



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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DEVELOPING THE NATIONAL LAND USE POLICY IN MYANMAR: THE IMPORTANCE OF INCLUSIVE PUBLIC CONSULTATIONS AND CLOSE DONOR COORDINATION

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Abstract

Recent rapid changes in Myanmar lead to legitimate concerns being raised relating to the land tenure and property rights of smallholder farmers and communities throughout the country. The simple fact that the overall legal and governance frameworks relating to land use management and tenure security in the country are poorly harmonized and largely antiquated added to these concerns. In Response to this the Government of Myanmar committed in 2012 to the development of a National Land Use Policy in order to strengthen land tenure security of vulnerable communities and improve the land governance frameworks in the country. This paper provides an overview of the process utilized by the Government to develop the National Land Use Policy, with emphasis on the inclusive multi-stakeholder consultative process that was transparent and ultimately respected by the parties involved. The paper will also emphasize how important donor coordination was in ensuring success of this unprecedented effort. Finally, the paper will illustrate how this policy development process has helped inform similar processes in the country.

Key Words: consultation, land, Myanmar, policy, tenure

Introduction

As Myanmar emerged from years of political and economic isolation, the country has been gathering much attention from the international donor and development communities as it has embraced a process of adopting more democratic forms of governance and simultaneously opened its doors to foreign direct investments. A new Constitution was promulgated in 2008 that cleared the way for a democratically elected Government in Myanmar. In addition, the new Constitution made clear that the country would adopt a market based economy, in which the ownership and protection of land and other property rights are clearly recognized.

With the successful execution of national elections in 2012, the international community began the process of normalizing relations with the Myanmar Government. This development, along with Myanmar's economic integration with the Association of Southeast Asian Nations (ASEAN) in 2015, was seen as leading to rapid development and change in a country that had been largely isolated for more than twenty years. Donor aid programs, civil society groups and the private sector all looked to Myanmar with heightened interest. Myanmar was suddenly open for business, but this rapid change raised serious concerns relating to the protection of land tenure and property rights (LTPR) of smallholder farmers and communities located throughout the country.



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Adding to this concern was the simple fact that the legal and governance frameworks relating to land use management in the country are poorly harmonized and largely antiquated. Legitimate concerns were raised by many commentators that weaknesses in the legal framework and the overall tenure governance systems in the country could lead to large scale land acquisitions that unfairly infringe on smallholder and community land tenure and property rights, and also negatively impact valuable forestland resources in the country and the environmental services they provide to the country.

The Government of Myanmar was well aware of the concerns being raised, and recognized that issues of concern relating to security of land tenure and property rights threaten the fledgling democracy being established in Myanmar. In response to this, the Government of Myanmar committed to development of the country's first National Land Use Policy (NLUP), which would form a foundation for reforming the systems of land governance in the country and increase the land tenure security of all, including smallholder farmers, women, ethnic nationalities and other vulnerable groups.

In 2012 the Government established a multi-ministerial body tasked with developing the NLUP, and engaged in the first multi-stakeholder National Dialogue on Land Tenure and Land Use Rights that included representatives from Government, civil society, the international community and others. This marked the beginning of the donor community committing to help the Government in developing the policy through mobilization of national and international technical assistance and supporting meaningful and inclusive public participation in the process. With this assistance, the Government developed a road map for development of the policy in 2013, and workshops were soon being held on issue specific topics and international best practices, which would provide inputs into early drafts of the policy and raise awareness of stakeholders involved in the process. For example, a multi-stakeholder workshop on the Voluntary Guidelines for the Responsible Governance of Tenure was held in early 2013.

With support from the international community (United States Agency for International Development, the Swiss Agency for Development and Cooperation, and the European Union) a core team was established to work on developing the policy with various issue specific working groups in late 2013. By September of 2014 the Government had produced a draft of the policy for public release, and committed to engaging in a public consultation process. Both the Government and civil society were wary of engaging in this process, as such a step had never been taken in the country



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before and there was a high level of distrust among the parties involved. Ultimately the various stakeholders grew more comfortable with the public consultation process, and trust between the different interest groups was increased. Consultation events were held in every State and Region of the country, followed by a series of multi-stakeholder expert roundtables and a national workshop. Systems were put in place to document both written and verbal comments, and how the core policy drafting team utilized them. This increased transparency and legitimacy of the NLUP development process.

