



# **Why is the resolution rate of confiscated land slowing down in the last few years?**

**September 2019**

## **1. Executive Summary**

The government of Myanmar, under two separate administrations, has been working to resolve land grabs since 2012. Namati, partners, and community paralegals they deploy have been working on land grab cases since 2013. Paralegals collect granular data on every case they support and Namati collects, stores, and analyses this data. This data shows that the rate at which land grab cases are being resolved has been slowing since a high-point in the third quarter of 2015. This slowdown is widely acknowledged by senior officials and officials working in the system.<sup>1</sup>

This policy brief address three questions:

- 1) At what rate have land grab cases been resolved over the last six years?
- 2) Why is the resolution rate of land grab cases slowing down?
- 3) What can the government and civil society do to reverse these troubling trends?

This policy brief will explore these questions using case data, the caseworks experience of community paralegals, official information released by the governments, and the experience of CSO representatives involved in the mechanism.

The key finding is that:

1. There is a significant slowdown in the rate at which land grab cases are being resolved. This has fallen on a secular trend from a high of 19% of cases being resolved in 2015 to just 5% in 2018 (and about 4-5% projected for 2019).

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<sup>1</sup> [President U Win Myint Speech at The Coordination Meeting of the Central Committee for Confiscated Farmlands and Other Lands, 26 June 2018, Naypyidaw](#)

The key factors contributing to the slowdown are;

1. The system still has many flaws which benefit powerful grabbers over affected farmers
2. The current mechanism lacks the legal power to enforce its decisions
3. Land grabbers, especially the military, have shown a lack of political will to release grabbed lands and are able to use their power to frustrate the best will of the system
4. Investigation processes are not performed in accordance with the rules and regulations
5. Farmers access to information about the process and cases is highly limited
6. The reinvestigation committee itself often lacks access to key documents which can be withheld from it
7. The compensation process is not performed properly

As it gets closer to the next general election in 2020, it is not clear what will happen with resolution rates. On the one hand one might expect to see higher number of resolved cases as the government pushes to demonstrate their willingness to fight for the people. This happened in 2014 and 2015 under the USDP. However, on the other hand it is possible that the military, who retain considerable control of the system, makes it much harder to resolve cases in order to show that the NLD is not able to govern effectively.

## **2. Brief overview of the mechanisms used to resolve land grab cases since 2012:**

Since 2012, the government of Myanmar resolved to deal with the land grabbing issues that have plagued the country for decades. Under the previous USDP government the issue was handled through two bodies, the Parliamentary Land Investigation Commission (PLIC)<sup>2</sup> to investigate the cases and the Land Utilization Management Central Committee<sup>3</sup> to implement the decisions of the PLIC. This system was replaced under the current government in 2016 with the Central Committee for Scrutinizing Confiscated Farmlands and Other Lands (widely known as the Reinvestigation Committee). This new mechanism involves many stakeholders such as parliamentarians, government representatives, and civil society representatives at the lower levels. The aim of the new process is to speed up the resolution rate because the resolution of land grab cases is one of the key priorities for the new government and something they made extensive commitments about during the elections campaign of 2015. The new NLD-led government set itself an unrealistic target of resolving all cases in 6-months. The new mechanism was reviewed in 2017 and some small changes were made to it in 2018. The reinvestigation committees exist at

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<sup>2</sup> The committee was also called as the Pyidaungsu Hluttaw's Land Confiscation Investigation Commission. This brief will use the term PLIC or the Parliamentary Land Investigation Committee.

<sup>3</sup> This committee was formed in 2013 under the leadership of the then vice president (1) as well as ex-general U Nyan Tun. Both LUMC and PLIC were dissolved in 2016 when the new government came into power. And it was replaced with a new body.

every level of the government from the village to the national level. Cases are passed up the system to at least the district level, but in practice at least the State or Region where a final recommendation is made.

General Roles of the Reinvestigation Committees at different levels		
Level	Members	Main Duties on Paper
Central Level	Chairman VP-2, Ministers, Director Generals, <b>High-ranking military official</b> , Chief Ministers	Final Recommendation, guiding and monitoring sub-committees, reviewing the process
State/Region Level	Chief Minister, officials from several departments, <b>high-ranking military official</b> , <b>MPs &amp; CSOs reps</b>	Budget allocation, Recommendation, Investigation
District level	District administrator, district-level officials, State/Regional <b>MPs, CSO reps</b>	Recommendation, Returning land, Negotiation/liaison, Investigations
Township Level	Township administrator, Township level officials, <b>MPs, CSO reps, regional MPs &amp; CSO reps</b>	Investigation, Hearing, Information Gathering, Communication/liaison, Making Recommendations
Village Level	Village administrator, representatives from several departments, State/Regional <b>MPs, Farmers reps</b>	Ground Investigation, Information gathering for higher committee, Direct Communication with affected farmers, Recommendation and facilitating any ground investigations by higher committees

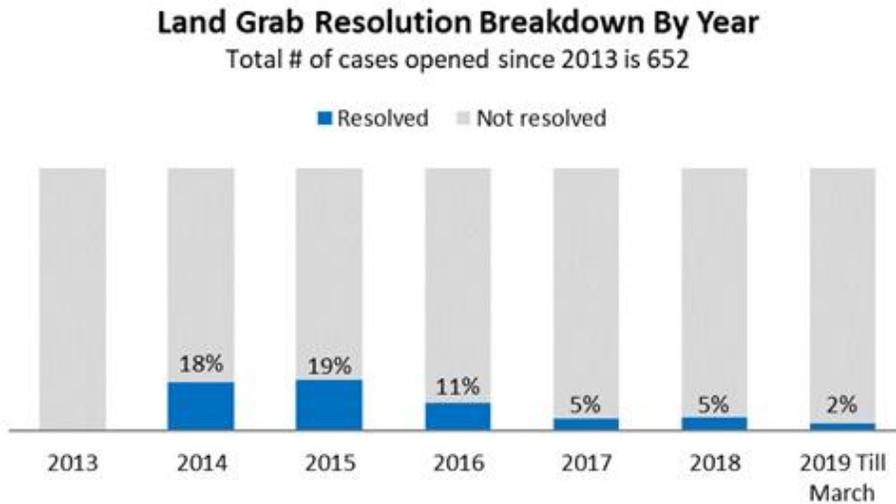
As an introduction to the committee to reinvestigate confiscated farmlands and other lands, this table was created based on the formation instructions. The central level is the most powerful in terms of both the high rank of its members and duties particularly to make final suggestions of what should be done with a case and supervision of the sub-committees. Secondly, the role of the state/regional level can be seen as significant in deciding upon remedies. The State and Regional level committee have the power to form a special investigation team along with the District and Township committee members. The State and Regional level committee has the important task of presenting the findings from the lower levels to the central level to ensure cases move forward without delays.

