Policy Recommendations from the National Dialogue on Land Tenure & Land Use Rights

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MICC, Naypyitaw, Myanmar

Land Core Group of the Food Security Working Group

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Acknowledgements

This National Dialogue demonstrated effective collaboration and cooperation between a diverse range of stakeholders from government, civil society and the international community. It was this diversity which added strength to the meeting and ensured robust policy recommendations were produced.

Thanks are due to the collaborating partners – the National Economic Social Advisory Council, the Ministry of Environmental Conservation and Forestry and the Land Core Group of the Food Security Working Group, who worked together to ensure that the National Dialogue on Land Tenure and Land Use Rights was a great success.

Executive Summary

Myanmar, civil society and government officials directly engaged in a national dialogue on land tenure and land use rights reform. Regional experts shared lessons learned from land tenure reform in their respective countries of relevance to Myanmar. Civil society raised concerns over Myanmar's political-economic reforms which have yet to reduce levels of land grabbing and which have the potential to increase the levels through opening of the country to inward foreign investment. Civil society also raised issues over the new land laws and related policies which continue to provide weak and insufficient tenure protection for smallholder farmers. Government representatives agreed with civil society that people-centered development that listens and responds to peoples' voices is the model of development most suitable and beneficial to the people of Myanmar. The seminar achieved a breakthrough in government-civil society relations, which is a first step towards transforming land tenure and the model for national development to be more favorable to the country's small-holder farmers.

Three thematic clusters emerged from presentations by, and feedback from Myanmar government officials and civil society representatives.

(1) National and local economic growth is best achieved through state support to, and private investment in, smallholder farmers who have land tenure security.

Large-scale land concessions are detrimental to smallholder farmers. Instead of a main focus on supporting industrial agricultural growth, the government and private sector should jointly invest in smallholder farmers. The private sector and smallholder farmers would benefit, from fair and equitable contract farming arrangements, and from companies sourcing directly from producers through farming cooperatives. Smallholder farmers will benefit from these agricultural investments only if they have secure land tenure, are well organized and protected by law, laws are equitably enforced, and international standards of good governance are followed.

(2) Upland customary land rights and shifting taungya need to be officially recognized and incorporated into law by the government.

Upland land management has the least land tenure security under current land laws and is therefore most at threat during the current land reform process. If the government legally recognizes customary land rights and upland specific farming systems including shifting taungya, upland farming communities will benefit from the

reform process and be able to contribute more to economic development in upland areas. Recognition under the law is a first step which must be closely followed by awareness raising and education of farmers on their legal rights to allow them to use the law. Furthermore, for smallholder farmers to fully benefit from agricultural investment and protect their lands from large-scale plantation development, they need to be supported by development of strong and effective farmers associations which enjoy protection under the law.

(3) The Myanmar government needs to solve the country's overlapping and conflicting land tenure regimes and land uses by way of a comprehensive national land use policy and administrative body.

Enacting a comprehensive national land use planning body, would minimize inter-ministerial conflict over land, mitigate overlapping land use claims, and help implement a national land use strategy. This body would help deter further land grabs in the country and improve systematic national and local land use planning and implementation.

All three themes which emerged from the national dialogue can be achieved if the Myanmar government has the political will to fully support smallholder farmers. Presentations from the regional experts clearly showed that when government, along with the private sector, supports smallholder farmers as part of their overarching national strategy, then these farmers, along with rural economies, and the nation as a whole benefit.

Recommendations

Develop National Land Use Policy

It is essential that the government of Myanmar adopt a comprehensive approach to the development of land use policy which covers the whole of the country. This needs to address the competing needs and demands of different stakeholders wishing to utilize land. The 3 components of these policies and laws need to be clearly outlined. These are 1) process for development of policies and laws; 2) underlying principles which form the foundation of these policies and laws; and 3) sectoral priorities. Specific recommendations coming from this symposium were:

PROCESS:

1. The process for formulation of national land use laws, policies and planning must be participatory and inclusive of Myanmar civil society and farmers
2. Parliament has a duty to listen directly to civil society voices during formulation of laws, policies and planning, to ensure revised land laws are more suitable for the people
3. Create a comprehensive national land use planning body with authority over line ministries
4. Decentralise administrative and decision making authority on land issues to state and region level

PRINCIPLES:

5. Explicitly state women's equal rights to land in national land use legislation
6. Recognize the rights of indigenous people and enshrine the fundamental principles of the United Nations Declaration of the Rights of Indigenous People in land laws
7. The principles of free, prior and informed consent (FPIC) must underpin all land allocations and concessions

PRIORITIES:

8. Promote domestic and foreign private sector companies to invest in small holder agriculture
9. Promote community participatory mapping and access to government land maps
10. Promote community forestry and agro-forestry under management of the Forest Department
11. Promote improved cultivation practices and appropriate new technology to enhance rotational farming systems
12. Ensure increased access to affordable credit for farmers

Improve National Land Laws

Creation of land related policy instruments is only effective if laws which spring from the policies are fair and equitable. Alongside the policy development process a major revision of existing land laws to re-enforce positive elements and to address continued weaknesses needs to be undertaken. Although the Farmland and Vacant, Fallow and Virgin Lands Laws have only recently been passed in 2012 there is still room for large improvement to ensure the rights of smallholder farmers are better protected. Specific recommendations coming from this symposium were:

1. Revise land laws and policies to protect rights and land tenure of smallholder farmers
2. Grant full freedom of crop choice, in the law and implement this in practice
3. Define maximum land holding sizes for each classification of land defined under the law, to allow optimum use of land and restrict over-sized land grants
4. Define the minimum levels of forest cover required at the national level to ensure a sustainable environment and watershed conservation
5. Ensure fair and adequate compensation, and provision of adequate alternative livelihoods in the law. Detail mechanisms for measuring compensation pay ments at current market prices