Revisions to the draft policy were made based on comments received, and a National Workshop on was held in mid 2015. Based on further verbal and written comments, a final version of the NLUP was developed and submitted to the Presidents cabinet at the end of 2015. The Government recognized the importance of the public consultation process used, and respected the outcomes that were reflected in the policy. With only minor changes, the Government endorsed the National Land Use Policy in January of 2016.

Key actors in the donor community coordinated closely throughout the NLUP development process, providing assistance to Government and other stakeholders, including civil society, to constructively engage with one another and ensure inclusive public consultations were fully embraced by all. Without such support and strategic interventions at key junctures of the process, the policy development process would likely have gone off course and not come to fruition.

The following NLUP development overview focuses on a timeline of key events that took place from 2012 until formal endorsement in 2016, which emphasizes the unprecedented inclusive public consultation process that was utilized. How the overall process played an important role in building bridges of trust and avenues for constructive dialogue between stakeholders where previously there had been animosity and conflict is also highlighted. In addition, emphasis is placed on the importance of close donor coordination and support during all steps in the development of the policy, which now continues as further steps are made to strengthen land tenure security and modernize the land governance architecture in the country. The paper also illustrates how lessons learned from the consultation process utilized for the NLUP has been applied to other government reform initiatives, such as development of the recently enacted Investment Law.

National Land Use Policy Development Process Timeline



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The following outlines the key steps that took place in developing the NLUP, from the first national multi-stakeholder dialogue on land governance in Myanmar held in late 2012, the creation of a policy development roadmap in 2013, and the extensive drafting and consultation processes that carried on for over two years prior to formal endorsement in early 2016.

1. The Government established the Land Use and Allocation Scrutinizing Committee (LUASC) and directed it to develop a draft “National Land Use Policy” for further consideration. The Minister of the Ministry of Environmental Conservation and Forestry (MOECAF) originally chaired the LUASC, which was reformed as the National Land Resource Management Central Committee (NLRMCC) in October of 2014. The LUASC included membership of all concerned Government ministries and agencies directly involved in land use administration and management in the country. The Vice President subsequently chaired the NLRMCC, with the Minister of MOECAF assigned as a deputy chair.¹
2. In November of 2012, MOECAF, the National Economic and Social Advisory Council, and the Land Core Group of the Food Security Working Group held a multi-stakeholder National Dialogue on Land Tenure and Land Use Rights that included representatives from Government, civil society, the international community and others. Findings from the National Dialogue fed directly into the development of the draft NLUP that was subsequently opened up to further inclusive multi-stakeholder consultation processes. This event was the first multi-stakeholder consultation on land governance issues in the country, and was marked by a high level of animosity and discord between Government representatives and civil society representatives at the event.
3. In March of 2013, FAO and MOECAF hosted the first multi-stakeholder workshop on the Voluntary Guidelines on the Responsible Governance of Tenure. Elements of the guidelines were ultimately carefully considered, adopted to the Myanmar context, and incorporated in the draft NLUP.
4. In August of 2013, MOECAF participated in a donor-supported multi-stakeholder dialogue in Yangon on issues relating to the development of a “roadmap” for drafting a NLUP, conducting nationwide public consultations on a draft policy, and the process for ultimately formally endorsing the policy.

¹ The Ministry Environmental Conservation and Forestry was restructured as the Ministry of Natural Resources and Environmental Conservation (MONREC) in 2016.