*“We farmers, cannot count on strong personal connections with powerful authorities. All we can do is to lodge complaint letters again and again to all possible and available authorities. But whatever we try we do not get a fair result.”*

*Farmer whose land was grabbed.*

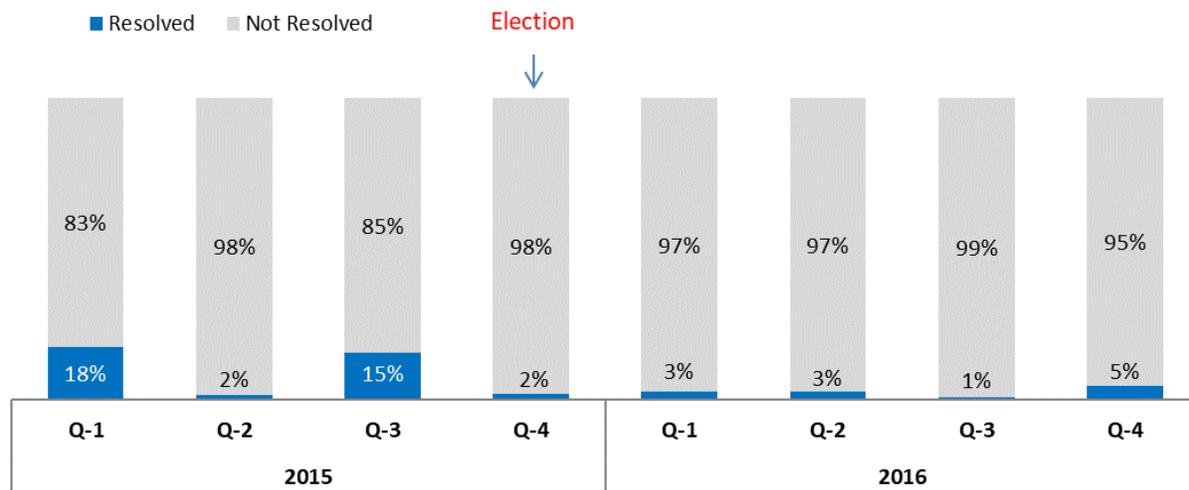
### 3. The Slowdown

The overall resolution rate based on Namati’s 652 cases opened across six states and regions since 2013 is extremely low at just 22% (145 cases). The data shows that the slowdown began at the end of 2015 once the USDP lost power and despite NLD efforts to improve the mechanism has continued under their watch. This data can clearly be seen in the table below which shows a slowdown in case resolutions from 2015.



However, it is important to note on a more granular level that the slowdown began once the USDP lost power. The table below shows the rate at which military land grab cases were resolved by quarter over 2015 and 2016. Military land grab cases were selected to show the level of political control there is over the system. The USDP were able to control the outcomes over the military to a much greater extent, the party itself is led by retired generals, when compared to the ability of the NLD to do so.

## Resolution Rate of Military Land Grab in 2015 and 2016



Paralegals working with Namati and partners started opening cases in 2013 and first saw results in 2014. The majority of the 145 land grab cases successfully resolved happened under the USDP government .

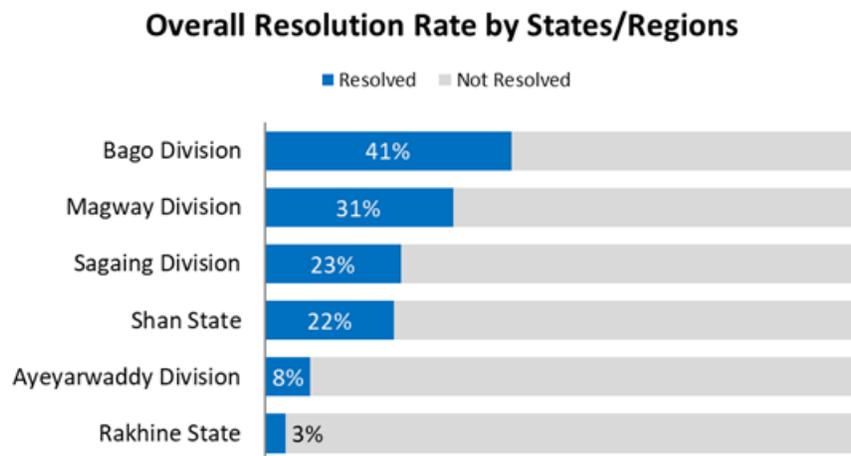
The government is not unaware of the issues facing the reinvestigation committees. In 2017 the government formed an ad-hoc monitoring committee in February 2018 and reviewed the reinvestigation committee’s mechanism in order to improve its functioning. However, we must note that this monitoring committee rarely engage with civil society. Namati sent the monitoring committee a series of data and recommendations but we never heard back from them even to acknowledge receiving our letter - though one MP did contact us informally. The outcome of the monitoring committee was a slight update to the policy and the addition of some new rules in mid-2018. A seemingly positive yet potentially unrealistic rule to “work on one case within 3 months” was added to the regulations. However, rules such as “to close cases already provided compensation when land was grabbed” and “close cases that fail to show ownership evidence exactly” bring about the question whether the intention is to resolve remaining cases fairly or to simply to reduce the backlog of cases. For example, it is entirely possible that a farmer was pressured by the military into taking a tiny amount of money in ‘compensation’ for his or her land in the early 1990s, however, this does not and should not mean that the case should be closed without further investigation by the reinvestigation committee.

