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Debating Federal Land Governance in Myanmar: Issues and Challenges

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Abstract

Issues related to land governance are extremely complex in most agrarian societies, in a conflict-prone country like Myanmar, conflicts over use and distribution of land are influenced by societal changes, rule of law issues and wide-spread conflict induced displacement. This paper gives an overview of the current land governance landscape in Myanmar and uses comparative examples to examine what kind of land governance practices would be feasible and desirable in a future federal Myanmar.

Keywords

Myanmar, Federalism, Land Governance

A) Introduction

Debates around federalism in Myanmar have deep roots, dating back to the pre-independence period and continuing to the present day. Disputes over land and its governance play a central role in these discussions, with many groups viewing federalism as a pathway to a fairer distribution of land and natural resources. Based on desk reviews and interviews, this paper explores the relationship between federalism and land governance, and how this interaction could inform current and future debates on establishing a federal system in Myanmar. The discussion begins with a conceptual overview of land governance and its interconnections to federalism. It then outlines Myanmar's current land governance structure under the 2008 Constitution and contrasts it with aspirations laid out in the Federal Democracy Charter. Drawing on two case studies, India and Switzerland, the paper examines how land-related competences are allocated in federal states, how tenure and property rights are managed, and how resource-related disputes are handled. The paper does not advocate federalism as a panacea. Rather, it shows that even exercise of strong autonomy by subnational units does not necessarily coincide with protection of land use by disadvantaged communities. We find that more research is needed to identify factors of strong local government that may be more effective in protecting the rights of disadvantaged groups. Federalism also does not mean that federal regulation and oversight become irrelevant. Rather, the study shows that there is great need for cooperation and coordination between the federal and subnational level governments. The paper concludes with reflections on the lessons Myanmar can draw from these models, emphasizing the importance of legal clarity, inclusion of customary systems, and strong subnational institutions.

This paper is an abridged version of an unpublished manuscript and seeks to present the most relevant information on Myanmar for the reader.¹

¹ This paper is based on a larger research study conducted in 2023-2024, financed by the Swiss Development Cooperation (SDC) and in cooperation with the University of Bern. As part of the project, the research team conducted in depth interviews with experts working on land governance and actors working on federalism in Myanmar. Names are not used to protect confidentiality of the interviewees. For any questions related to this paper, please contact the corresponding author Dr. Rekha Oleschak Pillai, Institute of Federalism.

B) Myanmar: A short introduction



Myanmar (formerly known as Burma) is the second largest country in South-East Asia, sharing international borders with China, India, Thailand, Bangladesh and Laos and has an estimated population of 54 million (WHO). Modern Myanmar was a British colony that gained its independence in 1948. Though at the time of independence, Myanmar appeared to be moving towards a federal system, the Constitution adopted in 1947 only partly reflected federal aspirations that were expressed in the Panglong Agreement (12 February 1947), signed earlier in the same year and used since by all actors calling for federalism. Since independence from British colonial rule, the country has gone through short phases of democratic parliamentary rule and longer phases of autocratic military rule. In 2021, after the elections in 2020, on the day the new parliament was to assemble, the Tatmadaw (military) took

power through a *coup d'état*, thus ushering in the latest episode of military rule. Large-scale protests broke out in the country, and many of the parliamentary and opposition leaders eventually had to leave the country as a result of violent crackdowns.

Although Myanmar has promulgated three constitutions since independence - in 1947, 1974, and 2008 - none have succeeded in establishing or consolidating the rule of law. While the 1947 Constitution is often regarded as the most inclusive and democratic of the three, its provisions were short-lived, as it remained in force only until 1974 and ultimately failed to function in the manner envisioned by its drafters (Saffin 2017). The 1974 Constitution was enacted as a reflection of the “Burmese Way to Socialism”, and the 2008 Constitution reflected the military’s vision based on the State Law and Order Restoration Council/State Peace and Development Committee’s Tatmadaw’s Seven Step Roadmap to Disciplined Democracy. Both constitutions were drafted by military non-democratic governments and, although formally put to nationwide referenda, cannot be considered as based on constitutional consensus (Saffin 2017).

The rule of law has been conspicuously absent in Myanmar, which ranks 135th out of 142 countries worldwide according to the World Justice Project (The World Justice Project Rule of Law Index 2024). In key areas such as governmental accountability and the protection of fundamental rights, the country’s record remains profoundly weak (Zan, 2017).

The 2008 Constitution of Myanmar was promulgated under the last period of military rule. As it enshrined a significant role for the military, among others, it was largely rejected by opposition forces, especially after the February 2021 coup that ushered in the current period of military rule.

Since the coup, the country has been under a state of emergency that is regularly renewed and further empowers military decision-making.

Given that it remains the operative legal framework, this paper adopts the 2008 Constitution as the principal reference point for examining Myanmar's existing legal system (without making any judgement on the legitimacy of the 2008 Constitution or its repudiation by many political actors). The Constitution establishes a 'Union' structured around a parliamentary system of government, albeit one in which executive authority is heavily concentrated in a dominant presidency. The use of the term Union is derived from the British tradition and is found in several postcolonial constitutions, for example in the Indian Constitution. However, unlike the Indian Constitution, the term Union does not represent "a Union of states" but is to be seen in the overall framework of the constitution as denoting a unitary form of government. The paper also employs the Federal Democracy Charters, adopted by the National Unity Government (NUG), as a reference for discussion. While these documents are largely aspirational, it should be noted that numerous versions of (informal) 'state constitutions' exist, and over the past two years, multiple 'federal constitutions' have been drafted and circulated by various actors, particularly from ethnic minority groups (Williams, 2017). The 2008 Constitution uses the term "Republic of the Union of Myanmar", and outlines as basic principles the Union's consistent objectives as follows (Art. 6), "(a) non-disintegration of the Union; (b) non-disintegration of National solidarity; (c) perpetuation of sovereignty; (d) flourishing of a genuine, disciplined multi-party democratic system; (e) enhancing the eternal principles of Justice, Liberty and Equality in the Union and; (f) enabling the Defence Services to be able to participate in the National political leadership role of the State. It does not identify federalism as a principle of the Union. One provision, namely Art. 10 expressly prohibits the right to secede from the Union.

The Republic of the Union of Myanmar comprises of seven states and seven regions named in the 2008 Constitution, six self-administered zones and divisions, and one Union territory containing the capital Nay Pyi Taw and surrounding townships. The states and regions of Myanmar are: Ayeyarwaddy Region, Bago Region, Chin State, Kachin State, Kayah State, Magway Region, Mon State, Rakhine State, Sagaing Region, Shan State, Tanintharyi Region and Yangon Region. The distinction between states and regions is loosely based on ethnic identities (which are not necessarily reflective of actual demographic makeup of the population); the Bamar majority areas are called regions, while the others, which have ethnic minority populations, are termed states.

