in Ayeyarwaddy,



which has the highest rate of landlessness in the country, and which the Parliamentary Commission's report cites as the location of most military land grabs. The paralegals supported by Namati and CPRCG also have not successfully achieved redress for any land taken in Southern Shan state, where many economic and tourism development projects are pushing up land prices.

WHICH CASES ARE BEING RESOLVED?



Across grabber type, a slight majority of cases involving government ministries and the Myanmar Economic Corporation (MEC) have been resolved, with very little progress made in those involving companies⁵, local government, or individuals. This is especially troubling given the relatively large median size of cases that involve companies and individuals.

"MY MIND HAS BEEN OPENED"

U Kyi Lin was at home when a village administrator and official from an electric company knocked on his door. They told him they were going to build an electric tower on his property. There would be no compensation for his lost crops or for the use of his land, the officials said, as this was a government project. U Kyi Lin did not know about the Farmland Law, which says that farmers must be compensated in cases such as these, but he sought help from a community paralegal. After explaining the law to U Kyi Lin, they went together to the police station to lodge a complaint of trespassing against the company.

The police officers did not understand the problem, telling them "It's a government process. It's for electricity for the whole country." The paralegal asked if the police officer was familiar with the Farmland Law—section 66—which mentions compensation at least three times. After hearing the section read out loud, the police officer offered to help negotiate with the electricity company.

All three went to the township administrator, who refused to help negotiate compensation, responding once more, "It's a government project." Finally, U Kyi Lin, the paralegal, the electricity company, and fourteen other village members who were being similarly affected went to the regional level government.

The regional government agreed compensation should be paid, and the difficult work of deciding compensation began. Each farmer had been growing a different type of crop on the land needed to build the towers; the company argued that the price of the specific crops at the time the towers were built should be used to calculate compensation.

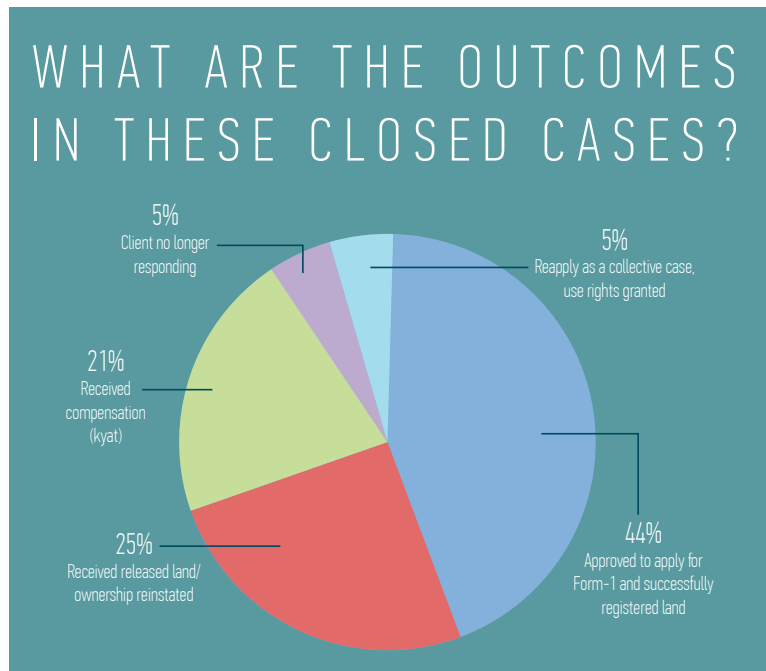
Even though this was less than the law provided, the community members agreed. "I am happy with the outcome. I did not want to draw it out longer. When the land was taken, the price was a certain level, but now it is much higher. I don't know which one is right to use. But, now that my mind has been opened, I am better prepared in the future," says U Kyi Lin.

