

MYANMAR LAND LAWS: CURRENT PROBLEMS, POSSIBLE SOLUTIONS

Report on a Discussion with Business

17 December 2020

1. Summary

An online discussion with business on “Myanmar land laws: current problems, possible solutions” was held on 17 December 2020, organised by UNDP, Myanmar Centre for Responsible Business with involvement of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI). The objective was to obtain specific and relevant feedback from the business community on current land laws and administration. Information sought focused on well-functioning areas, existing challenges, gaps, and suggestions for improvement. The feedback was intended to inform and support the work of the National Land Use Council and relevant subcommittees to implement the National Land Use Policy and to draft the new National Land Law¹.

There were 73 participants including representatives from business associations (21), law firms (33) and other businesses (19) attending the online consultation which was done in two batches, one in English and one in Myanmar. The most relevant land related laws for businesses are the Land Acquisition Laws (1894, and 2019), the amended Vacant, Fallow, Virgin Land Management (VFV) Law, the Myanmar Investment Law, the Environmental Impact Assessment (EIA) Procedure, the Deed Registration Law, and the Farmland Law. Out of those, the VFV Law, the Land Acquisition Laws, and the Farmland Law cause the most problems for the private sector, followed by the Deed Registration Law and the EIA Procedure. The Myanmar Investment Law stood out as less concerning and, together with the MIC processes and DICA’s MyCO online system, was most frequently mentioned by participants as well-functioning areas.