Recognise Existing Land-Use

A central component of improving the land laws is the need to clearly recognize current land-use across the country. This recognition of how farmers are actually using land as opposed to reliance on out of date maps and demarcated boundaries will enable effective land use planning. The mismatch between actual and recognized land classifications and demarcated boundaries which exists at the moment is one of the major causes of confusion related to land titling and land-use planning. Specific recommendations coming from this symposium were:

1. Clearly define land classifications and carry out a national agriculture census based on these classifications
2. Respect upland customary law and land use practices, including recognition of shifting ***taungya*** as a legal land use category and recognition of village for ests, fisheries and grazing lands
3. Systematically deal with land use rights for forest-dwelling communities
4. Halt any designation of land cultivated under customary arrangements as vacant or fallow land

Improve Land Titling

Research has been shown that clear and secure rights to land can improve investment, productivity and sustainable and equitable economic growth. Land tenure security defined as "the certainty that a person's or community's rights to continuous use of land will be recognized and protected against challenges from individuals, groups, companies or the state" is one of the essential building blocks for long-term sustainable growth in the rural economy. For smallholder farmers, communities and the landless, secure land tenure is a key step to support their efforts to pull themselves out of poverty. Specific recommendations coming from this symposium were:

1. Critically review current land titling programmes to ensure they target the most vulnerable and marginalized people and communities
2. Reallocate land to land-poor and landless households
3. Provide a legal mechanism for registration of communal land use titles
4. Prohibit granting of land concessions in areas where land registration and land census is not complete
5. Improve technical and staff capacity for government land titling programmes

Empower Civil Society

Improving policies and laws is one part of the solution to ensure protection of the land rights of smallholder farmers in Myanmar. In addition farmers and civil society also need to clearly understand their rights and responsibilities under the law to allow them to effectively use these laws. To allow the government of Myanmar to implement the land laws there must be systematic awareness raising and education for all sections of Myanmar society. Specific recommendations coming from this symposium were:

1. Empower civil society, especially farmers, so they understand and use their legal land rights
2. Develop strong farmer associations to increase farmer bargaining power in value chains and grant freedom for farmers to capitalize on agricultural in vestment
3. Define clearly the role of farmers' association from local communities in land policy

Promote Equitable Agri-business & Contract Farming

Supported by the government of Myanmar domestic and foreign agri-business investment has been increasing dramatically in recent years in almost all parts of the country and across a wide variety of different crops. This increased investment presents both opportunities and threats for the people already farming the land. Companies have experimented with contract farming models which have provided limited benefits to farmers and some of which have also been detrimental for them. At the same time issues of land grabbing associated with some agri-business operations have received wide coverage in local and international media and been the cause of farmer protests. The government has indicated a willingness to explore options to address farmers' complaints whilst at the same time balancing the need for investment in the rural economy. For agri-business companies to operate, equitable and fair terms and conditions regulating their operations which are applied before projects are implemented, need to be developed. Specific recommendations coming from this symposium were:

1. Requirement to check and verify operational records of companies making applications for agri-business concessions
2. Environmental & Social Impact Assessments to be conducted before projects commence and at regular intervals during project operations
3. Companies should implement different pilot projects to assess most suitable farming / contracting models for local conditions
4. Companies should provide social security provision for farmers as part of growing contracts
5. Initial concessions should only be granted on short-term leases until company compliance with lease terms and conditions has been satisfactory whereupon longer leases can be considered
6. All growing contracts must clearly state mutual benefit arrangements, includ ing land-use, crop/profit sharing and agreed crop prices

Provide Mechanisms for Legal Redress

Improved land policies and laws coupled with increased empowerment of civil society and farmers provide a sound basis to ensure the rights and responsibilities of smallholder farmers and companies are protected. However even with good laws, effective implementation and sufficient awareness of rights and responsibilities amongst stakeholders land related conflicts can still occur. In addition in Myanmar there are many land conflicts which remain unresolved from implementation of land laws which have now been superseded. There is a pressing need in Myanmar to establish independent and impartial formal and informal mechanisms which allow complainants to seek redress. Specific recommendations coming from this symposium were:

1. Provide farmers associations with the powers to solve their own land conflict issues
2. Establish official complaint mechanisms for farmers including access to a) court arbitration; b) independent tripartite arbitration where state, farmers and private sector will be present; c) constitutional tribunal
3. Clearly identify who can act as legally recognized farmers representatives to defend their rights
4. Guarantee independent legal representation for companies and farmers
5. Clearly describe the process for resolution of conflicts related to land acqui sitions which occurred before August 2012 when the new land laws were in place

Ensure Effective Monitoring and Oversight

Monitoring and oversight are of paramount importance to ensure successful implementation of the land laws which regulate the actions of farmers, companies and the state. All stakeholders have a duty to ensure this and only when all parties cooperate together can success be assured. The fundamental objective is to record and learn from examples of good practice as well as highlighting occasions when policies and laws are not implemented and rights are infringed. Specific recommendations coming from this symposium were:

1. End corruption and bribery, and enforce good land governance
2. Ensure effective resettlement of villagers for large-scale land acquisitions
3. Ensure adequate supervision of company operations and adherence to con cession terms and conditions
4. Ensure enforcement of regulations and penalties in laws on contracting and transfer of property
5. Ensure transparency and accountability, and effective monitoring and regula tion of agribusiness contracts

The Food Security Working Group (FSWG), established in 2003 is a network of over 140 national and international NGOs, working on improving practices related to food security in Myanmar. The FSWG supports its members with a range of services including: technical seminars/trainings, workshop, dissemination of information, access to resources, learning and exchange forums, representation, opportunities to collaborate in evidence-based research, and advocacy.

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