** Name has been changed to protect individual identity*

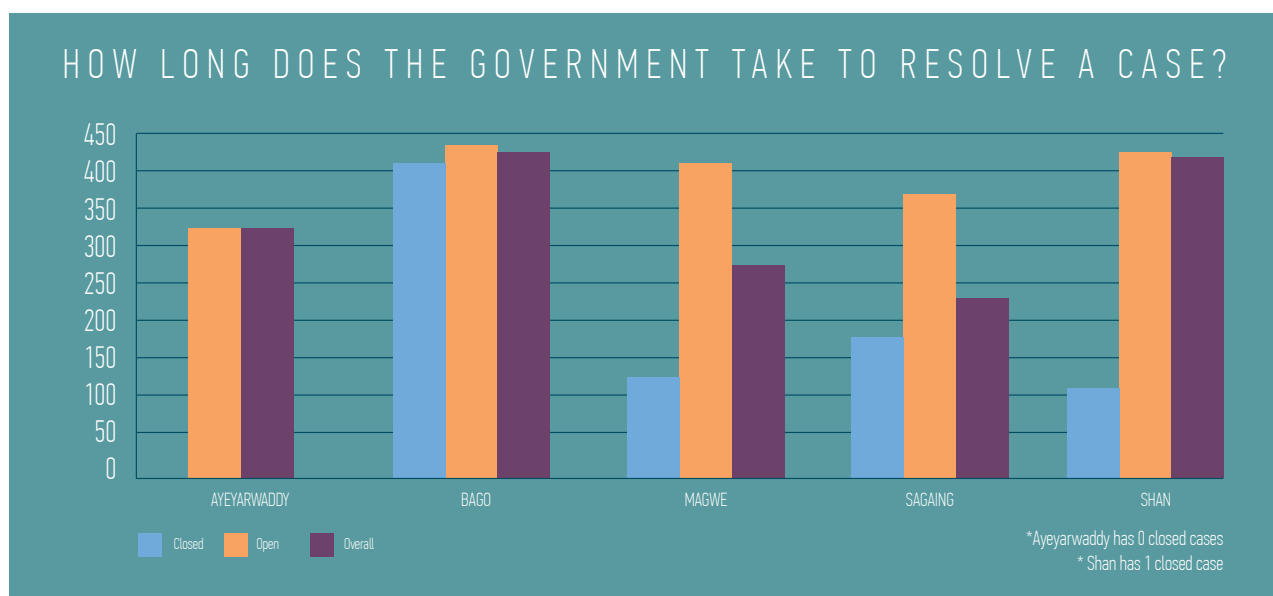
⁵Military or government were often involved in "company grabs," but it is useful to identify cases involving companies separately, as they are a third party to the dispute and direct beneficiary of the confiscated land. The MEC (Myanmar Economic Corporation) is one of the two major holding companies operated by the Myanmar military.

III. PROCESS OF RESOLVING LAND GRAB DISPUTES WITH THE GOVERNMENT

There are two laws that guide land confiscation and compensation: (1) the antiquated 1894 Land Acquisition Act; and (2) the 2012 Vacant, Fallow and Virgin Lands Law. While the 2012 law's provisions on compensation are reasonable, the method by which these payments are supposed to be calculated are not consistently followed. According to the law, in cases where farmland is taken by the state for national infrastructure projects, the farmer should be compensated at the current market rate in addition to payment for crops and improvements they made to the land⁶; when land is taken for profitable economic business, the compensation shall be negotiated but shall not be less than market value.



From our cases in which compensation was received, the average compensation was 4.6m kyat per acre. While land of course can vary dramatically in value even in the same township, anecdotal evidence suggests that the current value of that land is closer to 40m kyat per acre (and price/acre in some parts of Myanmar near economic zones exceed 200 million kyat/acre). Case data also shows that even where any land is returned, on average only 60% of the total land claimed by clients is returned. While this certainly shows progress, without corollary compensation it falls quite short of full justice.



Moreover, although two-thirds of clients have documentation to support possession at the time of taking, the process of resolution, compensation, or return is cumbersome and lengthy. Once again, there is variation across state/division and grabber type, but even when farmers have the assistance of a community paralegal, the median time for the government to close a case

