

Myanmar Land briefing

Understanding rural land issues to engage comprehensive policy dialogue

SPECIAL EDITION: NATIONAL LAND USE POLICY

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Special edition : National land use policy

Since 2012, land tenure in Myanmar is being remodelled through profound reforms. The process will continue. On the 18th of October 2014, the government released the long awaited draft of the national land use policy that is to be the over-arching framework that will shape land and natural resource governance for the years to come.

The NLUP has been under development since December 2013 by the Land Use Allocation and Scrutinizing Committee, an inter-ministerial committee established by President U Thein Sein with a mandate to draft the National Land Use Policy and the National Land Law. The Government then undertook a series of 17 public consultations in every State and Region throughout the Country to gather feedback from the citizens from all of Myanmar on their policy draft. It also given a mandate to civil society to support pre-consultation workshops all around the country. The consultation process has now been prolonged up to March 2015.

The public consultations have been a unique opportunity for civil society to make recommendations to the government on crucial issues of land policy. Many CSOs such as Transnational Institute (TNI), Global Witness, Gender Equity Network (GEN), Namati, M-LAW or Landesa, CSO clusters (Dawei Statement) and individuals have developed and disseminated reviews of the land use policy to feed into the policy dialogue. The LCG pre-consultation CSO taskforce has also compiled the key issues that have been raised during the extensive consultation processes that took place thought the country (**see page 2**).

The guiding principles of National Land Use policy display considerable efforts to improve land governance. The existence of chapters on land use rights of Ethnic Nationalities (part VII) and Equal rights (part VIII) for example is already a significant achievement that needs to be acknowledged.

Whether these reforms are pro-poor or pro-agribusiness and foreign investments is however still actively discussed in the consultation process. The investment law that is currently under formulation and the contents of investment treaties may provide incisive answers. But no answer may be produced before asking some other questions which are sometimes overlooked:

- Does everybody speak the same language (**see page 3**) ?
- Who will be the winners and the losers of these reforms ? On the later question, a close look at the local set-up of land governance may produce at least some answers (**see page 4**). This is a critical point as one key weakness of the NLUP is the lack of clarity in duties and responsibilities of authorities that are to be involved at the different levels of governance, and the lack of clear accountability mechanisms through independent taskforces and arbitration committees.

NLUP consultation in Monywa



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PUBLIC NLUP REVIEWS

Pro Business or Pro Poor ? Making Sense of Draft National Land Use Policy - October 2014 :

www.tni.org/sites/www.tni.org/files/download/myanmar_land_policy-1.pdf

Global Witness submission on Myanmar draft national land policy - November 2014 :

www.globalwitness.org/sites/default/files/library/Feedback%20on%20Myanmar%20draft%20national%20land%20policy_EN_1.pdf

The numerous other reviews of the Land Use policy are also downloadable on the MYLAFF document repository :

- Dawei statement : www.mylaff.org/document/view/2524
- Landesa review : www.mylaff.org/document/view/2525
- Namati review : www.mylaff.org/document/view/2526
- Gender equity Network : www.mylaff.org/document/view/2528

LCG Pre-Consultation CSO Taskforce: Activating voices from the ground to advocate for change in the draft land use policy

Following the public release of the national land use policy in October 2014, a series of **17 public consultations** were implemented by the Government around the country. In response, a pre-consultation CSO taskforce was established by interested members of the Land Core Group with an aim of ensuring that communities around the country were not only aware of the new policy draft but that their ideas and feedback on the draft were able to be incorporated into the national consultation process.

Through this collective effort and the utilisation of an extensive LCG membership base, the **taskforce was able to support over 60 pre-consultation meetings on the draft policy through more than 10 CSOs operating in different parts of the country**. Pre-consultation meetings were well attended by farmers and community representatives, and there was a high degree of interest in the draft policy. Through over 60 consultations, the task force was able to receive a wealth of community feedback which was recently summarised as part of a two day summary and analysis workshop organised by taskforce members at the beginning of January.

Following are some of the key issues that emerged following the analysis workshop.

- **Providing space and time for consultation**

Importantly, many of the key issues coming out of this consolidation workshop focused on the improvement of the policy (and subsequent law) development process. In particular the grass-root voices emphasised that the process of policy and law development should not be rushed, but rather ensure that repeated public consultation is undertaken so as to sufficiently apply the voices of the people. Likewise the grassroots voices urged that the formulation of land law should be undertaken only after the final policy is approved. The grassroots voices affirmed that any drafting of the law should once again seek public consultation and input, and ensure that drafting take place with the participation of both national and international external experts on land, as well as with representatives from CSOs and ethnic minority groups.

- **Decentralisation and transparency**

The grassroots voices also called for the policy to ensure that land management is decentralized and transparent, conducted in such a way so as to increase the participation of the public in decision-making. Similarly they call for open and transparent information at the grassroots level on ownership and land tenure rights.

- **Guidelines for conflict resolution**

The grassroots voices indicated that land issues and forced land expropriation loom large as a point of contention and anger across the country. In this regard the grassroots called on the new policy to include guidelines for law formulation to resolve previous and current land conflicts whilst ensuring that the landless - including internally displaced populations - have access to land.