These administrative divisions date from British colonial rule and reflect the colonial administrative system, most specifically what is now called Regions were mostly governed directly by the British, while those called States often enjoyed an indirect rule with local ethnic authorities interacting with/normalized by the colonial administrators.²

There is no politically empowered local level of government, only administrative units known as urban wards, towns, and village tracts, which are then grouped into townships. Collections of townships are organized as districts, which in turn form the region or state (Nixon et al, 2013). These fall under the oversight of the General Administration Department (GAD) of the Ministry

² Similar systems were used by the British colonial government in India, and these to an extent are reflected in today's constitutional framework, with terms like "Scheduled Areas" and "Scheduled Tribes" and also applied to some of the so-called "princely states".

of Home Affairs (Union level), while an appointed administrative council under the authority of the president manages the Union Territory of Nay Pyi Taw (Nixon et al, 2013).

C) Federal discussions in Myanmar

Before independence from the British, the representatives of the ethnic minority groups demanded that they be given safeguards of autonomy, which required the Bamar majority's representatives to seek consensus with the minorities, reflected in the Panglong Agreement of 1947. Although the Agreement itself did not include all different minority groups present in the territory and was quite limited in its substantive content, it did play a role in the transfer of power from the colonial government to an independent government of Burma. The Agreement has major symbolical value and forms part of all discussions on federalism in the country. Given its size (second largest country in South Asia) as well as its ethnic, linguistic, and geographical diversity, federalism seems to be the most feasible and most discussed form of governance (Siegener, 2019).

In 2021, after the elections in 2020, and exactly on the day the new parliament was to assemble, the Tatmadaw (military) took power in a coup d'état, thus ushering in the latest episode of military rule. Shortly afterwards, the Federal Democracy Charter³ was drafted by a wider democratic opposition group⁴ and ratified by the in-absentia elected but not seated People's Assembly in January 2022.

In the relatively short time of civilian government in the period 2016-2021, the National League for Democracy (NLD), the party in power did discuss federalism, yet a real momentum was lacking. While peace conferences (21st Century Panglong Conference 2016, 2017, 2018) tried to rekindle the debate, there was no impactful agreements made at these meetings.

The debates on federalism in the last decade could be grouped as those advocating "democratic federalism" and those calling for "federal democracy" (Bellamy, 2016, Choudhury, 2018, Wansai, 2018). The difference between the two terms is whether the way forward is to establish democracy first, after which a federal agreement should be negotiated ("democratic federalism") or whether there should be agreement on a federal framework first, followed by democratic elections in the agreed federal framework ("federal democracy"). Some scholars identify a trend since the coup towards discussions on "federal democracy", thus placing federalism first (Aung et al 2023). While this might seem to be a purely academic discussion, in essence the debate is about whether there should first be "power-sharing" between the groups (ethnic minority groups and the Bamar majority) and then a move towards democracy (universal franchise and free elections) or whether the main aim of all pro-democracy movements should be first to regain democracy and find federal solutions as a second step. In other words, whether federalisation and democratisation should take place simultaneously or consecutively.

The discussions on federalism in Myanmar can be grouped in two logics: first, favoured by many of the ethnic groups, which is a bottom-up approach applying the principle of subsidiarity that is based on the idea that the states/regions come together to form a federal Myanmar ("coming-together federalism") once already having established for themselves which powers they will

³ Federal Democracy Charter, <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf>

⁴ The elected members of the Pyidaungsu Hluttaw Representation Committee (CRPH), various ethnic resistance organisations (EROs), civil society organisations (CSOs), and ethnic and federal representative committees from the states supported by a mass mobilisation of civilians quickly came together to form the National Unity Consultative Committee (NUCC) and the National Unity Government (NUG).

exercise. This approach sees federalism as autonomy from the central government including in appointments (e.g. of public officials- the Public Service Commissions), functions and accountability. According to Melissa Crouch, this also includes the right to have state constitutions, state control over natural resources, the right to be part of a federal army, and significant representation of the States in the Union Legislature (Crouch, 2019).

The second approach sees federalism as a top-down process, where the centre (federal or Union level) decides on the competences to be delegated to the states/regions and thus sees a stronger role for the central government. The Tatmadaw prefers a unitary rather than a federal system, at the 21st Century Panglong Conference, at least one representative argued that the 2008 constitution is federal (Crouch, 2019).

Inevitably, any discussion on what kind of federalism Myanmar should have would have to find a middle-path between these two positions. The countries discussed in this paper, represent each of these perspectives and are based on the history and politics of the respective countries. Switzerland offers the first approach, where smaller units (cantons) historically joined together loosely (“coming together) and later formed a confederation (albeit under external influence), which formed the modern Swiss state. The Indian example shows a post-colonial country that in its initial period had the objective of “holding together” a massively diverse country, and was consequently highly centralised, although having allotted the issue of land administration from the start to the state level. Given their shared colonial past and ethnic diversity, India seems to offer the more relevant model.

The following chapter will introduce the concept of land governance, discussing its application to Myanmar’s system.

1.1 Defining Land Governance

Land governance refers to the frameworks—rules, processes, and institutions—through which decisions are made regarding access to land, its use, and the management of competing claims. As defined by UN-Habitat in 2009, it encompasses not only how these decisions are made but also how they are implemented, enforced, and how conflicting interests in land are handled (Palmer, Wehrmann 2019).

Land governance is not solely about formal property ownership; it also includes decision-making processes about land use, environmental management, access to resources, spatial planning, and the resolution of conflicts over land. In the context of federal systems, land governance becomes particularly complex because competences (i.e. power of decision-making) are distributed across multiple levels of government. This division of powers shapes who can make decisions about land use, how land is registered and titled, who has the right to access resources, and which level of government has authority over a certain issue, for example environmental protection.

The literature on land governance often focuses heavily on the formal legal frameworks⁵, while devoting less attention to the actual processes, power relations and institutional arrangements that govern land in practice. In many countries, particularly post-colonial states, there are gaps between written law and lived realities, especially where customary tenure systems exist alongside formal statutory frameworks.

⁵ A vast increase in published articles on the topic is shown in Masura, Y. J., Robinson, B. E. & Holland, M. B., “Property Rights, Tenure Form, and Tenure Security” in M. B. Holland, Y. J. Masuda & B. E. Robinson (eds.), *Land Tenure Security and Sustainable Development*, Palgrave Macmillan, 2022, 1, 5.

In Myanmar, land governance is a highly contested and politically charged issue. Land disputes are deeply intertwined with conflict, displacement, and struggles over identity, self-determination and natural resources. The existing legal system is dominated by centralized state ownership and management, with little recognition of customary or communal tenure systems that are critical to rural and ethnic minority communities. More research would be required to identify the lived realities of rural and urban populations on this topic.