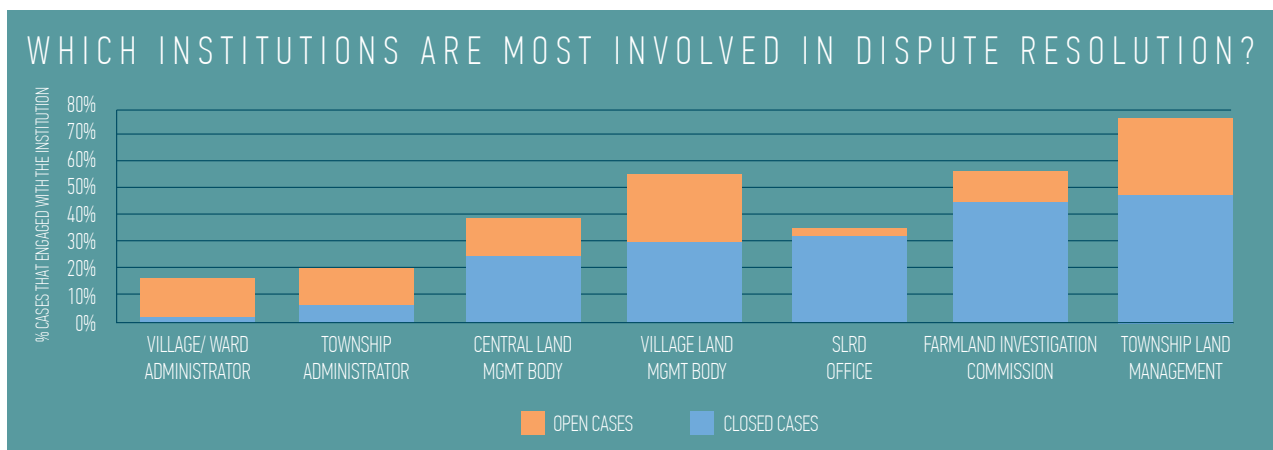
⁶The Township Farmland Management Committee is responsible for calculating this compensation: 3X average crop output + 2X value of improvements + current local value of the land

is 185 days. Open cases have been in process for a median of 400 days (some for as long as 700 days).

Some of this lengthy process may be due to a lack of willingness or understanding by government institutions, especially at the local level, to resolve these cases. To close a case, a community paralegal must work with the client(s) to visit a government office or write a letter an average of 6 times. Cases are ultimately referred to the national level in Nay Pyi Daw in 57% of closed cases, where it becomes even more difficult for clients to follow-up due to travel costs, distance, etc. The law does provide that the Central Land Management Body should be responsible for resolving these cases. However, our numbers suggest that it is also possible to resolve them at a more local or state level. Addressing past land grabs through institutions closer to the affected community could be beneficial, as context and history can be more readily understood at a local level, and potentially more equitable outcomes reached.

The current system of government engagement does not lend itself well to being sensitive of local dynamics. For example, communities often bundle individual claims into a collective case, but in collective cases, only about 15% of paralegal clients have land possession documents. In practice this means that when a case is “closed” by government and land released or compensation paid, it does not necessarily fall equally to each person with a valid claim. Given the complicated history of land confiscation and redistribution in Myanmar, there can be multiple claimants for the same piece of land.

In Ayerwaddy Division, for example, Namati has found that land disputes are sometimes rooted in farmers who had been forced in the 1990s to leave their land because they could not pay fees or taxes properly or because the farmers could not meet imposed production quotas. The local government then redistributed the land to other small farmers, who worked as tenants of the government. The result over years is five or six farmers making claims on the same plot of land. When land is returned, the issuance of land certificates is ad-hoc – sometimes land goes to the original farming family, sometimes land is granted to a family that worked the land as a tenant of the military, sometimes land goes to the farmers currently using the land, etc. There is currently no consistent government policy to outline whether the most recent or original farmer, for example, should receive compensation when provided, or if in varying amounts.



IV. RECOMMENDATIONS

1. The Farmland Investigation Commission should publish detailed information on returned land, including geographic coordinates and recipients.

The establishment of the Farmland Investigation Commission and acknowledgement by government for responsibility in taking land without due process or compensation is a notable achievement. However, it is difficult to verify government claims of returned land, and the government must go further to make this information available and verifiable. As the majority of cases heard by the commission are collective cases, transparency in return and beneficiaries is essential to ensuring that inter-communal conflicts at a local level can be mitigated and further steps at the local level can be undertaken to ensure fair remedy for all affected farmers. Anecdotally, there is evidence that sometimes land is returned to people who never even claimed it or worked it in the first place.