- **Consultations and compensations for affected communities**

In order to improve land management around the country they insist that the policy acknowledge that in future cases of unavoidable land acquisition, that acquisition be undertaken with the agreement of affected communities whilst ensuring compensation resulting from accurate land valuation. Any relocation process must be in consultation with the affected community, ensuring restitution - in other words, sufficient land substitution for livelihood activities as well as support for necessary rehabilitation assistance.

- **Taking into account customary land tenure**

The unique situation of ethnic minority groups was identified by the grassroots as a critical issue. In summary the grassroots call for the policy to include concrete statements ensuring the rights of ethnic nationalities, in particular for the recognition of traditional land tenure rights and customary conflict resolution practices and to allow the formal registration of these traditional tenure rights. In addition they call for further study into different traditional land management practices and that these traditional practices be utilised in law formation. They also call for the policy to acknowledge the role of ethnic ministers and autonomous regional leaders in land conflict resolution mechanisms and in law formulation.

- **Gender**

Finally the grassroots request for the policy to incorporate the National Plan of Action for the Advancement of Women developed in 2012 with an aim to ensure women's land and economic rights.

FINAL MESSAGE TO THE GOVERNMENT OF MYANMAR

The people have spoken. Both the grassroots and the LCG taskforce encourage the Government of Myanmar to make substantive changes to the content of the draft policy reflecting the desires of the people as outlined above. Furthermore we encourage the Government of Myanmar to reform the land use policy and land law drafting consultation process so that these important reforms can become a true national dialogue on common concerns and interests as Myanmar moves forward.

To download the final report of the taskforce recommendations (Myanmar version) :

<http://www.mylaff.org/document/download/2542>

The NLUP's Mutations in Translation

Elliott Prasse-Freeman

The variance in responses to the draft NLUP since its release two months ago – some emphatically opposed, others resoundingly positive – almost makes it seem as if people are reading entirely different documents. In fact, they are. Not only are there multiple English translations circulating across the internet, but these in turn are discordant with the Burmese official draft whose meanings they are meant to convey.

The general confusion reminds us that translation is always an act of approximation and hence an elision of meaning, given that one specific and situated way of thinking about the world has to be given expression in the tools (words) of another. Comparing a translation with its referent and attending to incongruities can provide insight into how different political and legal traditions may talk past each other, thinking they are sharing a vocabulary while they are actually giving different meanings to words.

- **Dissonances on some crucial terms**

There are many opportunities to observe dissonance between the official English translation and the Myanmar draft. These include the treatment of *kyuu kyaw* which is translated as “trespassing” or “aggression” – but which also is the Myanmar word used for “squatting” and hence has those un-translated connotations in Burmese. Others have noted the inexplicable occurrence of women’s rights language in early parts (10b, d) of the English translation when the Burmese draft contains no mention of women at all. Still others have asked what kind of substantive opportunities upland cultivators retain to continue working lands in traditional methods given the language in sections 75/76 in Myanmar (although not English) implies that “alternating” *taung-ya must* be changed into “permanent” *taung-ya*.

- **The conceptual differences in the notion of “right”**

Less obvious, but just as important, are the ways that “rights” are dealt with in the translation. The Burmese term *akwint-ayay* is used dozens of times in the Myanmar and always gets translated as “rights” in the English. As “rights” in the Western political liberal sense essentially designate trumps against power – abilities to say no, to declare certain things non-negotiable – English readers often come away from the translation thinking that protections for farmers are well-established.

But in my on-going research I am finding that in Burmese descriptions of power and politics *akwint-ayay* seems to mean not only (and sometimes not at all) “rights”, but something closer to “opportunities.” Not only are the words often synonymous, but Burmese readers with whom I have read the NLUP suggest that often the translation of *akwint-ayay* as “rights” is inappropriate or just incorrect. Moreover, noteworthy is that *ya-bain-kwint* – the Burmese word for “entitlements” (it could be literally translated as “privileges that one gets to own”) – is perhaps closest to the Western sense of “rights”, and yet is rarely used in the NLUP at all.

So what does *akwint-ayay* mean in the Burmese draft? In talking with several Burmese speakers, my hypothesis here is that *akwint-ayay* does not contain the power of trumps, but perhaps is closer to a *counter-claim* against power. Might we understand Burmese “rights” in an always-aspirational sense, made possible only by the opportunities to realize them? The question remains open, and it warrants consideration from those concerned about what kind of policies and laws will stem from this document.

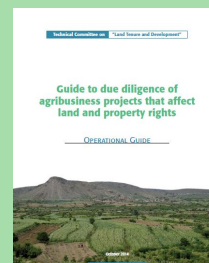
- **Absence of translation for the NLUP's preface**

Finally, there can be no dissonance when there’s no translation at all – and this is the case in the first 40 pages of text. Indeed, the sections that constitute the preface and those that describe “the intentions” and how they will be implemented remain in Burmese. Some Burmese readers have interpreted these sections as *situating* the later translated part by encouraging those reading it to see Myanmar as a poor country in desperate need of development. When the translated part of the draft begins with the rather jarring declaration of commitment to transform environmental resources into foreign investment opportunities, this is no surprise to the Burmese reader, who has already been inundated with that logic for dozens of pages.