1.2 *Security of tenure*

The debate on land governance is driven by fierce competition for natural resources, both between and within countries. Property rights and tenure security are crucial aspects of this debate and of the global development agenda. Security is defined as the “assurance that the rights of the land holder will be respected and upheld in the event of a challenge, dispute or risk as the competition for land and its resources ensures” (Kenney-Lazar et. al 2024). Tenure insecurity for peasants and those dependent on the land is widely prevalent in Myanmar. The state’s use of the colonial power of “eminent domain” and its subsequent incorporation in the Constitution (Art. 37, 2008 Constitution), combined with little access to legal recourse, have resulted in general insecurity for people dependent on land. Further insecurity is due to large-scale land acquisition for so-called “developmental” activities, like large-scale agroforestry, agricultural plantations (for cash crops like rubber), extractive industries and even conservation. In urban areas, the increasing migration of people (affected by agricultural changes as well as loss of land) has led to the creation of slums, in which tenure insecurity prevails and perpetuates itself. A legislation enacted in 2012, the Farmland Act and the Vacant, Fallow and Virgin Lands Management Law, have further contributed to tenure insecurity, as those unable to prove that they have been using the land “productively” and “continuously” may be confiscated and reallocated by the State. The categorisation of the commons as “wastelands” further removes access to the commons for dependent peasants. Previous and ongoing conflicts also exacerbate tenure insecurity. The executive bodies responsible for land administration are perceived as creating further problems for tenure security Kenney-Lazar et. al, 2024).

1.3 *Property Rights*

Rights are defined as “particular actions that are authorized” (Schlager & Ostrom, 1992) and a property right is “the authority to undertake particular actions related to a specific domain” (ibid). Property rights over a domain include access, withdrawal, management, exclusion, alienation and due process and compensation. Property rights are often enshrined in constitutions as constitutional rights (fundamental rights) but may also be enacted as only statutory law or even only be regulated in the form of executive ordinances. Property rights do not just include the concept of “ownership” but also various forms of access to and use of rights. The constitutional right to property is enshrined in many constitutions and holds that persons have a right to property and that the state may only infringe this in the public interest and on payment of adequate or full compensation. Many post-colonial states grappled with the question of how to formulate a right to property at independence, as this implied, in many cases, an absolute protection for the actions carried out under colonial rule, which they were not willing to condone. At the same time, many newly elected governments also wanted to be able to carry out large scale land reforms for removing feudal landholdings and allowing peasants and workers to have access to land. Additionally, the mandate for economic development made land acquisition for infrastructure projects necessary. These competing interests have come to the fore in post-colonial countries as an area

of conflict between the judiciary (where the constitution included a right to property) and the legislature and executive, intent on carrying out land reforms or acquiring land for development projects (Wahi, 2020).

The 2008 Myanmar Constitution contains a constitutional right to the protection of property and to security and privacy (Arts. 356-357 of 2008 Constitution). At the same time, this is limited by Art. 37 of the Constitution, which outlines that the Union is the ultimate owner of all lands and natural resources. A Commission on Land was established to deal with land disputes, however, there is no constitutional right to just compensation for the acquisition of private property. In her analysis of Myanmar legal disputes, Melissa Crouch finds that many constitutional writs involve disputes over land, such as those over property ownership or the use of land or building or those relating to farmland use. She finds that land disputes are among the biggest legal issues in Myanmar (Crouch, 2019). Although Myanmar has a Human Rights Commission, this body has a very restrictive mandate and generally been ineffective. Overall, the level of rights protection afforded by the constitution is negligible. Additionally, there have been substantial challenges in proving ownership rights, for example for peasants in the absence of effective land registration and public services allowing for an easy, standardized and transparent process of registering land and property.

D) Relevance of Federalism for Land Governance and the Principles of Federal Land Management

1. Federal Democracy Charter

The 2008 Constitution mentions that the Union is the owner of all land and resources (principle of eminent domain). All prevailing legislation is premised on this and thus gives the Union government all powers over land. In contrast, the aspirational Federal Democracy Charter includes a specific section on “Land and natural resources”. According to the Charter, “land and natural resources management and sharing law management and sharing law between Federal Union and member states shall be developed and enacted”. It also outlines that “the original owner of all of land and natural resources within a State is the people who live in the State. The State shall have the right to independently manage the exploration, extraction, selling, trading, preservation, and protection etc. of the natural resources within the State.” The Charter thus clearly sees the states as being responsible for land management and the population of the state to be the original owner of all land and natural resources. As far as natural resource extraction is concerned, the Charter foresees that “the State shall have the full rights to the revenue stream coming from the natural resources that are produced in large quantities among the resource revenues. In the extraction and production of natural resources, the consent of the local communities shall be obtained, and it shall have direct benefits to the development of that area. Separate taxes shall be collected, and a funds program shall be developed and enacted to remedy the negative impacts affecting the communities and the natural environment and the damages to the ecosystem due to the extraction” (Part II, S. 19, 20, 21 Federal Democracy Charter).

To translate these federal principles into practical arrangements, it is essential to examine how land-related responsibilities are currently distributed among different levels of government in Myanmar.

2. Distribution of Competences in Land Governance

Since land governance covers a wide range of issues, such as spatial planning, land use planning, agriculture, environment, energy needs, natural resources, etc., several different topics need to be considered when discussing the allocation of responsibilities. No federation has a single level of government solely responsible for land governance. The 2008 Constitution includes a division of competences, with assigned powers and responsibilities listed in schedules. Unsurprisingly, the Union government holds the largest number of powers, with a few powers being allocated to the states/regions and some to the local government levels. Schedule 1 (Union legislative list) has 112 items; Schedule 2 (State/Regions list) has 45 items, and Schedule 3 lists the local government powers.

Of interest to land governance are inter alia, the agricultural and breeding sector, including land administration, reclamation of vacant, fallow and virgin lands, settlements and land records, surveys, all of which are assigned to the Union. Further, under the Mining and Forest sector, the following are of relevance, minerals, mines and environmental conservation, forests and environmental protection, including wildlife (Art. 6, 45). Among the items under the local government competences, the following are of relevance: conservation and preservation of forests, preservation of the natural environment in accordance with the law promulgated by the Union (Art. 37, 390(b)).

The current distribution of competences is highly tilted towards the centre. In any future federal system, the issue of land as a state matter/or local government matter would need to be considered in line with the demands raised by the ethnic/territorial groups, but also due to efficiency arguments and keeping in mind the principle of subsidiarity. These theoretical principles are crucial for understanding the challenges Myanmar faces in structuring land governance within a future federal system. Understanding how land governance functions in federal systems requires a closer look at federalism itself and how it distributes authority across multiple levels of government.

Federalism affects land governance in several ways. Firstly, the existence of at least two levels (in many federal countries, there is also a third, local level) means that the competences in various areas of land governance are distributed across the levels. Whether it is the building of an infrastructure project like roads or dams, or access to land registration documents, the principle of subsidiarity is considered as allowing for a more sustainable and inclusive decision-making process. Federalism allows for greater political participation at several levels of government, thus enabling decision-making for issues that are of relevance to the states/regions or local levels of government. Thus, if in a federal system, competences over land administration are provided to state/regional levels, it is to be expected that issues that may otherwise be ignored at national levels get better reception and reflect the needs of the local /regional populations. In federal systems, not all aspects of land governance are regulated by one level of government. In fact, the principle of subsidiarity requires that the lowest level of government, closest to the issue, be responsible. So, for example, concrete land use planning, building a road or a zone for an industrial factory can be made at the local level, while environmental regulations would be allotted to a higher level, for example, the state/regional level or even the federal level.