2. In cases where no land (or not all land) is returned, financial compensation should reflect current market rates, include compensation for lost production, and be applied consistently to all cases, in keeping with international best practice.

Alternative resolutions, such as use rights, should also be considered more seriously as potential intermediate resolution, especially given the lengthy processing time. In our cases, the average compensation rate is 4.6m kyat/acre, however this amount is only one-tenth the market rate that some farmers believe their land to be worth.

3. Local government institutions should be empowered to resolve land grab disputes.

Our evidence suggests that many cases, even of just a few acres, are sent up to the national level for resolution. This results in a cumbersome and lengthy process, which can leave farmers with uncertain land rights for years. Local institutions should be empowered to resolve disputes with detailed, transparent criteria for their decisions set out by national institutions.

4. Government needs to develop a fair mechanism for distributing grabbed land and/or compensation across multiple claimants.

Many of the cases decided by the Farmland Investigation Commission are collective cases. Our data shows that in collective cases only about 15% of clients have land possession documents; but, in local land disputes, almost 70% of clients have land possession documents. The multiple claims to the same piece of returned land create a resurgence of disputes over land allocation. The government needs to develop clear and transparent criteria by which these multiple claims can be decided in a participatory manner.

5. The government should be aware of the paralegal model as a cost effective means of legally empowering communities.

This data shows the importance of independent support for citizens seeking redress and engaging government institutions. In India, for example, the government is funding paralegals to support people in securing land rights in tribal districts. Myanmar could likewise recognize the role paralegals can play in helping to fulfill policy objectives and allow them, for example, to represent people in the Farmland Management Body's dispute resolution mechanism.

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METHODOLOGY:

The data set analyzed for this brief was compiled by Namati and CPRCG paralegals between August 2013 and October 2015 based on land issues they handled in their role as a community paralegal. These community paralegals are present in a limited number of townships in each state and division in which Namati works and take on cases as requested by clients. As such, this dataset does not benefit from either full coverage or true randomization; however, it contains qualitative and quantitative information for over 170 land grab cases. For each case these paralegals documented over six-dozen data points, and are also intimately aware of the qualitative information surrounding each case, the community members involved, and the bureaucratic processes, as they work full time as community paralegals. Between 2013 and October 2015, Namati and CPRCG had 30 community paralegals working across 7 states and divisions in Myanmar. Of a total of 170 land grab cases, this policy brief draws on the 132 cases for which a majority of data was available and which did not close due to paralegal drop-out.

NAMATI:

Namati is an international NGO focused on legal empowerment. In a world where 4 billion people live outside the protection of the law, Namati is dedicated to putting the law in people's hands. Namati is building a movement of grassroots legal advocates, also known as "community paralegals" who work with communities to bridge the gap between the law and real life. In under three years Namati has built a frontline of paralegals in eight countries. The paralegals support hundreds of thousands of people to address some of the greatest justice issues of our times. Safeguarding their land and environment, making health services work better, and securing the rights of citizenship. Namati draws on that grassroots experience to seek large-scale structural reforms in the law itself and in the institutions by which law is applied.

NAMATI'S MYANMAR PROGRAM:

Namati established a program and office in Myanmar in early 2013, with an exclusive focus on land rights (registration, re-classification, and land grabs). Between August 2013 and October 2015, in partnership with the Myanmar NGO Civil and Political Rights Campaign Group (CPRCG), Namati trained and supported a network of 30 paralegals serving farmers in parts of seven states: Bago, Ayeyarwaddy, Kayah, Magwe, Mon, Sagaing, and Shan. Since then, the Myanmar Program has grown to a network of 90 paralegals with the addition of 5 new local partners.

ABOUT CIVIL AND POLITICAL RIGHTS CAMPAIGN GROUP

Civil and Political Rights Campaign Group (CPRCG) is a Burmese NGO in which lawyers and social activists work together to build strong and effective rule of law and environmental protection in Myanmar. Established in 2010, CPRCG works to promote this vision through increasing legal awareness amongst local communities and supporting the ability of communities to solve their local issues themselves, using the law and legal strategies. The focus of this work is on improving the realization of civil and political rights for local people together with protection and community control over lands and environment. CPRCG is based in Pyay, Bago Division.