Additionally, the new president, who was appointed in early 2018 made the resolution of land grabs a priority. Paralegals did immediately notice an increase in work and efforts by the reinvestigation committees. However, these increased efforts have not lead to any increase in the

rate at which these cases are being resolved nationally. There was a slight increase in in one particular region though it is not clear if it was due to the words of the president or just because the Chief Minister of one region was already active in resolving land grab cases.

The picture which emerges using government data is interesting. According to the Secretary of the Central Reinvestigation Committee, the committee has resolved only 9% of the 5,117 cases on its docket (as of late 2017) and returned 39,790 acres of confiscated land to farmers.<sup>4</sup> according to Despite having some misgivings about the accuracy of government data, what stands out from this most clearly is the effectiveness of the paralegal program which has resolved 22% of cases - more than double the normal rate.

There are clear variations in the resolution rate across different states and regions. However, some of these variations can be accounted for because of the different lengths of time the paralegal program has been operating. Of the resolved cases a relatively higher percentage is witnessed in Bago, Magway, and Sagaing regions where paralegal program started earlier compared with other states/regions. There three are followed by Shan state where the program started in late 2015.



### **3.1. The Investigation process is not performed appropriately**

According to the procedure, once a complaint is received with supporting documentation, the reinvestigation committee must investigate the case by sending a team to the site. This should be performed primarily by the village reinvestigation committees who should report their findings along with recommendations to the township level reinvestigation committee. The township level then decides either to accept the report of village level or to re-investigate the case. Thus, investigations are primarily the duty of village and township reinvestigation committees. District, State/Region, or the National level(s) rarely conduct investigations except in special situations or

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<sup>4</sup> Interview with the secretary of the Central Committee for Confiscated Farmland and other Lands, 2017, MOI Web Portal.

highly problematic cases. In such cases a special committee is formed by the state or regional committee on an ad-hoc basis to carry this out.

According to community members and paralegals in reality the committee level which conducts the investigations varies by location. In many of our project areas, the village committee is not assigned to investigate cases but rather the township committee themselves conduct the investigation. However, members of the township committee have many other tasks and responsibilities. Thus, the time and effort they put in the investigation is limited. Sometimes, they are not able to do a ground investigation and only invite stakeholders to the township office for questioning. In this situation, farmers have to travel to the township offices, at their own expense, where they are less confident to speak up before powerful officials. In addition, most of the time, grabbers do not appear to participate in the township level hearings and meetings while farmers must go each time they are called. When a grabber does not attend meetings land related department officials, village administrators, and village general administration clerks become the key sources of information for the township committees. This situation provides a clear advantage to the powerful and well connected who can have local officials do their bidding. In some cases, these local officials are even appointed or report to people appointed by the grabbers or people close to them.

The effective participation of all stakeholders including grabbers and investigators are critical to improve the quality of investigation and to produce impartial and fair recommendations to higher level committees. However, community paralegals and farmers say that the participation of grabbers in the investigation process is weak at all levels, especially in lower levels where land grab victims are able to participate more effectively. Powerful grabbers usually do not participate in investigations in village and township level. Sometimes their representative will attend but are unable to respond to questions properly. To take a few examples: In a military land grab case in Shan State the township level investigation team was not even allowed to enter the grabbed land and were told this was “for the sake of security”. In a military land grab case in one region where a high level joint land survey team was formed to measure grabbed land, the military official on the regional level committee was unwilling or reluctant to work with members and officials from the township and district level committees. In addition, officials on the township level committees are often reluctant to communicate with military grabbers.

One of the key concerns among farmers is that while the rules and regulations of the system accepts affidavits and oral testimony from neighbors and village authorities' as evidence of land use by farmers in reality such evidence is often ignored. Given a history of weak governance and much customary use the lack of official documentary evidence is a common problem across Myanmar. This is recognized in Rule No. (2) of the rules and regulations issued to guide the reinvestigation committees “10 Policies regarding the application by original farmers of farmland and other lands confiscated by the state”. Nevertheless, paralegals and community members said that unlike

village level committee township level investigations often fail to follow the official guiding rules and instead place undue emphasis on written documents which many farmers do not have. Consequently, the reports and recommendations of the reinvestigation committees highlight the supposed lack of evidence to the higher committees. Such recommendations do not reflect the real situation on the ground. Consequently, farmers and community paralegals have to submit an appeal to the higher level committees. Thus, orders come down to redo the investigation again and again. This situation sometimes requires multiple investigations of the same case leading to unnecessary delays and uncertainty for the farmers.

According to community paralegals and farmers actively involved in cases, the village-level committee is believed to be fairer and to know more about the farmers, history of disputed lands, and the losses caused by the previous land grabs. In addition, farmers feel more confident and comfortable to engage with village level committees rather than at the township, district or higher levels. It is also easier to be present at the village committee rather than at higher-level committees which require more time, energy, and money to attend.

Reinvestigation Committees have multiple members, these include: government officials from all the relevant bodies such as the Department of Agriculture, Land Management, and Statistics, Forest Department, and so on. In addition, parliamentarians, military representatives, and CSO and farmer representatives also sit on the committees which are chaired by a member of the General Administration Department. The research has found that the performance and the roles of parliamentarians, civil society representatives and farmers' representatives are vital to move cases forward and improve the accountability of the committee. They can help to make sure the investigation follows the guiding rules, are often willing to communicate with powerful grabbers including the military and listen to the suffering of farmers who have suffered land grabs.

In several locations MPs have provided comments on cases without knowing about them and without taking the time to meet with farmers. Thus, it is important that farmers and CSO representatives are elected or selected in a proper way. It is also important to learn the impacts and effectiveness of MPs involved as members of the committee. According to many CSO representatives it will be more effective if MPs fulfill the role of providing parliamentary oversight of the committees rather than being participants.