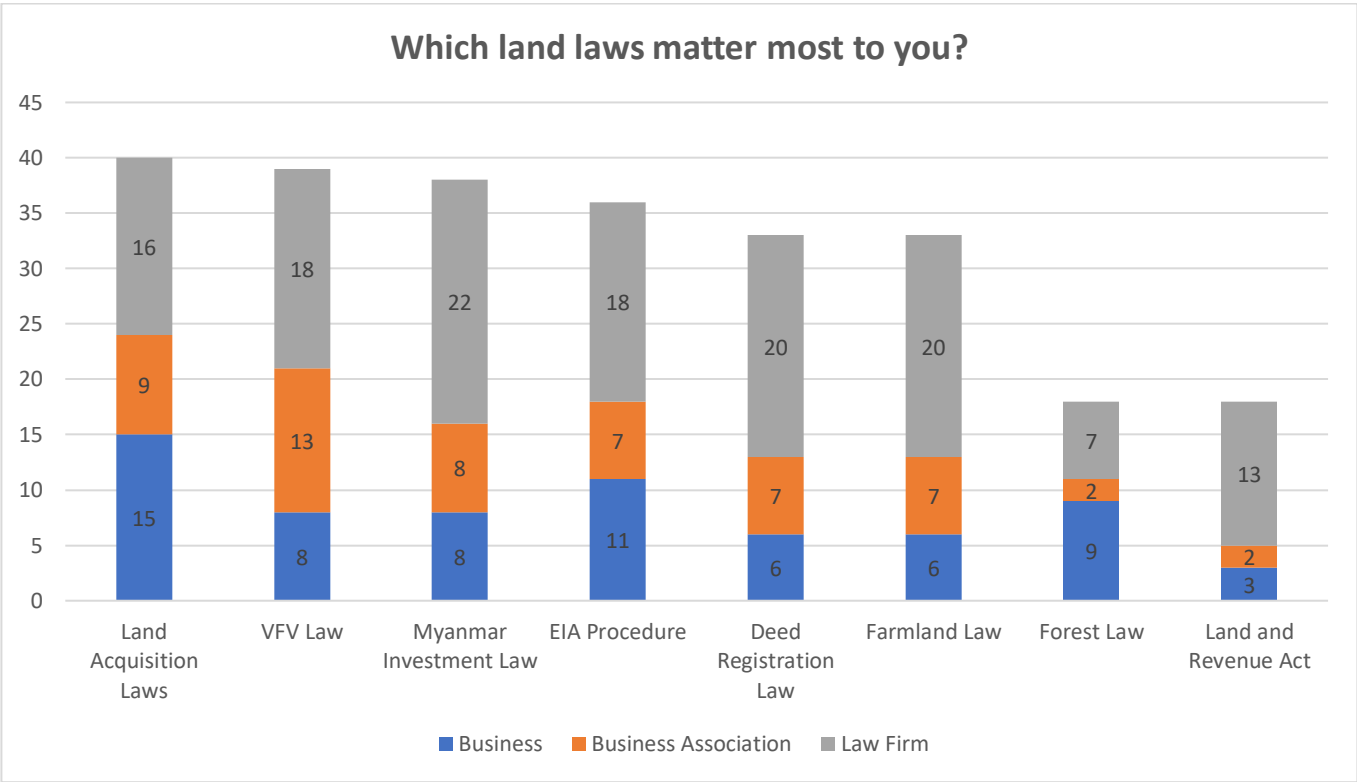
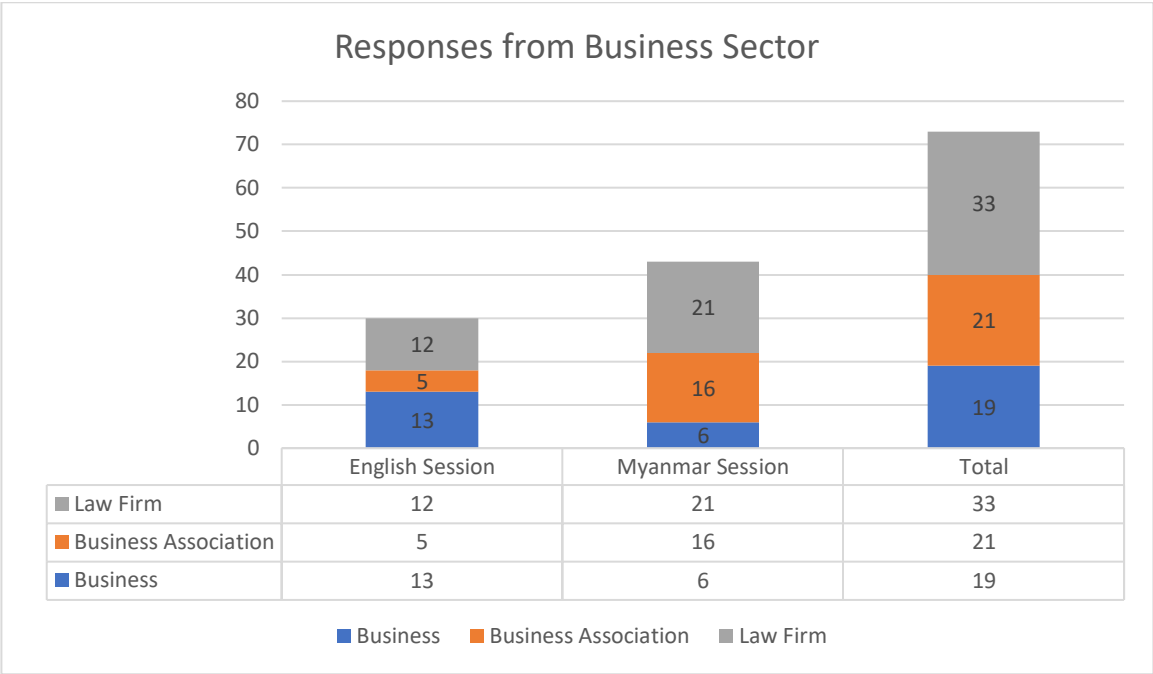
The main problems raised concerned changes of land ownership, land use and land registration. Specifically, businesses reported the procedures in these areas to be too long, overly complex, and with too many government institutions involved. Hence, businesses suggested simplifying land transfer and change of land use processes, ensuring better disclosure of land related information, and transparent and consistent application of land laws, government policies and practices. Currently, businesses find it difficult to verify land ownership, noting procedures differ in every region. They recommended creating a digital Land Registry, where information on type of land, condition of land, and ownership could be publicly accessed. Businesses also suggested that reducing taxes for land transfers would encourage compliance with the laws and accurate registration of interest. Corruption is frequently faced by businesses in relation to land and was reportedly experienced with almost all ministries involved in land related processes.

On legislative reform, businesses recommended revising and harmonising land laws and ensuring that the legal framework duly considers environmental and social issues. Businesses also urged greater compliance, consistency and coordination by government when applying and enforcing land laws.