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5. In late 2013, the Government adopted an initial roadmap for drafting and conducting public consultations for the NLUP, including the establishment of issue-specific working groups within LUASC tasked with analyzing research and other available technical information, and formation of a core drafting team, in order to create a working draft of the policy. Between January and June of 2014, the LUASC special working groups worked with the core drafting team on developing a draft of the NLUP prior to submission to the President's office for consideration and approval for use in public consultations. Multiple meetings of the LUASC were held to discuss and debate provisions in the various working drafts of the policy that were created. Various non-government technical experts (both national and international experts) provided advice on developing the draft NLUP. Extensive research on various land use issues in Burma from academic institutions, donors, INGOs and CSOs fed directly into the development of the draft NLUP. Information from media reports also fed directly into the draft NLUP. In addition, findings from various Parliamentary commissions dealing with land use and rule of law issues fed into the draft policy.
6. In late June of 2014, an initial draft of the NLUP was provided to the President's office for consideration and feedback. Multiple meetings and discussions were had between LUASC and the President's office to further refine the draft policy prior to approving for public release and consultation.
7. On August 15th of 2014, a multi-stakeholder Presidential Workshop on Land Resource Management and Urban/Rural Land Use Planning was held in Nay Pyi Taw. MOECA, the Ministry of Economic Development and Planning, and the Myanmar Development Resource Institute organized the workshop. Information from this workshop fed into further refinement of the NLUP during the initial drafting process.
8. The 5th working draft of the National Land Use Policy was finalized in September of 2014 by LUASC and approved for public release and consultation by the President's office. In anticipation of the upcoming public consultation process, training was provided to Government officials on how to constructively engage with the public during consultation meetings and how to accurately document all comments received, both verbal and written. A comment tracking and response mechanism was developed in order to illustrate that all comments were recorded and considered in due course.
9. The draft policy was formally released for public consideration and comment during October 2014, and the Government engaged in a direct public consultation process with



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support from donors. Public consultation events were held in all States and Regions of the country from November 2014 through January 2015. The purpose of the public consultations was to secure feedback on the draft policy from various stakeholders, including civil society and farmers' associations, in order to revise and improve the draft of the National Land Use Policy into a 6th draft, which would then be presented at a National Workshop for further multi-stakeholder consultation. In parallel to the Government led public consultation process, civil society organizations in the country also carried out a parallel grassroots public consultation process on the draft policy in order to coordinate feedback in a meaningful way.

10. In response to loud, clear and consistent public feedback during the public consultation process that demanded extra time for a well-informed public consultation process to take place, the Government agreed to extend the period of public consultations on the draft policy. Donors likewise committed support to an extended consultation process.
11. Between January and March of 2015, several multi-stakeholder consultations on the draft policy were held, including two Expert Roundtables hosted by the Government together with donors and civil society, as well as a Participatory Land Use Mapping Workshop organized by EcoDev and a National Dialogue on Customary Land Tenure organized by the Land Core Group in cooperation with MOECAAF. These consultation events were received positively and increased both the level of trust and the comfort level of all parties in engaging constructively in such multi-sector dialogues. The two Expert Roundtables organized by the Government were designed to make specific recommendations for changes to the language and organizational structure of the draft policy.
12. Information from the Expert Roundtables and broader public consultations were used to develop a 6th draft of the NLUP, which was finalized and approved by the NLRMCC and publicly posted for review and comment in early June of 2015.
13. A multi-stakeholder National Workshop on the 6th draft of the policy, which included over 200 participants from Government, civil society, private sector, academia, and other stakeholders, was held over two days at the end of June 2015.
14. Feedback during the National Workshop and other written comments received on the 6th draft between June and the end of December 2014 were used by the Government (NLRMCC)



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to further refine and revise the draft NLUP for submission to the President's Cabinet (7th draft) for review, final revisions and formal endorsement.

15. In January of 2016, the President's cabinet formally endorsed the NLUP. The NLUP has is described as a "living document" that can be reviewed and updated as additional information or realities on the ground change over time. At the time of its endorsement the NLUP represented an important foundation for land governance reform in the country that can be built upon as needed over time.

Building Bridges of Trust and Avenues for Constructive Dialogue

Prior to the extensive public consultation process utilized for development of the NLUP, the concept of the Government engaging with the public was essentially unheard of. The level of trust between Government actors and other stakeholders was very low, particularly with regard to land tenure security issues. Interactions between the parties were often marked by open confrontation, accusatory finger pointing and shouting, as evidenced by the level of discourse during the National Dialogue on Land Tenure and Land Use Rights held in late 2012. One of the benefits of the consultation process used during development of the NLUP is that it provided all stakeholders with an opportunity to be heard, constructively work together on key issues during the expert roundtables and National Workshop, and learn from one another.

Government stakeholders walked away from the process with a greater understanding and appreciation of how public consultations can improve the quality of an end product while also increasing buy-in from other stakeholders. Civil society and other stakeholders felt that their voices had been heard and respected in ways that previously had not happened. A small step in the right direction perhaps, but an important step nonetheless. The NLUP public consultation process illustrated what was possible in the Myanmar context, and provided a model for others to utilize in the future. Lessons learned from the NLUP consultative process that largely took place at the national level, with some engagement at the state and regional level, could in the future be applied at the lower levels through constructive engagement between local government authorities at the village tract and township level with local communities.