### **3.2. Access to information is limited.**

It is essential that all stakeholders including affected farmers have access to information such as:

- Official land records and title deeds as they appear in government files
- Official case files of land confiscation
- The stage of the case (it is at the village, township, district level etc)
- Investigation findings
- Comments and recommendations made by the committees at each level
- The responses, if any, of those accused of being grabbers

In the guiding rule no (6) of “9 policies regarding the process of instant or quickest return of released land,” it is stated that information related to the works of the committee at all levels shall be published monthly to have transparency. This is also mentioned in several other instructions. However, the re-investigation committees at all levels fail to follow this rule. In all 652 cases Paralegals have participated in we have never once seen this information published.

According to land experts with a half years from 2016 May to the end of 2017, the central reinvestigation committee itself only released information three times. This information was released once in November 2016 and again in April and May 2017. However, this information was not detailed enough to help anyone in the process and was just aggregated data relating to total number of acres returned and so on. There is no database or a platform/channel where farmers, paralegals, or other interested parties can access information about the activities of the committees and any other information they wish to release. The 2018 updated instructions include storing data in a digital database but we have seen no evidence that this has been done. It also re-addresses the need to publish information till the level of the township - again Namati has not seen any changes.

Due to the lack of information provided by the reinvestigation committees it falls to farmers and community paralegals to reach out themselves to the offices where the committees sit to request information or ask about the progress of their cases. Sometimes they have to make multiple trips to get a single piece of information. Depending on the level of the information needed, they approach either the township or district and sometimes even the region/state committee as the cases move up through the system. This consumes the time, energy, and money of the farmers living in rural areas. Nevertheless, this direct approach often does not work and the information is either not provided and in some instances is even wrong. As expected, the better the personal connection with individual officials or staff in the government offices, the easier it is to get information - this systemically disadvantages the already disadvantaged. Consequently, farmers and community paralegals have to rely heavily on MPs and farmer and CSO representatives in the committees at the township, district and state/regional committees in order to gain access to relevant information.

In a case , the decision and comments made by one regional level committee was based on the report from the district level. However, this initial report was not reflective of the real situation. In this case it is essential for the farmers to know what recommendations or comments were made so that they can decide whether or not to appeal to a higher level. However, farmers were not provided a copy of those decisions and comments. Instead, an official just read out the decision and comments to farmers. Fortunately, in this specific case farmers were able to get a hold of the documents and make a secret copy through an ally on the committee - we cannot say more than this because it could jeopardize the ability of the ally to keep working. The document helped the farmer to prepare a submission opposing the decision. While this was a successful case it shows the weakness of the system as, obviously, in areas where farmers do not have allies on the committees or if the MPs and CSO representatives do not truly represent the interest of the affected community there is no access information.

It is stunning to discover that even CSO representatives can be denied access to information on the cases they are supposed to investigate and make recommendations about. This can limit the performances of committee members and also the possibility to achieve justice. An active farmer representative in the Township committee mentioned that even for members, it is still challenging to be provided a full copy of the recommendation and the case file. Even if it is allowed in some situations, the farmers representative has to use his own money to make a copy, although it is supposed to be managed by General Administration Department which heads all committees from the village to district levels. In addition, farmers' representatives are eager to release and publish information monthly as per rules and policies and to improve information access not only for members but also for the general public and affected farmers. This will enhance transparency and openness and almost certainly help move the case faster.

### **3.3. The interests of grabbers come first**

*"I have never heard that a military grabber provides compensation for land they will not release."*

A farmer

The system puts the interests of the grabbers first and this results in many cases where it is accepted that the land was grabbed but the land is some returned nor meaningful compensation paid.

According to the guiding rules for the land reinvestigation system if it is decided that the land was grabbed two options are provided to the grabbers, if they meet some basic criteria:

1. To release the grabbed lands to farmers
2. To keep the grabbed land and pay the original farmers compensation

Farmers have only one option: that is to accept what the grabber decides and to try and negotiate a better deal for themselves. This fundamental power imbalance at the heart of the system makes it very difficult to deliver meaningful justice.

Most farmers would prefer to get their land back and be paid compensation for loss of earnings while they did not have access to their lands. However, most grabbers decide to select the second option (to keep the land) or to transfer to other third parties. However, they may only do so if the grabs met certain requirements:

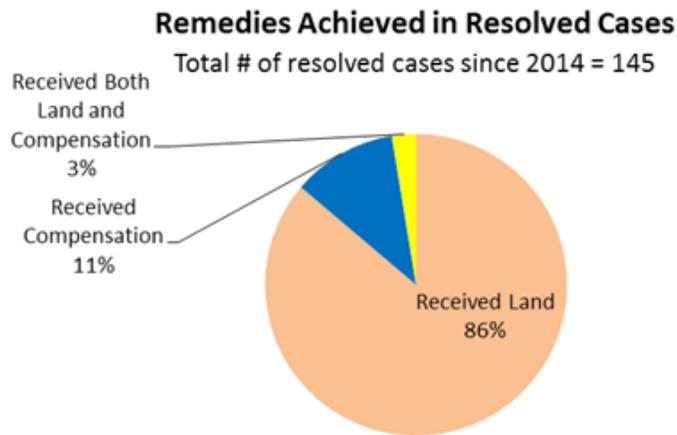
1. The land must have been used, for some time, in line with the initial reason it was taken
2. It project must have a public purpose and be “for the sake of the public” - or
3. In the case of military grabs be “for security” purposes.

There is very little to stop powerful grabbers abusing the system to keep or transfer the land despite not meeting very broadly defined criteria above.

There are many cases in which grabbers only started using the land when farmers began the process of trying to have their land returned to them. Some grabbers managed to convert the land from farmland to other types of land such as housing land, fish ponds etc.; and many grabbers sold or leased out the grabbed lands to other farmers and sharecroppers. In many military land confiscations, the land is not being used for any security related purpose. Instead it is used for cultivation by military families, for housing for veterans and even for commercial purposes such as growing teak, building shops and housing. There are cases in Eastern Shan where the military took land and paid the original farmers to grow commercial crops on it but now claim they cannot return the land because it is ‘for security purposes’. In one particularly galling case military officials planted teak on the grabbed land but want the original farmers to compensate *them* for the value of the wood they have grown on their land. When asked the community very rarely think the grabbed land is being used for any public purpose.