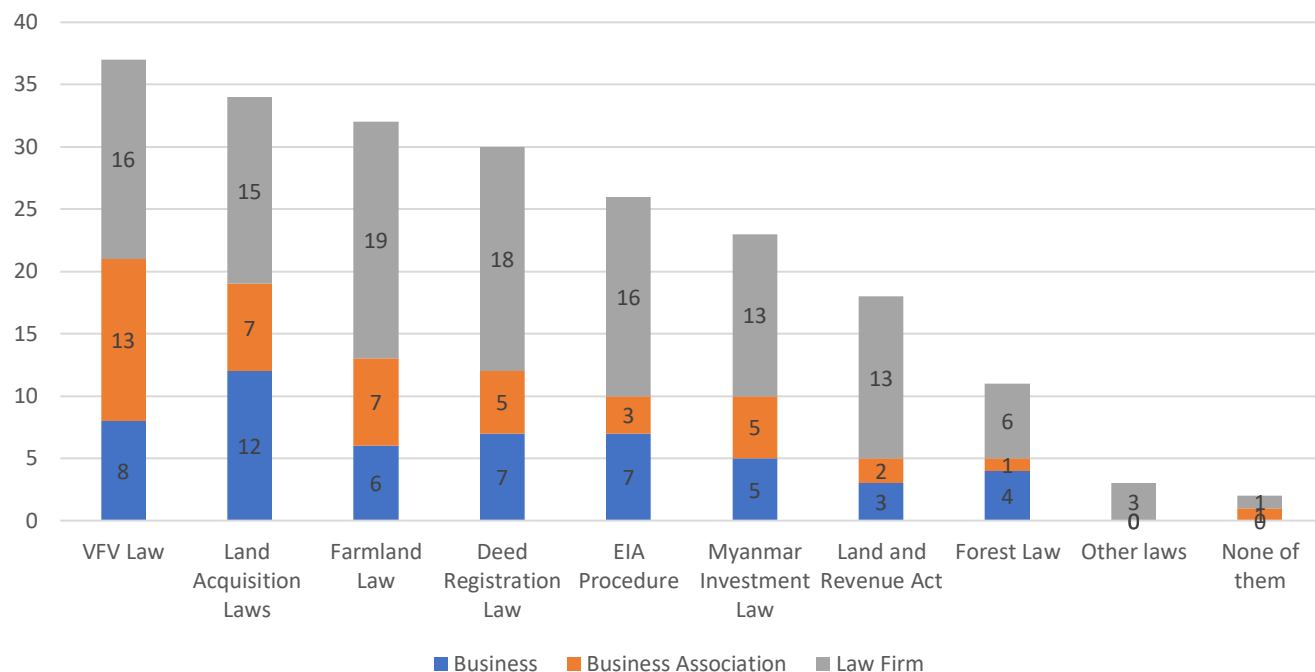
¹ The organisers, UNDP and MCRB have collated the feedback, but do not necessarily endorse all the points raised.

Finally, businesses, business associations and law firms all appreciated the chance to be involved and consulted, as this would help to understand and resolve pressing issues jointly and timely. The business sector stressed to be available for further consultations in the land reform and National Land Law drafting process.