Federal systems operate based on several guiding principles for distributing powers. A key principle among these is subsidiarity, which is frequently applied to decide which level of government should handle specific governance responsibilities. While subsidiarity helps determine the level of implementation, the broader structural design of a federal system—whether symmetric or asymmetric—shapes how authority and autonomy are distributed.

3. Symmetric or asymmetric federalism?

The 2008 Constitution does not explicitly mention the term “federal”, and there is considerable debate whether the Constitution is federal (Crouch, 2019). The country is currently divided into seven states, seven regions and one union capital (Naypyitaw). At the sub-national level (below the states/regions) there are district, township, ward, village tracts and six self-administrative zones/divisions (ibid). The designation of seven ethnic-based States and seven Bamar-based Regions is symmetrical. The states/regions are the second tier of government; however, they remain connected to and dependent on the Union (Crouch, 2019).

A fundamental question to be answered in the creation of a future federal system is whether the existing divisions of provinces, regions and self-administrative zones will be the basis of any new federal system (despite many challenges to the legitimacy of the colonial boundaries and divisions) or whether there will need to be a renegotiation of existing sub-national units.⁶ For example, section 52 of the Federal Democracy Charter provides for the establishment ‘of the ‘administrative, legislative and judicial mechanisms of the respective States/Federal Units’ ‘as necessary’ in accordance with the ‘principle of self-determination in the context of building the federal union enshrined in the Charter’. Section 53 assigns the coordination of ‘legislative, administrative and judicial matters between the Union and the States/Federal Units’ to the NUCC. An explicit commitment to the creation of new territories is therefore lacking and this question will need to be agreed upon between all constituents under a new constitution.

The 2008 Constitution delineated seven states named for an ethnic group, though the actual reality of ethnic distribution is much more diverse and complex than a state name might imply. The Constitution also establishes six additional “self-administered” units labelled with the names of single ethnic groups (2008 Constitution, secs. 49-56 and 274-83). The creation of these units was likely a result of ad-hoc historical and political circumstances, and the 2008 Constitution makes no provisions for how to create future states or self-administered regions or zones named for individual (*lummyo*) or whether or how new units would be considered on the basis of ethnic population statistics (Callahan, 2017). The census of 2014 is seen to provide a distorted account of the actual makeup of the current population, which means that any renegotiation of boundaries would be highly contested (Callahan, 2017).

Notwithstanding any future agreement on a federal system, there are major differences among political actors on the scope of powers that are to be divided between federal and regions/provinces as well as on whether these powers should be asymmetrically or symmetrically divided (see Miles et al, 2024).

The Federal Democracy Charter states that “the member states of the Union and the people in these states are the original owners of sovereignty” and that is the federal union will be “established with member states which have equal rights and right to self-determination in full. All the member states of the Union (all the federal units) are equal in terms of politics.” This seems to indicate a “symmetric” federal state, although the use of the term right to self-determination, could also be understood as implying an “asymmetric” form of federalism.

Some authors find the debates to be proceeding more towards asymmetric federalism (Raynaud, 2021), others are sceptical about the federal claims made based on ethno-lingual distribution (Callahan, 2017). If asymmetric arrangements are opted for in any future federal system, these would

⁶ Interview, Myanmar citizen, non-Bamar, employed by an International NGO, who finds that the division of sub-national units will ultimately be based on territories acquired during the current conflict. See also Sai Wansai, The Creation of New Constituent Units in the Myanmar Context, 2024, <https://www.tni.org/en/article/the-creation-of-new-constituent-units-in-the-myanmar-context>

certainly include the issues of land governance, necessitated also by the topography and existence of natural resources (minerals, plant and animal wealth) in the different regions/provinces, as well as there will be differences in the cultural / customary practices in the use and management of land.

E) Myanmar: Legal and Land Governance Challenges

Issues related to land are highly contested in Myanmar, and unsurprisingly, disputes over land ownership, management of natural resources and access to land are widely prevalent. For the purpose of this paper, the authors conducted interviews with experts on land governance in Myanmar. Findings reflect the main areas of concern link to land governance in Myanmar. These include internally displaced persons (IDPs), lack of land registration mechanisms, conflicting allocation of competences, customary tenure systems recognition, gender discrimination and state induced land grabbing.

The first highlighted issue is the one of conflict-induced displacement and internally displaced persons (IDPs). According to estimates by the UNHCR, 3 178 700 people have been displaced internally, and 1 181 100 people are estimated to be living as refugees in neighbouring countries.⁷ Displacement results in the infringement of basic human rights, including the right to adequate housing and the right to property. Subsistence farmers with difficult or no access to land make up for the majority of the rural population of IDPs.⁸

The second issue highlighted by the interviewees was the lack of land registration mechanisms, including overlapping departmental jurisdictions, weak systems and poor administrative capacity, lack of adequate data, including maps, poor mechanisms for conflict resolution and accountability.

The third issue highlighted was that of conflicting allocations of competences, or conflicting claims on competences between the Union and the regions - especially in the areas of natural resource extraction (Sahla et. al 2021). There are also cases of competing jurisdictions of different government departments. This means that, for example, an area that might be designated as “protected area” for biodiversity conservation, may at the same time also be designated for “mineral resource extraction” (ibid).

The fourth highlighted issue is the one of customary tenure systems and their recognition. This includes approval and promotion of the traditional practice of shifting cultivation, where and when it is sustainable. However, these alternative systems are experiencing increasing pressure due to conflict, displacement and exploitation of natural resources. Current and previous legal systems and land governance institutions largely discourage shifting cultivation and do not formally recognize customary tenure.⁹

Others mentioned the issue of gender discrimination with respect to property rights, especially in the titling process, which often assumes the male as head of the household and titles the property

⁷ UNHCR, Regional Bureau for Asia and the Pacific, Myanmar Emergency Update, October 2024 <https://reporting.unhcr.org/myanmar-emergency-regional-update-9969> (last accessed 11 Sept 2025)

⁸ See Introduction, Addressing Myanmar's Unsettled Restitution Gap, 2019 [restitution-gap-final_web.pdf \(nrc.no\)](https://www.unhcr.org/refugees/37-principles-of-the-union-peace-accord-2017-peace-agreement); [The 37 Principles of the Union Peace Accord \(2017, Peace Agreement\)](https://www.unhcr.org/refugees/37-principles-of-the-union-peace-accord-2017-peace-agreement), outlines the issue of internal displacement and the need for solutions based on international human rights norms.

⁹ The Naga Republic. (n.d.). Land and forest governance in the Naga village republic. Retrieved [11.09.2025], from <https://www.thenagarepublic.com/fact-check/nagas-history-culture/land-and-forest-governance-in-the-naga-village-republic/>

in his name. Some customary and traditional tenure systems may be more protective of women's tenure, but not all.

State induced land grabbing (including for foreign corporations) was mentioned by some interviewees, especially with respect to lack of formalized procedures, lack of judicial review as posing challenges related to lack of accountability and a general lack of the rule of law. Among the challenges described, one of the most contentious and politically sensitive is land acquisition—particularly where it intersects with non-recognition of customary tenure.