Although the grabbers effortlessly use the system to respond “not to return land” they are far less keen to follow the rules and regulations regarding proper compensation for the original farmers.

Namati’s case data shows in the majority of resolved cases, 86% of a total of 145 resolved cases, were resolved with the return of land. However, it is rare that all the grabbed land is returned and it is possible to give substitute land. Only 11% of cases were resolved through the payment of compensation. It is important to note that many of the 507 unresolved cases are resolved from the point of view of the grabber - who have kept the land - but are unresolved for farmers who have not received any compensation (Namati’s data follows the views of the farmers not the grabbers).



Paralegals think there are two significant reasons why so few cases are resolved once the grabber has decided to keep or transfer the land but will not pay compensation. One is that grabbers are unable or unwilling to provide compensation at market rate and the second is the weak performance of the district level and regional level reinvestigation committees as well as the regional government who allow the status quo, of grabbers retaining the land without paying compensation, to persist. For example:

Case 1, in Eastern Shan. There is a large land grab which has taken nearly half the land of a village. This land is no longer being used and is heavily overgrown. The individual behind the grab is a former commander of an ethnic armed group who has now joined the government as a commander in the border guard force. All the local officials Namati has spoken to are aware of the grab but acknowledge they cannot ask the grabber to return the land or to pay compensation. The question in such, all too frequent, situations is: why must the injustice be borne by the community? Why doesn't the government offer compensation then take the responsibility of trying to collect it from the powerful rather than allowing all the negative impacts to fall on the least powerful?

Case 2, in Bago the Ministry of Agriculture took lands from farmers but has neither released unused lands nor provide compensation to farmers. Instead, the farmers are required to provide written evidence of their previous use of the land and to open a 'local land dispute' case which will be handled by the farmland management body - which is controlled by the Ministry of Agriculture. The opening of the new case also has the effect that the situation is no longer considered as a land grab but rather as an ownership dispute between farmers and the ministry. In this situation the ministry holds nearly all the cards especially given the dependence on written documents many of which can be supplied by the ministry.

Case 3, in a military land confiscation in Magway Region at the end of the process the grabber responded that they would neither release land nor pay compensation because they had already paid compensation. In fact, farmers were forced against their will to take a small amount of

compensation and sign a paper provided by the military when the military was in complete control of the country and farmers lived in fear.

The resolution of many cases are severely delayed due to protracted negotiations regarding the amount of compensation to be paid. There should be no delays because the law is clear - compensation should be paid at the market rate. Even though this is not fully satisfactory because the rate should be replacement cost, market rate plus transaction costs - though most farmers would accept market rate to move on with their lives. Most grabbers are unwilling to pay the market rate - they are not unable to pay it as in many cases the grabber is the military or the government and they could find the funds if they so choose. In one case of land confiscated by the Ministry of Education in Magway region, the regional committee, headed by the Chief Minister, issued a letter recommending farmers be compensated. However, as the amount offered was considerably below the current market rate the farmers did not accept it.

The poor performance of the reinvestigation committees and state or regional governments in the compensation process is also a significant factor in the low resolution rates. There are a number of rules <sup>5</sup> which deal with unreleased lands and compensation. According to the district level CSO representative, the compensation process is to be implemented using the budget of the state or regional governments. The implementation of the process should be by the district General Administration Department (GAD) supported by the district reinvestigation committee.

The state or regional government and district GAD should set the appropriate market rate but should also include the farmers in this process. Nevertheless, the performance of state and regional government and district officials are unsatisfactory according to paralegals and farmers. Paralegals in Bago Region think that the regional authorities are not working effectively to restore land grabs. Indeed, even the State Counselor remarked that state and regional committees have been enormously weak at handling cases.<sup>6</sup> A CSO representative at the district level reinvestigation committee said that they have never seen a regional government allocating the budget for compensation to land-grab victims. According to paralegals and farmers, no compensation is paid after they were informed that grabber would not release land.

### **3.4. The existing mechanism lacks the power to enforce decisions**

The previous mechanism, 2012-2016, separated the investigation and decision making and responsibility to implement the decisions into two separate bodies, the first comprised of parliamentarians and the second government officials, including senior military officials. The head

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<sup>5</sup> Rule no. 2 and 7 of "The 10 Policies regarding the application by original farmers of released farmland and other lands confiscated by the state" and rule no. 3 of "The Five policies in investigating unreleased lands", etc. The committees are assigned to follow the rules.

<sup>6</sup> ["The State Counsellor Urged To Return The Land As Soon As Possible", 28 June 2019, Radio Free Asia](#)

of the central committee was Vice President-1 a former military general. The current mechanism, 2016 -, assigns both duties to only one body that comprised of all stakeholders, including CSO and farmers' representatives up to but not including the national level. The head of the central committee is now Vice President-2, a civilian.

Nevertheless, it is frequently pointed out by Namati's legal advisor and heads of our partners who closely work with paralegals that the current mechanism either lacks the power to enforce its decisions or is overly reliant on other bodies, such as the GAD, to do so. Thus while the reinvestigation committees are able to make recommendations these often go unimplemented. This is seen as the most critical factor in successfully resolving cases. Moreover, the committees well aware of their lack of power often do not make recommendations if they know these will not be followed - even when they know what should be done. This could be because they are afraid to do so and/or because they know their recommendations cannot or will not be implemented. This could be a significant reason why a majority of cases encounter long, multi-year, delays and "no-response" when the case reaches to the central level. When delays happen at the township, district, and state or regional levels at least it is possible for farmers, however hard, to find out some information and push to move the case forward. However, paralegals and farmers are unable to reach out to or understand what happens with their case when it is at the central level.