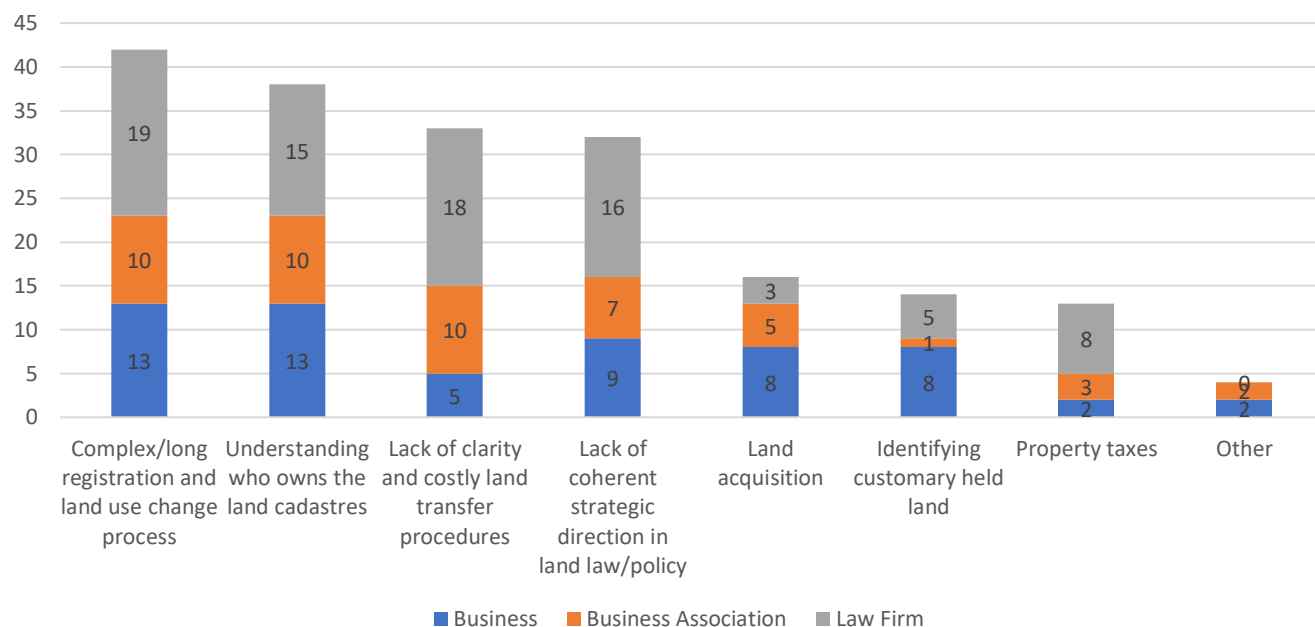
2. Responses in Online Polling



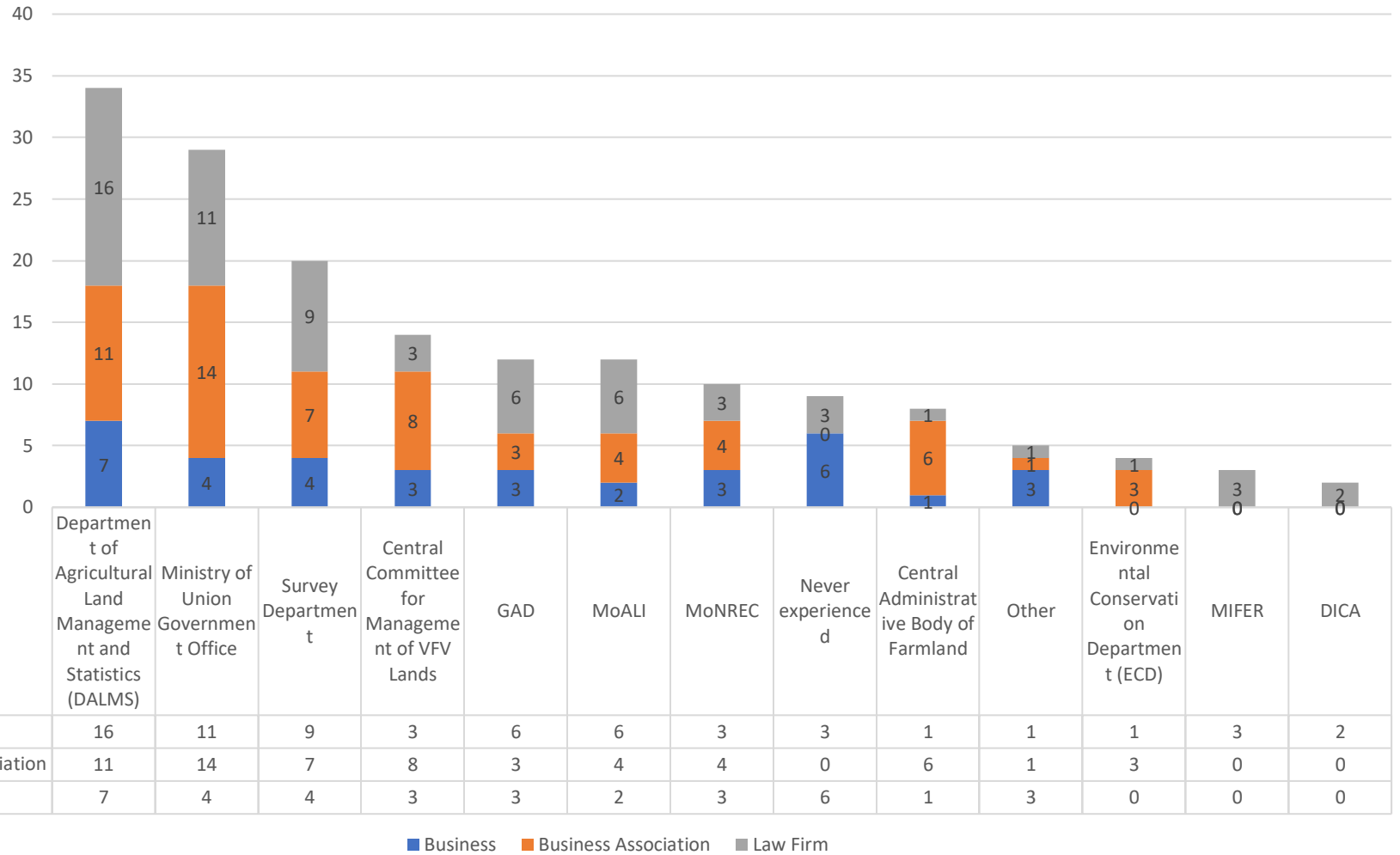
Which land-related laws do you have problems with?