LATEST PUBLICATIONS ON INVESTMENT ISSUES

How international investment rules undermine agrarian justice, Vervest P., Feodoroff T. January 2015

<http://www.tni.org/briefing/licensed-grab>

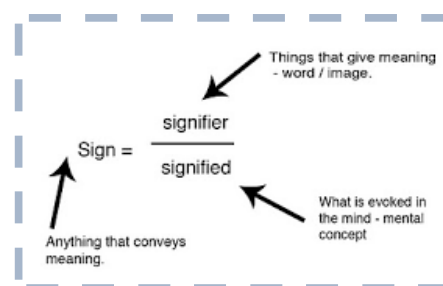


Guide to due diligence of agribusiness projects that affect land and property rights. Operational guide, Technical committee of land

and development, October 2014.

<http://www.foncier-developpement.fr/publication/guide-to-due-diligence-of-agribusiness-projects-that-affect-land-and-property-rights/>

The scramble for the Waste Lands: Tracking colonial legacies, counterinsurgency and international investment through the lens of land laws in Burma/Myanmar. Ferguson J. 2014. Singapore Journal of Tropical Geogra-



The challenges of translating signs

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Cosmetic reforms for land governance?

- **The village tract administrator: a key actor in resource management**

Regarding most natural resources (lands, water bodies, etc.) and even government rural credit, management at the village level is in the hands of a few individuals that hold the privilege to provide and restrict access to these resources (either directly or through their influential position – *aw-za/a-na* in Burmese). Among these individuals are local representatives of institutions, such as the Settlement and Land Record Department (SLRD) or the Myanmar Agricultural Development Bank (MADB). These stakeholders may vary according to the type of resources concerned... except for one constant and ever-present key player: the village tract administrator – and by extension 100 households' leaders (*ya-ein-hmu*) for smaller villages.

- **The village head man: the State's "political broker"**

Until 2011, these administrators were appointed by the government. They are now elected – however many administrators from before 2011 have remained in their position. The village administrator (hereafter the village head man) still remains central in resource management at the village level. In fact, since the British colonization and the instauration of the village tract administrative unit, the head man always performs as the State's "political broker". This is well illustrated by the land transfers done between individuals at the village level. Despite the ban (up to 2012), land use right transfers (through inheritance, pawns, sales and purchases etc..) continuously took place for different purposes with the help of the headman. In many cases, the headman would "officially" (*taya-win*) acknowledge these local arrangements by signing written documents, even though these were legally banned.

- **An imbalanced power game**

As a consequence, the headman always concentrated the power to provide access to resources at the local level. Interestingly, at the time of the compulsory paddy procurements, the headman also facilitated the distribution of confiscated lands through the village land committee; transfers that are now a major reason for land disputes through the reform (see our last issue 3). The headman is again the main player in the current Village tract Land Management Committee (VLMC) which adjudicate on land disputes at the village level. Who participates actively in land speculation? Who nominates the MADB representative? Who arranges predatory land rents for the production of "Chinese" watermelons? The headman is always involved, though not alone. How can abuse of power be handled in such biased context?

- **Need for transparency and accountability mechanisms: ...towards independent land management committees?**

Reforms are necessary and welcomed. Accountability to citizens by authorities in charge of land administration is not a spontaneous process. If concrete mechanisms for transparency and accountability of the actors who will be in charge of translating the legal framework into practices on the ground are not clearly defined in the new legal framework, impact on the local level will remain "cosmetic". Concerning land governance, a first step could be the creation of an independent VLMC, and Land Management Committees at each level (Township, District, Region) that could be called upon for conflict arbitration. Such measures would protect the economically weakest and least politically represented stakeholders, and provide a fertile ground for restoring citizens' trust towards the State.



OPEN CALL FOR PROPOSALS:

MLRG'S QUICK DISBURSEMENT FUND



The SDC has initiated the Mekong Region Land Governance Project with the objective of improving the tenure security of family farmers in the Mekong region (Myanmar, Cambodia, Lao PDR and Vietnam). It set up a Grant Facility with two funding windows including the **Quick Disbursement Fund**.

The QDF provides funding up to a maximum of US\$ 50,000 for short terms projects of up to 6 months for stakeholders in **urgent tenure security issues or windows of opportunities in anticipated or on-going policy development processes**. This means that the nature of the proposed action must be such that the applicant must intervene at the time of application and not at any other time in the future.

Since QDF was launched in 2014, it has already supported 2 initiatives. In Myanmar, it funded a series of pre-consultation workshops on the NLUP with CSOs. This initiative was coordinated by the LCG. In Lao PDR, the QDF funded a pilot capacity building scheme in target villages to enable farmers *to be more aware of their land rights, and negotiate with the support of local authorities and the Ministry of Justice* more favorable outcomes in potential large-scale land deals.

For more info, see : www.mrlg.org

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