Many cases are frozen at the central level. Some reasons for delay at the central level includes delayed response of the grabbers and the ineffective performance of the central committee. It was also suggested that the central committee should organize multi-ministerial meetings in which a decision can be made regarding the land ministerial and military grabbed. Such meetings can at least give the farmers a clear decision that their land was or was not grabbed and if it was grabbed if they will receive the land back or compensation.

The apparent weakness of the central committees is detectable through the responses of the state or regional committees which report to paralegals, informally, that they are not provided any responses and so cannot take further actions. The central committee does not appear to provide feedback to the lower committees, any monitoring of their performance, nor guidance. All this leaves paralegals and farmers waiting for months and years having already spent long periods of time and a huge amount of effort to get the cases to the final stage. The central committee also lacks the ability to make the lower level committees follow its rules and instructions. In May 2018, several rules were updated, including encouragements on state and regional committees to work effectively and to take actions. However, Namati and partners have still not heard of a single person being charged for failing to perform appropriately in the resolution process.

### 3.5. Despite political wills, grabbers are not cooperating to realize it. Or Land grabbers especially the military has shown a lack of political will to release land.

Although the pre-2010 military government is primarily responsible for the widespread issue of land grabbing ironically it was the military proxy party the USDP which formed the government (2010-2015) that initiated the plan to resolve the issue. The current NLD government (2016-) has declared its strong political will to provide justice and resolution for those who suffered land grab. Nevertheless, the powerful grabbers seem to be unwilling to support the government’s plans and instead are fighting hard to keep the land they took. Of the 652 cases that community paralegals have opened with farmers since 2013, the main grabbers were the military (45% military, Home Affairs Ministry, and Military associated Companies), governments (various ministries), businesses/ companies, and influential individuals.

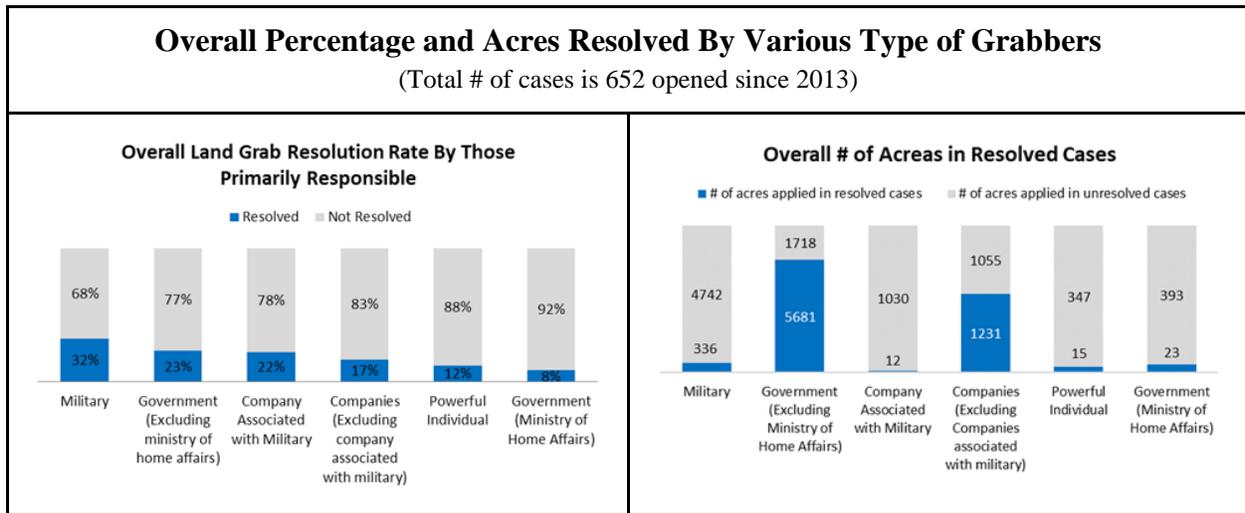
Number of Cases by Type of Grabber (n=652)

Type of Grabbers	% of cases
The Military	35%
Government (Excluding Ministry of Home Affairs)	27%
Companies (Excluding Companies associated with military)	11%
Government (Ministry of Home Affairs - Military Controlled Ministry)	9%
Powerful Individual	5%
Company Associated with Military	1%

From 2013 till now, community paralegals and farmers have been trying hard to get their land back and build their livelihood again. However, the resolution rate stands at only 22%. The majority of all resolved cases happened under the former USDP government - 89 cases resolved before April 2016 and just 56 cases resolved since.

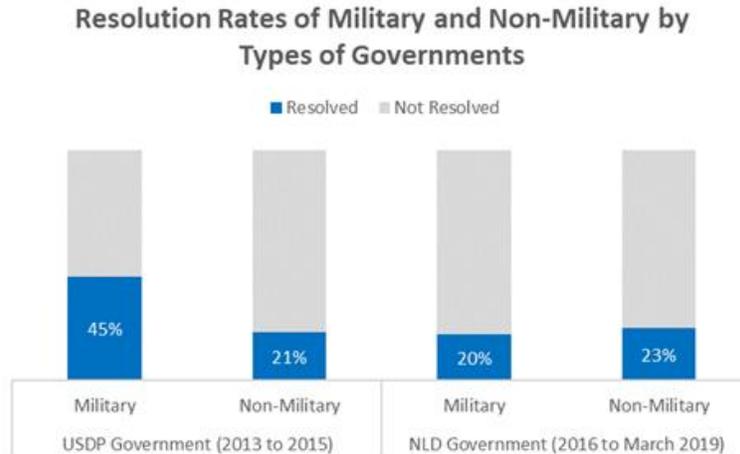
By grabber type, military cases have the highest resolution rate which stands at 32%, the government (excluding the ministry of home affairs) has a resolution rate of 23 %, and companies

associated with the military 22%, while companies not directly associated with military resolved only 17%.