What problems related to land does your business and/or sector experience?



At what stages and which departments have you experienced corruption?



*Due to oversight, City and Township Development Committees were not included as response options in the polling, but several participants mentioned experiencing corruption at this level as well.

3. Responses in Discussion and Comments

a) What works well?

- Myanmar Investment Law and Rules (several mentions)
 - Provides some certainty to investors, but needs to be harmonized with other land laws and environmental processes
 - MIC processes
- DICA
 - The MyCo Online System (several mentions)
 - One stop shop
- Myanmar Companies Law
- Foreign company registration through MIC according to the contracting law
- Farmland Law
- VFV Law
- Transfer of Property Act
- Myanmar Special Economic Zone Law
- Land use tax
- Land registration process is better than before
- Technical expertise on land use, agriculture etc. in Township level government bodies is generally good
- Agriculture and livelihood activities (form 7 is very supportive for agriculture activities)
- Military returned some land to landowners
- CSO and development partner coordination around land laws
- Consulting with local communities over land ownership/use/access

b) Challenges and suggestions for change

Access to information and transparency

- Disclose land related information to public and investors (several mentions)
 - Law should be interpreted and applied consistently, not just on a case by case basis. Government should inform public of those practices. (several mentions)
 - Provide clearer guidelines and timelines for each stage of land use or land conversion applications
 - Transparency about fees and reasons for approval/rejection is needed
 - Clearer guidance from government on what kinds of land can and cannot be taken as security, and the process for taking security.
- Language barriers
 - Establish a glossary of land terms, available in all Myanmar languages
 - Translate land related communication materials into all relevant Myanmar languages.

- Provide a research platform or a website where everyone can access all land laws, policies, and research papers both in Myanmar and English.

Consultation

- Government should include business, business associations and chambers in regular consultations on land (several mentions)
 - Will help to understand and resolve issues in a timely manner and minimize opportunity cost for investors
 - Lawyers and land law experts should also be invited to consultations
 - In the consultations for the National Land Use Policy, businesses and sector representatives were not/not sufficiently invited to the consultations. They would have a lot to share as they have on the ground experience.
- Government should seek active engagement with ethnic minorities ensuring their concerns are identified and recognised
- Make use of bottom-up land use planning on village level which focuses on local sustainability

Land registry and land ownership

- Land ownership is difficult to verify for businesses (several mentions)
 - Procedures differ in every region
 - Getting clarity on type of land, condition of land, and ownership is not easy
- Creation of digital Land Registry would be needed (several mentions)
 - Nation-wide, unified online system for all types of land
 - Public access to database
 - Transparent centralization of data
 - One website that is updated regularly
- Proof of ownership should not be a tax slip, there should be specific provision of proof of ownership
- Use new digital technologies for land mapping

Change of land use, land transfer and taxes

- Reduce amount of taxes for transfer of land (several mentions)
 - Will encourage compliance with the law
 - Will encourage prompt and accurate registration of interest
 - Stamp duty is too high
- Simplify land transfer and change of land use processes (several mentions)
 - Simplification of land transfer process while protecting land holders and customary users
 - Title transfer process is not easy to understand for laypeople
 - Government needs to understand that different types of land use may be compatible with each other
 - National infrastructure building (such as telecom towers) needs simplified land use change procedure

- More flexibility on land use needed (e.g. when only a small part of land is needed and not the use of the entire plot must be changed)
- Forestry depleted lands should be available to be used as agriculture and livestock development land
- Approval process for conversion of land use for infrastructure should be shortened. It takes a year to get approval.
- Farmers should be able to get the right to cultivate and raise what the farmer wants
- Farmers should be able to receive equal land tenure for agriculture and livestock