1. Land Acquisition & Non-Recognition of Customary Tenure

The current legislative framework for land acquisition is the Land Acquisition Act, 1894 (a newer legislation enacted in 2019 to replace the colonial-era legislation has not yet entered into force), the Farmland Law 2012 and the Vacant, Fallow and Virgin Lands Law 2012 as well as the various constitutions (1947, 2008) and a wide plethora of land laws. While in the past, large scale land acquisitions were carried out for military purposes, more recent cases include acquisition for large-scale agriculture, development of industrial parks and energy infrastructure. One study from 2015 estimates that 57% of expropriated lands were customary land owned by smallholder farmers (TNI, 2015). While the newer legislation from 2019 (not yet in force) included some safeguards regarding land acquisition processes, there is criticism that the law fails to consider the wide range of customary tenure arrangements and practices prevalent in Myanmar. It does not provide sufficient clarity on the expropriation process, lacks adequate protections for landowners and land users, and contains several significant gaps overall. Further, there is little to no recognition of customary tenure in Myanmar, which is seen as a source of conflict by various ethnic groups (Springate-Baginski, 2019). Even though Myanmar is a signatory to the 2012 FAO Tenure Guidelines (FAO, 2012)¹⁰, these have not been implemented domestically. The implementation of the 2012 Vacant, Fallow and Virgin Land Management Law has been criticised as causing displacement of villagers from their ancestral lands and weakening customary land tenure rights (Gelbart, 2018). The combination of the designation of the state as ultimate landowner (doctrine of eminent domain) in the 2008 Constitution, the limited protections of the Land Acquisition Act, the designation of commons as “fallow” or “wastelands”, and thus liable to expropriation, as well as the non-recognition of customary tenure thus constitute major challenges associated with land acquisition.

2. Land Use Planning

Land-use planning is “the systematic assessment of land and water potential, alternatives for land use, and economic and social conditions in order to select and adopt the best land use options.” (FAO, 1993). In most federal systems, land use planning is a concurrent competence, with both federal and subnational levels playing a role. In Myanmar, it is centralised. A more progressive new National Land Use Policy was promulgated in 2016¹¹, however, this has not been implemented. According to the policy, a National Land Resource Management Central Committee would be formed, which has its objective the systematic management and utilization of national land resources. The policy outlines that it was developed by the Union Ministries in cooperation with other organizations, like the UN and international organizations, civil society organizations (CSOs), NGOs, and other stakeholders including rural communities. There were heated debates

¹⁰ FAO, 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/tenure/voluntary-guidelines/en/>

¹¹ The National Land Use Policy Myanmar, 2016, available online, <https://faolex.fao.org/docs/pdf/mya152783.pdf>

about land use and especially access to natural resources during the Union Peace Conference (Panglong Conference for the 21st century between 2015 and 2020), in which the government, the Tatmadaw and several ethnic armed organizations (EAOs) were discussing a way towards a Federal Union and an end to the decade-long civil war (Transnational Institute, 2017). Land use and planning, especially of communal lands and lands containing natural resources, were seen as key issues because representatives of EAOs and ethnic parties argued that regional and even local land use planning is vital for the protection of their traditions, culture and identity. This was disputed by the Tatmadaw and by the NLD-led government in the negotiations (Forest Trends, 2019).

While these challenges highlight the fragile state of Myanmar's land governance, understanding how federal systems elsewhere manage similar tensions provides useful insights.

F) Comparative Insights: India and Switzerland

1. Country case study: Land Governance in India

India is the largest country in the world in terms of population (1.4 billion) and is home to over 1.600 language groups and six major religions. In addition, about 10% of the population has been characterized as tribal (indigenous peoples). The ethnic and linguistic diversity is partially accommodated by states (constituent units) defined by language, asymmetric arrangements in the North-East and Central areas of the country for indigenous peoples, and several constitutional protections for minority groups through social and cultural rights. Since its independence in 1947, India has followed a system of parliamentary democracy and, unlike other countries in the region, has not fallen into military dictatorships. The democratic system has been durable, yet weaknesses persist, accounting for the classification as a “flawed democracy” by the 2024 Economist Democracy Index.

1.1 Main Legal Bases

The Constitution of India states that India is a Union of States and comprises all states and territories specified in the First Schedule (Art. 1). Today, there are 28 states and 9 Union Territories. The Indian federal system deviates from a classical understanding of federalism in which the boundaries of the constituent units are sacrosanct. The Indian Constitution allocates wide-ranging powers to the federal level to amend the territorial boundaries of the states (Art. 3), which has, in the past, allowed for accommodation for demands for statehood by various groups. Federal asymmetry has also been negotiated over the past seven decades, allowing for autonomy arrangements and special provisions in several states. In the early 1990s, a third level of government was constitutionally recognised and enshrined. The allocation of competences among the federal and state levels is defined through three detailed and exhaustive lists (Union, state and concurrent lists in the Seventh Schedule). Additionally, the local governments' competences are also enumerated in the Constitution (73rd and 74th Amendments).

1.2 Allocation of Competences

In India, the allocation of legislative competences is governed by Article 246 of the Constitution and the Seventh Schedule, which includes a Union List, State List, and Concurrent List. Land is a state subject, meaning Indian states have jurisdiction over land rights, tenures, rent collection, land revenue, land records, and agricultural land transfers (Arts. 18 & 45, State List). The Union

government has no general competence over land, but under the Concurrent List, it holds the power to legislate on land acquisition and requisition (the colonial era Land Acquisition Act, 1894 was replaced by the Land Acquisition Act of 2013, as well as minerals which it has exercised through laws such as the Coal Bearing Areas Act (1957) or the Mines and Mineral Development Act, 1957. This authority was upheld in *State of West Bengal v. Union of India*,¹² where the Supreme Court affirmed that the federal government may legislate in areas otherwise reserved to the states, thereby reinforcing a centralised interpretation of federal powers. Additionally, federal competences such as defence, highways, and railways influence land use through infrastructure and acquisition needs. Residual powers also lie with the Union.

India also recognises local governments in rural and urban areas, with assigned competences that impact land governance. Rural local governments oversee agriculture, land reforms, irrigation, and community assets, while urban bodies are responsible for land-use regulation, urban planning, and slum redevelopment. Despite judicial recognition of the right to housing as part of the right to life, urban slum evictions persist due to the lack of formal land rights. Notably, the Odisha Land Rights to Slum Dwellers Act (2017) is a progressive example of state-level legislation that grants titles to slum residents. However, India's fragmented legal landscape on land, marked by numerous, overlapping statutes without a comprehensive database, leads to conflicts and legal uncertainty. These structural dynamics, divided competences, centralised overrides, and lack of land rights for the poor, offer critical lessons for Myanmar as it considers federalising its land governance framework.