Although the military resolved cases at the highest rate these cases deal with relatively small tracts of land whereas the government (excluding the Ministry of Home Affairs) returned relatively large tracts of land. Thus despite 32% of the cases involving the military as grabber being resolving these cases account for just 6.6% of all the acres the military is alleged to have taken. Given the politics of the period when the majority of this land was returned, see below, one might conclude that the cases were more a cosmetic exercise rather than a deep and genuine attempt to resolve the issue of land grabbing by the military. In stark contrast while just 23% of the cases involving the government (excluding the Ministry of Home Affairs) as grabber being resolving these cases account for a very significant 77% of all the acres it is alleged they took.

There is a clear trend when looking at resolution rate by year. The rate at which cases were resolved decreases year by year from 2016 when the NLD government came to power. Interestingly when looking at the data by grabber type the resolution rate of military grabbers was significantly higher under the USDP government and lowered under NLD government. Meanwhile, the resolution rate of cases where the government was the grabber saw a slight increase under the NLD government.



Having spoken to a large number of paralegals, CSOs, and CSO representatives on the reinvestigation committees a rather dismal picture emerges. It seems that the military was willing to cooperate with the USDP government in the run up to the elections in November 2015 and support them to resolve cases for their political gain. Now, under the NLD, such cooperation has been severely curtailed. Indeed, Namati sees that the military is slowly shifting its position from frustrating the process through procrastination to a more confrontational approach against farmers. This can be seen in the number of farmers being sued for ‘trespass’ - essentially a form of lawfare by which grabber can tie-up the time and resources of farmers by accusing them of trespass on what is widely perceived as their own land. While there is an issue in Myanmar of squatters sitting on land and demanding money to move on this is totally different from grabbers abusing the power and the law to charge the original farmers with trespass.

Military grabber frequently abuse the rules and regulations created by the central land reinvestigation committee. These include rules that state the military may only retain land which is being used for military purposes and which is contiguous existing military land. The standard response from the military is that the land is ‘needed for security purposes’ which is never clearly defined.

In cases in Eastern Shan State, the distance between the grabbed land and military compound can be up to a one hour walk and the lands are separated by farmlands and orchards. Nevertheless, none of these lands are released with the military citing security reasons. Therefore, be considered as needed ‘for security reasons’ but is an economic issue the military should resolve. In one case in Eastern Shan the military tacitly admitted to this issue by stating it could not release grabbed land because it was needed “for the rations of military families.” In some cases, farmers can access the land and use it with the permission of the military but they are not given the titles to this land. In such cases, farmers are reluctant to take actions to get land tenure documents officially because they fear the military will take away their existing access to the land. In some cases, negotiation

for compensation is taking place because the military will not release land and farmers feel it is their only option.

In a case ongoing since 2013 in Bago Region, the military grabber agreed to release land and at that point farmers started using their land. However, the military did not issue an official letter to release the land officially. Thus, farmers could not apply to register the land under the form-7 process. As a result, the farmer had to resubmit the complaint to the reinvestigation committee in 2016. In this case, all the farmers need is the official letter from the military releasing the land but the military will not write the letter and so the case is still unresolved and the farmers are at risk and could be charged with trespassing.

In a case in Pakuku Township, Magwe Region, the military released 39 acres of land officially in March 2018 and the formal process to return the land to farmers began. Farmers started cultivating the land to prepare it for the coming rainy season. However, when farmers started the official registration process, they heard that the military was not releasing land to return them but rather was releasing the land to a veterans' association in order to build housing. The purpose of releasing land was not mentioned in the original official letter. Villagers also heard that military initially request to release just half the 39 acres for the veteran association, but this later became all the acres. Immediately following the release of this news, in December 2019, the military started digging the lands in preparation to start construction. Farmers also stopped preparing for the upcoming rainy season in fear of criminal charges that the military might take against them. According to community paralegals, they have never seen such an aggressive and problematic approach taken by a military grabber who had already agreed to release the land.

The military attempts to retake released land in Magway Region.

U Tun Lwin and over 60 farmers' farmlands were confiscated in 1990/1991 by the military to enlarge a military base. They took hundreds of acres in West Chawkan Village in Pakokku township. Farmers were called to the military base and were informed that the military was going to confiscate their lands regardless of their opinions. Villagers were told they would be compensated but no money was ever paid. The military farmed the land themselves for one year but later on, from around 1993, they stopped and leased the land back to the original farmers who became tenants on their own land paying the military for the privilege.

In 2013 after 20 years of cultivating their own lands as tenants, villagers heard that grabbed land should be returned. They lodged complaints with the government starting 2013 for all the affected farmers to get their land back. Nevertheless, the response they received from the military was that they "cannot release land in order to protect the welfare of military families", moreover, there would be no compensation. The area was slowly developing with the construction of roads and railways. At some point the military fenced in all the land grabbed except about 40 acres.

Those 40 acres belonged to U Tun Lwin, an active client, and 11 others who were tenant farmers. Unfortunately, in 2014, the 12 farmers' access to the farmland was ended by the military because of the rule that grabbed land must not be lent out by must be used in line with the reason why it was taken.

Thus, U Tun Lwin and the 11 other farmers tried again to claim their land by submitting a new complaint letter in 2017 to land reinvestigation committee. In March 2018, the military officially announced that they had released those 40 acres. The investigation committee conducted two rounds of investigations and prepared the formal process in November 2018 to finally return the land to the farmers. While the few final steps were being undertaken, such as the issuance of temporary certificate, the military interrupted the process and started building on the land at the end of November 2018.

Shocked by this turn of events farmers lodged complaints to every department, and agency they could think of including sending all the information to the Office of the President, the central land reinvestigation committee, regional chief minister, commander in chief and also to the state counselor several times. Farmers also staged protests twice in 2019. The complaint letters lead to the case be re-reinvestigated but this time each one was dealt with individually rather than seeing the whole 40 acres as one case. Despite the official announcement and an official event releasing land in November 2018 June 2019 the military responded to the new reinvestigation that they will not release lands. In the meantime, the military continues building and creating facts on the ground while farmers are left with no options but to lodge complaints again and again and to wait, in vain, for justice.

The request by the township-level investigation committee to the military not to use the land was not respected. The chairman of regional land reinvestigation committee ordered the district reinvestigation committee to issue a letter stopping the military using that land. However, U Tun Lwin and 11 farmers believed that only an official order from the central committee, The President, or the State Counselor would work in their case.