Revision and harmonisation of laws

- Revise, harmonise land laws in line with international best practices (several mentions)
 - There should be a unified law with one focal department to provide One-Stop-Shop service
 - Harmonize land laws with urban planning policy to ensure land is properly planned from a zoning perspective
 - Need to review and reform the Forestry Law and Protection of Ethnic Rights Law
 - Review overlaps with recently issued Myanmar National Building Code
 - Harmonise in real estate, banking, construction areas
 - Different government departments need to consult to harmonize laws to the MIC processes
 - YCDC & MCDC laws need to be amended
 - Improve quality of laws to reduce corruption opportunities
 - Clarify roles and responsibilities of involved agencies
- Environmental and social issues must be considered in the laws. (several mentions)
 - Environmental and social issues should be part of the ECD approval process rather than having multiple parallel processes with similar aims.
 - Recognize ethnic/customary ownership
 - Laws should comply with ESG, be clear and easily understandable
 - Strengthen formal protection of customary land titles
 - To implement resettlement action plans, all related laws should be in line with international laws and standards

Simplification of procedures

- Procedures should be simplified and reduced (several mentions)
 - There is a lot of paperwork for land permits or grant applications
 - Decision processes takes too long
 - Decentralization and delegation to the regional/state level is also important
 - Procedures should be consistent in all regions, simplify paperwork and create SOPs, have complaint mechanism and whistle blowing channel.
 - It should be easier to register other interests in land [than ownership], for example easements which can allow registered rights to use or access landlocked plots, etc.
 - Office of Registration of Deeds should simplify registration process and requirements for immovable property

- There should be fewer government bodies involved in land administration processes (several mentions)
 - Reduce number of involved ministries, departments, committees
 - There should be one interface focal point from Government for all land aspects relating to a project

Implementation and performance by government

- Increase government capacity
 - Capacity building to improve competence of government employees working on land issues
 - Provide a fair salary to officials and decent facilities
- Government officials from relevant government departments should comply with and enforce the law (several mentions)
 - Shorten process time in government departments
 - Both governmental departments and people have to cooperate to run the whole process well, and need to comply to the laws, rules and regulations
 - Government procedures must comply with laws and regulations. There should be specific guidance for every procedure.
 - Government officials should handle applications effectively and quickly and in accordance with existing laws and regulations. They should not reply or act as per internal practices.
- Increase government consistency and coordination (several mentions)
 - Government coordination system should be improved to get clear answers
 - No collective authoritative measures on BOT investment structures. Annual land leases vary substantially.
 - Set up SoPs, monitoring and compliance framework
 - Proactively check compliance with mandatory registration of long-term leasehold on some Build, Operate, Transfer (BOT) residential projects
 - SoPs for consistent land and asset valuation
- Corruption is a frequent problem in land administration and processes (several mentions)
 - Corruption happens because the state and region do not have SoPs related to land administration, processes and procedures are complicated, and no online registration system exists.
 - Corruption delays the process for land registration
 - Take effective action against corruption

Sector specific comments

- For the fishery sector there is no specific policy for development, especially regarding the aquaculture sector. A policy is needed that can allot suitable places for aquaculture in States and Regions according to their potential and strength.
- In Special Economic Zones, in the previous government term, land has been acquired without implementing business activities. This makes land price for new businesses too high and challenging.
- Ethical standards for real estate agents are needed, including required qualifications for agents

- The previous government allowed rubber plantation on forest land for thirty-year terms. The current issue is that Forest Department does not agree to do rubber plantation for another cycle. Due to fixed investment costs, investors want permits for two more cycles. If not, it will be less beneficial to investors and the country.
- There is no legal provision for livestock zones so it happens on agriculture land. A law for the livestock sector should be enacted to allow using pastureland for livestock activities
- In order to expand financial services to agricultural sector, banks need clarity over which type of land can be mortgaged and whether respective land committee approval is required in the event of repossession. The processes are different depending on the practices of the regional offices. Issuing Form 105/106 with the purpose of "for sale purposes", data is available online at YCDC however it is difficult to get it at other regions and states because the system is not digitized and as a result, applicants for loan programme lose opportunities. Without this clarity, banks cannot have assurance that this land has been pledged to another bank or not.
- Mining sector, particularly exploration is facing difficulties due to misinterpretation of the VFV law by Department of Agriculture/MOALI and Forestry Department.