1.3 *Security of tenure*

In India the security of tenure is shaped by its colonial legacy, which established the state as the ultimate landowner and treated non-private land as a commodity. After independence, efforts to redistribute land faced legal hurdles. Comprehensive land reforms have been limited, with only a few states (e.g., Kerala and West Bengal) achieving meaningful redistribution. A significant portion of India's legal disputes concern land, about a quarter of all Supreme Court cases over 70 years, with land acquisition comprising a third, highlighting the intensity of tenure-related conflicts (Chaturvedi, 2016; Wahi, 2020). A contrasting, people-centred narrative views land not just as an economic asset, but as a social and cultural resource, with overlapping rights held by farmers, tenants, forest dwellers, pastoralists, and fisherfolk (Wahi, 2020). Tenure security varies by group and legal recognition: Scheduled Tribes and forest dwellers benefit from constitutional protections (Arts. 244(1) & (2), Fifth and Sixth Schedules) and legislation like the Forest Rights Act (2006), while tenants are protected under various state tenancy laws. However, other groups, such as fisherfolk, often rely on customary rights or executive discretion. Commons are especially vulnerable, frequently reclassified as "wastelands", removing them from legal protection and undermining tenure claims. In such cases, affected communities often turn to political mobilisation rather than to approach courts. For instance, in Tamil Nadu, lands designated as "poramboke" (common/waste lands) require official verification before use, leaving communities in a weak legal position. These dynamics underscore the fragility of tenure where rights are not formalised, a critical lesson for Myanmar as it grapples with customary tenure, land disputes, and state-driven acquisition under its own legacy of eminent domain (Parthasarathy, 2022).

¹² Supreme Court of India, 21 December 1962, *State of West Bengal vs Union of India*, 1 SCR 371.

1.4 *Property rights*

The right to property in India was originally a justiciable fundamental right under the 1950 Constitution, allowing citizens to challenge state interference in court. However, due to repeated conflicts between the judiciary and parliament, particularly over land reforms and redistribution, the right was removed from the fundamental rights chapter through a constitutional amendment and relegated to a non-enforceable directive principle. This shift weakened legal protections not only for wealthy landowners but also for poor and marginalised communities, whose access to judicial remedies became even more constrained. While some efforts have been made in recent years to revive stronger property protections, the overall trajectory shows how property rights were continuously reshaped by political and legal forces to support economic development and social equity goals. These changes often favoured certain groups while undermining others, especially where land acquisition or redistribution was involved (Wahi, 2016). Despite holding legal titles, many vulnerable groups still face insecurity due to slow and under-resourced courts, limiting effective enforcement. For Myanmar, this highlights the critical importance of balancing justiciable property rights with redistributive goals, and ensuring that legal mechanisms are accessible and functional for all communities, particularly in a transitioning federal system.

1.5 *Case Study: Autonomy Arrangements and Natural Resources in North-Eastern India*

Nagaland, a North-Eastern state of India, is home to diverse Naga tribes with strong customary governance systems and collective land ownership traditions. Following armed conflict and political negotiations, the Indian government granted Nagaland a unique form of constitutional autonomy through Article 371A, which recognises and protects the social practices, customary laws, and land governance traditions of the Naga people. This constitutional provision was part of a peace settlement in 1960 and reflects India's broader use of asymmetric federalism to accommodate ethnic and regional diversity.¹³ Most land in the north-eastern states of India is governed by customary law and land administration is carried out by local councils (Singh, 2010). Dispute resolution also largely takes place through traditional mechanisms, reflecting the deep-rooted role of customary systems in regulating land and resources (George & Yhome, 2008; Zhimo, 2019).

Article 371A of the Indian Constitution stipulates that no central law relating to land, resources, or customary practices shall apply in Nagaland unless approved by the state legislature. This has enabled the state to assert local authority over land and natural resources, including attempts to regulate oil exploration and mineral extraction through state-level legislation (Tillin, 2016). However, this autonomy has been contested by the Indian federal government, particularly when Nagaland sought to bypass central regulations and grant exploration licenses under its own Nagaland Petroleum and Natural Gas Regulations (2012). The legal standoff reveals the ambiguity in the limits of state autonomy under Article 371A, especially when national resource laws and economic interests are at stake. While Nagaland claims that "land and its resources" include subsoil minerals like oil and gas, the federal government insists that these fall under its exclusive legislative powers (Hausing, 2014).

India offers valuable lessons for Myanmar as it moves toward federalism and grapples with complex land governance challenges, particularly in ethnically diverse and resource-rich regions. India's constitutional structure designates land as a state-level subject, yet overlapping competences, such as those related to land acquisition and infrastructure, allow for continued central

¹³ The 16 Point Agreement between the Government of India and the Naga People's Convention, 26 July 1960.

intervention, often leading to tensions between federal and state authorities. A particularly relevant example is Nagaland, where Article 371A grants constitutional protections for customary law, land ownership and natural resource governance, ensuring that no federal law applies to these domains unless ratified by the state legislature. Despite this, Nagaland's attempts to independently regulate oil exploration have been contested by the federal government, revealing the legal ambiguity and unresolved power struggles within India's asymmetric federal system. This underscores the importance of explicit constitutional safeguards, clear competence allocation, and mechanisms for intergovernmental dispute resolution, all critical for Myanmar as it considers devolving land and resource governance to its states and regions. Moreover, India's fragmented legal framework and the persistence of tenure insecurity, especially among marginalised and customary land users, highlight the risks of central overreach, weak implementation, and inadequate recognition of customary systems. Together, these insights from India illustrate both the possibilities and pitfalls of federalising land governance and offer Myanmar practical guidance on how to design a more inclusive, context-sensitive system. While India offers lessons for large, post-colonial, multi-ethnic states like Myanmar, Switzerland presents a contrasting example of a highly decentralized federal system in a much smaller, more homogenous country. Yet one that also faces complex questions of land governance.

2. Country case study: Switzerland

Switzerland is a country situated in the heart of Europe, with an area of 41,285 km² and a population of 8.9 million (Swiss Federal Statistical Office, 2023). It is thus (in comparison to India or Myanmar) very small, less diverse in terms of ethnic and linguistic diversity and owning fewer natural resources.

Modern Switzerland was established through its 1848 Constitution and is a federal state consisting of three levels of government – the federal level, the regional level with 26 cantons and the local level with around 2000 municipalities. Swiss federalism is characterized by a very high degree of decentralization. Historically, all power, resources and direct control over laws and their implementation were the privilege of the regional level (i.e. the cantons), but they were gradually shared between different levels as the federation came together. Until today, the Constitution foresees that all powers which are not specifically allocated to the federal state (residual powers) remain with the cantons.

An important principle in the Swiss context is the principle of subsidiarity, which has a crucial impact on the distribution of competences. Accordingly, only where the lower level is not best suited to deal with certain issues (e.g. because of the scale or complexity of the sector) should the competence be given to a higher level. More importantly, it also has an impact on land governance, for instance, because the cantons are the general sovereignty holders regarding their territory or because local governments oversee local rivers and lakes.

The Swiss cantons are the default sovereignty holders over public assets and natural resources in their territory. The Swiss system recognises different types of 'public objects' as well as different kinds of influence over them which impact on the actual powers of disposal of a given public authority (property, sovereignty and regulatory competence). Forests, waters and other types of territory each mean a different division of regulatory powers between the federal state and the cantons.