There are several areas in which the rules and regulations guiding the work of the reinvestigation committees do not provide any or sufficient clarity.

1. Whether the committees will continue to accept the complaints for land which was grabbed before 1988.
2. How to justly handle complicated cases such as when there are both long term tenants and original farmers
3. How to proceed when released land that is classified, with little evidence, as VFV land or forest land thus making farmers have to go through even more processes to finally have secure tenure.

## 4. Recommendations

### To the Government

1. Meaningful participation of CSOs and Farmers representatives in the committee at all levels including the central level should be enhanced and ensured;
  - Include CSOs and Farmers representatives at the national level.
  - Elect CSO and Farmers representatives at all levels in a meaningful consultation with the community. This will help to recruit true representative and increase the credibility of the committee and the quality of justice.
  - Provide CSOs and farmers representatives with expenses and resources so they may perform their duties effectively.
2. The government should provide more power to improve the effectiveness of the mechanism in the following ways;
  - Provide the central land reinvestigation committee with the legal mandate and power to question and take legal actions over grabbers who fail to follow the rules and the decisions made through the proper resolution process as per the rules and regulations.
  - Allow the central land reinvestigation committee to make complaints to the relevant line Ministry of civil servants who fail to perform according to the rules and regulations.
  - Improve the role and functions of the state and regional committees by sharing more power with them in order to communicate effectively with clients, handle the cases and, influence the actions of powerful grabbers.
  - Review the role and effectiveness of MPs participating as members in the land reinvestigation committees. The key decision here is should MPs participate or should they provide oversight via a parliamentary committee?
3. Allow the clients to read and make copies of the comments and recommendations from different levels all the way up to the central level. People have the right to know what has been written about their case and to see if the information is accurate or not. This will promote transparency and increase the level of trust in the system.

## **To the Parliament**

1. The role of the parliament at both the Union and State and Regional levels should provide for effective oversight of the reinvestigation committees;
  - By setting or holding regular special sessions to question the committee's members, performance, and outcomes.
  - In their oversight, the parliament should also monitor and review the budget of the state and region governments to check whether the compensation budget is allocated or not for land grabbed victims.
2. The parliament should enact a Right to Information law through meaningful consultation with the public to improve and ensure the right to access to information and improve transparency.

## **To the Central Committee to Reinvestigate the Confiscated Farmlands and Other lands or the Central Land Reinvestigation Committee**

1. The role of village land reinvestigation committees, for the sake of affected farmers, should be enhanced as follows;
  - The village committee should be primarily responsible for the ground investigations, and they should also be involved primarily and meaningfully in the ground investigations conducted by any higher levels.
  - The village committee should be consulted and or involved meaningfully in the investigations or hearings and recommendation makings meetings of the township and district levels.
2. The central committee should monitor and enforce the rules and regulations to be followed by committee members at all levels and land grabbers of any type. In particular, the rule acknowledging “neighbors and community’s witness when they lack written documents” should be used in the resolution process as strong evidence because it is an important rule for the affected farmers.
3. The committee should improve and ensure the transparency through following actions;
  - Monitoring and enforcing effectively the rules and regulations “to publish information monthly”, this should be followed by committees at all levels.
  - Ensuring access to information of any kind related to land grabs and the mechanism for all stakeholders including CSO and farmers’ representatives on the committees.

- Creating a public database (for example as online platform either Website or Facebook Page) to publish real-time information. If possible, the committees at all levels should create such platforms so that the communities in each area can easily access all the relevant information and the progress of cases at all administrative levels from village to central. This will support them to know which efforts are required to resolve their case.
4. The committee should improve the compensation process through following actions;
- Examining whether the land in cases deemed ready for compensation truly cannot be released and returned to farmers according the rules and regulations.
  - Setting a timeframe to complete the compensation process and taking action if stakeholders fail to do so.
  - Involving or enhancing the role and participation of CSOs and farmers in the process such as calculating the amount of compensation and supporting negotiations.
  - Ensuring the allocation of budgets by states and regions to provide adequate compensation for unreleased grabbed lands.

## **5. Methodology**

The analysis of all 652 land grab cases opened by the community paralegals and the second is the experience and impression of community paralegals and partner organizations that it is increasingly hard to resolve cases. Namati's data comes from the cases run by paralegals who work with Namati and partners. Namati further explored this topic through several in-depth interviews and focus group discussions conducted in 2018 and field visit in August 2019. Namati researchers spoke with and interviewed 20 senior community paralegals working on land grab cases since 2013 and affected farmers. The main topics discussed with community paralegals were their experience of the most challenging issues in the process, the experience of engagement with government members of the reinvestigation committee, the actions of land grabbers, and access to information. Additional interviews were held with: the heads of two of Namati's partner organizations and CSO representatives. These interviews focused on access to information and transparency, the process of ground investigation, the reason for the slowdown from internal perspective, and the overall nature of the work of the land grab reinvestigation committees.

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## About 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 written law and its practical application in everyday life. Namati has worked with over 40,000 active clients in eight countries to protect community lands, enforce environmental law, and secure basic rights to healthcare and citizenship. Namati draws on that grassroots experiences to seek large-scale structural reform in the law itself and in the institutions through which law is applied. Namati also convenes the Global Legal Empowerment Network, which has over 4,000 individual and 1,000 organization members, all dedicated to legal empowerment.

Namati established a program and office in Myanmar in early 2013, and partnered with local civil society organizations to implement "Community - based Paralegal Land Rights and Governance Program," which exclusively focuses on land rights and governance issues such as registration, classification, land grabs, applying for Vacant, Fallow and Virgin land and certification on community forest, joint land registration, and local land dispute cases. Since then, the Myanmar Program has grown to a network of 45 paralegals in six States/Regions (Shan, Rakhine, Irrawaddy, Bago, Magwe, and Sagaing). Our current partners are: Civil and Political Rights Campaign Group, Thanlwin Thitsar, and Green Peasant Institute.