Importance of Donor Coordination and Support

Throughout the NLUP development process there was close coordination and support provided by the United States Agency for International Development, the Swiss Agency for Development and



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Cooperation, and the European Union. The three donors established an informal donor coordination mechanism that ensured there were no critical gaps in the process. All three shared responsibility for providing technical and additional forms of assistance to the Government and other stakeholders to constructively engage in the process with one another. In addition, the close cooperation and coordination between the three donors ensured consistent messaging to their Myanmar Government counterparts, which helped to ensure that any obstacles encountered were overcome and the NLUP development process stayed on track.

As land governance reform efforts become more complicated in the future with addition of many more actors and “moving parts,” the lessons learned from effective donor coordination during the NLUP development process should be fully absorbed and embraced. While the NLUP relied on an informal coordination mechanism between the various involved donors and the Government through the LUASC, and subsequently the NLRMCC, a more formal land governance coordination mechanism should be established and utilized in the future.

Applying Lessons Learned to Other Public Consultation Processes

Lessons learned from the unprecedented public consultation process utilized during development of the NLUP have since been applied to a number of other policy and law development processes. For example, the mechanism for documenting all written and verbal comments received during a consultation process, and accurately recording how they were ultimately addressed or incorporated in a transparent manner, was adopted by the Government of Myanmar when developing the recently enacted Investment Law. Public consultations on the draft Investment Law were also extended when civil society and other stakeholders made demands for additional time to properly consider implications of the draft law, similar to what happened when such demands were made during the NLUP public consultation process.

Public consultations have also been held for the draft Agriculture Development Strategy (ADS) that the Government of Myanmar is developing. Civil society and other stakeholders suggested that additional public consultations on the draft ADS be held at state and regional levels, similar to the state and regional consultations held during the NLUP development process, in order to raise awareness of the ADS and secure comments from stakeholders at the grassroots level where impacts from implementation of the strategy will be most widely felt. The Ministry of Agriculture,



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Livestock and Irrigation, which is the Government ministry responsible for developing the ADS, has agreed in principle to conduct such consultations at the state and regional level.

It is indeed encouraging to see the Government of Myanmar become ever more comfortable with engaging in public consultation processes for development of laws and policies that will impact people's lives and livelihoods in the country. At the moment such processes are rather ad-hoc and individually tailored to a particular output. Over time it is likely that public consultation (notice and comment) procedures at the national level will become standardized. What will increasingly become important is the need to increase public consultation processes at the state and regional level as federal systems of governance are strengthened, and at the local government level (township and village tract) for administrative decisions that might impact the lives and livelihoods of local communities. Development of such public consultation processes and procedures will take time, but will ultimately strengthen the democratic systems of governance in the country and build greater trust and understanding among all stakeholders.

Conclusion

The story behind the development of the National Land Use Policy in Myanmar is an intriguing one, which has informed other policy and law development initiatives in Myanmar and contains important lessons learned for similar efforts elsewhere in the country. The unprecedented public consultation process, which lasted for over fourteen months, resulted in a "living document" with broad public buy-in, and increased levels of trust, understanding and awareness among the various stakeholders involved. The policy provides an important foundation upon which the Government of Myanmar, the donor community, civil society, the private sector and other stakeholders can build.

The importance of donor coordination and support to the overall NLUP development and public consultation process cannot be underestimated. Without the establishment of an informal donor coordination mechanism, it is unlikely that the NLUP would have made it across the line and been endorsed by the President's cabinet in early 2016, nor would the Government of Myanmar have been likely to embrace and follow through on an inclusive public consultation process. The NLUP development and consultation process illustrates the importance of establishing a formal land governance related donor coordination mechanism moving forward.



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Now that the policy is endorsed, all stakeholders in Myanmar are much better equipped to move forward together to address the next steps in strengthening land tenure security and improving land governance in the country. It is likely that targeted issue specific land policies and laws, which cover subjects such as land acquisition and relocation, participatory mapping and land use planning, land administration, and land resource data management system design and implementation, will have to be developed over time. The inclusive process used to develop the NLUP can help to inform processes for the future development of such policies and legal frameworks.