Often, the federal state adopts a framework legislation and is thus in charge of regulating the principles and the cantons then specify the federal framework in their own legislation, applying it to their specific territory and context. However, there are also domains which the federal level regulates exclusively. Even in these cases, the cantons are generally in charge of implementing

the federal laws, which gives them a certain leeway to account for specificities of their context. An important cross-cutting area is spatial planning law, which is an example of federal framework legislation, which is implemented by the cantons.

2.1 Main Legal Bases

The key constitutional provisions (all references are to the Federal Constitution) for land governance are the right to property (Art. 26) and the article on spatial planning (Art. 75). This is complemented by specific provisions on certain types of territory, including water (Art. 76), forests (Art. 77) and agriculture (Art. 104). The general provision on residual competence for the cantons (i.e. on areas where the Constitution is silent or non-enumerated powers) also has an impact on land governance (Arts. 3 and 42).

The Swiss Civil Code (based on Art. 122 of the Constitution) specifies the notion of property and clarifies, for instance, the extent of land property into the air and the ground (see Art. 667 Civil Code).

The constitutional provision on spatial planning gives the federal state the power to adopt framework legislation in this domain, which has led to the Spatial Planning Act. The cantons are in charge of the practical implementation of these regulations on their territory, they carry out the concrete spatial planning on the ground, dividing land into building and non-building zones. Land use is impacted by numerous other federal laws, be it depending on the specific territory (e.g. Waters Protection Act, Forest Act, Agriculture Act), the need for infrastructure (e.g. Energy Act, Railway Act) or cross-cutting issues (e.g. Subsidies Act, Environmental Protection Act).

2.2 Powers of Disposal – Property, Sovereignty and Regulatory Competence

In the Swiss system, the actual powers of disposal over a public asset depend in particular on property, sovereignty and regulatory competence of the different levels of government.

The Swiss notion of property is regulated in the Swiss Civil Code and essentially means private property. Even if public authorities (i.e. the federal state, the cantons or the municipalities) own a certain piece of land, they have private property rights over it and thus have the same rights as any private individual would have. There are, however, some limitations. For instance, property owned by public authorities and used in the common interest cannot be seized (e.g. schools). In the Swiss system, public law regulations may complement and modify the notion of private property, but there is no separate idea of ‘public property’. According to the Swiss Civil Code, some types of territory are not accessible to property rights at all. This concerns territories not suitable for cultivation (e.g. glaciers) but also waters or riverbeds. These kinds of territories are called ‘ownerless objects’ as they cannot be ‘owned’ by anyone. However, the public authority in charge exercises its ‘sovereignty’ over them, which, in essence, provides it with similar powers compared to if it had property rights. Ownerless objects cannot be sold.

The ownership of a piece of land by a public authority or its sovereignty over it does not mean that it can freely dispose of it. For instance, even if a canton has sovereignty over the lake on its territory, it has to comply with federal rules on the protection of waters or protection against floods. This means that besides property rights and sovereignty, regulatory competences of the public authorities have to be considered. Usually, it will be the superior level of government (federal level or cantons) adopting legislation which may restrict the use and disposal of territories by the lower level of government (cantons, municipalities). Of course, international agreements (e.g. on biodiversity) may represent an additional level of regulation, restricting the rights of free

disposal. In line with the Swiss federal system, the cantons are the default owners (or sovereignty-holders) of any land on Swiss territory. Accordingly, if there is neither a private owner nor a public act (often a law) allocating a certain parcel, it will belong to the canton (see Swiss Civil Code, Arts. 659 and 664). Some cantons have transferred this default ownership/sovereignty to the municipalities (e.g. the canton of Graubünden).

2.3 *Registration*

The Swiss land registry is organised in a decentralised manner, the federal level has an oversight function, but the cantons keep their records in their own land registers and are so responsible for implementation. In some cantons, there is only one land register, while others define land registers for several municipalities or even one per municipality. In any case, the registers have to comply with the requirements of federal law (Civil Code). The cantons may adopt additional rules, specifying the federal legislation.

2.4 *Case Study: Conflicts over Solar Panels in Environmentally Sensitive Regions*

Switzerland, like many developed and developing countries, is looking to diversify its energy resources to move away from fossil fuels. The setting up of solar panels to produce electricity is gaining traction. The issues connected to land use for such solar power projects are the object of the following case study. The overall framework legislation on land use planning and its accompanying ordinance was enacted at the federal level and came into force in 1980 (*Raumplanungsgesetz*). The legislation has undergone several amendments. In 2022, the Federal Parliament approved an (indirect) amendment of the Federal Act on Energy, which allows for expedited procedures for the approval of large-scale solar energy projects. This was implemented through an Executive Order of the Federal Council (*Verordnung über die Förderung der Produktion von Elektrizität aus erneuerbaren Energien*). Thus, land use planning is affected by the regulation of energy production. The so-called “Solar Express” law lowers the barriers to the construction of solar projects in the Swiss Alps, including simplifying environmental standards and even offering subsidies (Swiss Federal Office of Energy, 2023). The projects must be in “national interest”, cannot be built in nature reserves and are required to be dismantled once the operations have come to an end.

The amendments have brought to the fore conflicts between environmental protection concerns and land use planning generally (Bradley, 2022). The distribution of competences in land use planning is divided between the federal level and the cantonal level with the main criteria for distinction being whether the project falls within the “building zone” or “non-building zone”. All construction or land use activity falling within the “non-building zone” is a federal competence; the cantonal authorities are required to abide by federal law in permitting the activity as an “exception” in conformity with federal law.

According to the expedited set of procedures for large-scale solar projects, the approvals must be granted by the canton. This requires the consent of the political municipality in which the project is situated, as well as that of the affected property owners. Also required is that the construction permit already includes the conditions under which the project is then to be deconstructed. Further requirements include approval for connections for energy transmission through the responsible federal offices (for Electricity and Energy). Finally, the law provides for compulsory coordination between the responsible cantonal authorities and the concerned federal offices.

The cantons are required to implement the federal law. The Canton of Bern has done this through an ordinance.¹⁴ Particularities of large scale solar projects are that only cantonal authorities are competent to review and provide permission for the projects (in other instances, also communal authorities are involved), the ordinance removes one instance of legal redress, which means that possible appellants only have one judicial instance of recourse at the cantonal level (as opposed to two for “normal” building projects) and the cantonal administrative court is not competent to review matters of discretion (thus, decreasing the scope of judicial review).

Where solar projects are planned in non-building zones, it often raises questions of environmental protection, like protection of flora in sensitive alpine regions, protection of wildlife, and very often also aesthetic concerns. Several such projects have been submitted for approval in various cantons since the approval of the 2022 amendments. One such project being currently planned is in the region of Hasliberg in the Canton of Bern and has been initiated by a private energy company. Situated at a height of between 1 900 and 2 100 metres above sea level, the location is set in the mountainous region of the Bernese Alps. On a maximum projected area of 15 hectares, an alpine solar photo voltaic project with approximately 4 000 solar tables is to be erected and is estimated to produce around 17 gigawatts of electricity. According to the project initiators, the geographic conditions of the location are ideal, and the project should produce over half of its energy output between February and May, a time when the mountains are covered with snow and the days start to get longer. Thus, solar power would supplement the electricity production from existing hydroelectric projects, which tend to produce less during the late winter when water levels are low.¹⁵

In addition to the building permission from the cantonal authorities, the project also requires the consent of all landowners (in this case organized as a public law corporation “Bäuert Hasliberg”), as well as the political commune of Hasliberg. The recognition of customary rights over land, whether of usage, ownership or usufruct is secure in Switzerland and recognized inter alia in the Swiss Civil Code. The Bäuert Hasliberg is such a recognized public law corporation. Since the land ownership is vested in this corporation, their consent is necessary for the project to be carried out. Also necessary is the consent of the municipality of Hasliberg, this must be secured through direct democratic participation. Such democratic participation allows also for dissenting voices to be heard. Expropriation of the concerned land would not be carried out as the state is not the initiator of the project. Further aspects to be taken into consideration are the possible conflicts between the public interest in local energy production and effects on local flora and fauna as well as the aesthetic concerns (which may negatively affect the tourism industry). This case study highlights not only the federal and cantonal dimensions of change in land use, but also the requirement for coordination and the importance of secure tenure that enables affected landowners to voice their concern, or even to decide against the project. On the other hand, the new expedited procedures reduce access to judicial review through fewer instances and limitations on the scope of judicial review.

2.5 *Relevance for Myanmar*

Although the above example might seem quite irrelevant to Myanmar in the current state of political instability, these are issues that all countries (including less developed and developing countries) are faced with in the light of climate change and need for alternative energy sources. If

¹⁴ Einführungsverordnung zum eidgenössischen Energiegesetz und zur eidgenössischen Energieverordnung betreffend Photovoltaik-Grossanlagen (EV Photovoltaik-Grossanlagen) of 17 May 2023.

¹⁵ All information derived from the project website: Solar Alpin Käserstatt, “Sonnenstrom von Käserstatt für die Region und darüber hinaus”. Available at: <https://www.solaralpinkaeserstatt.ch/#solar-alpin-kaeserstatt>.

Myanmar were to adopt a federal system, with powers for states and local level and specifically with recognition of rights of customary tenure, then such conflicts on land use planning and its interactions with various other issues like environmental protection, increasing energy needs as well as the vertical dimensions of coordination and cooperation between the federal, state and local levels will become relevant.

Furthermore, the rapid deforestation of the country (initiated by the colonial powers) and which has continued into the current times, along with the large stretches of coastal areas, will make it likely that conflicts due to the climate change induced displacement will increase in the future. According to the Myanmar Climate Change Strategy, “the observed and projected changes in climate include a general increase in temperature, variation in rainfall and an increased occurrence and severity of extreme weather events such as cyclones, floods, droughts, intense rains and extreme high temperatures”.

The Swiss example of “Bäuer Hasliberg” is a form of customary tenure that has been formally adopted into civil law and, therefore, enjoys legal protection. Colonial history, coupled with military dictatorship, has severely affected customary tenure practices in Myanmar, however, where these practices still are maintained and can be recorded, it would allow for communities with intact customary practices to better exercise customary rights.

Decisions on economic development and land use change are ever present, even in an economically advanced country like Switzerland. This will remain a relevant issue in Myanmar at every level of economic development, specifically the need to pursue state-led efforts to develop infrastructure or other projects of economic development. The state/local governments may not have the same interests as local communities, and the challenge is always how to involve local communities in meaningful decision-making. The Swiss system of local democracy thus acts as a bulwark against decision-making by higher levels of government, this is, however, not necessarily replicable in other states.

G) Conclusions

Myanmar stands once again in the midst of conflict and at a political crossroads. The Tatmadaw’s ongoing efforts to suppress democratic uprisings through violence, intimidation, and the imposition of conscription laws have not succeeded in extinguishing the aspirations of the people. While federalism was historically championed by ethnic groups, it is now gaining broader support among the Bamar population as well. The issue of land governance, long central to grievances around conflict, identity, and exclusion, has been explicitly included in the opposition-led Federal Democracy Charter. As such, it must remain a core component of any future peace negotiations and discussions on a federal system of government.

This paper has outlined the conceptual and institutional issues that must be addressed in designing a future federal land governance system for Myanmar. These include inter alia issues related to land governance in federal systems, including principles of federalism; whether competences are distributed symmetrically or asymmetrically; who holds eminent domain (if it is retained at all); legal and land governance challenges. In particular, a future federal constitution will need to address tenure security, the recognition and protection of customary and collective rights, and the rights of indigenous and ethnic nationality groups. Drawing on the comparative experiences of India and Switzerland, this study has shown that assigning land governance to subnational levels does not automatically result in improved protection of community or customary rights. Instead, clear institutional design, legal recognition, and effective coordination mechanisms are required.

Myanmar's trajectory toward federalism may not follow the Indian model of top-down devolution or Switzerland's bottom-up integration. Instead, the current context suggests a potential "middle path," in which the military retains control of central territories while diverse ethnic nationality armies and administrations exercise varying degrees of authority over roughly half the country. This creates both challenges and opportunities for shared sovereignty, negotiated arrangements, and transitional governance structures.

One of the defining features of any federal land governance system will be the symmetry, or asymmetry, of competences across units. Will all states and regions hold the same rights and responsibilities, or will special allowances be granted, for instance, to protect customary tenure in specific ethnic regions? As the historical debate around Shan secession and more recent struggles over natural resource revenues suggest, the distribution of extractive industry benefits will be a central and contentious issue in the country.

Guaranteeing tenure security, including for women and communities under customary law, must be enshrined in any future constitution. As the Indian and Swiss examples demonstrate, customary tenure can be harmonised with statutory frameworks when recognised and supported by legal institutions. However, land use planning decisions, even under federalism, can still produce conflict, especially where they displace communities reliant on land for their livelihoods. Myanmar's past experiences with large-scale agriculture, infrastructure, and extractive projects have repeatedly resulted in displacement. Such conflicts are unlikely to disappear under a federal system and may even intensify unless strong intergovernmental coordination and safeguards are established.

Any meaningful reform will also require strengthening the rule of law. The current legal system, shaped by colonial, socialist, and military legacies, lacks independence and accessibility. Although the 2008 Constitution includes property and tenure protections, these are heavily qualified by the Union's claim to ultimate ownership of all land and resources. The Federal Democracy Charter, while aspirational, offers a vision for a more devolved and rights-based system of governance. Whether its provisions, particularly on land, will inform future constitutional debates remains uncertain. What is clear, however, is that any viable federal system will require a functioning judiciary, with an independent constitutional court capable of upholding fundamental rights, resolving disputes, and serving as a genuine guarantor of justice.

Ultimately, land governance is not a technical matter, but a political question tied to sovereignty, identity, and justice. For a federal Myanmar to succeed, land must be approached not only as a resource but as a foundation for inclusion, dignity, and peace. This paper has shown that federalism can provide a framework for more participatory and locally responsive land governance, but only if it is built on a foundation of legal clarity, institutional trust and genuine accountability.

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