

Land Law & Policy Reform -- Supporting Customary Communal Tenure of Rotational and Fallow *Taungya*

A policy discussion brief by MOECA, Land Core Group & Transnational Institute

National Dialogue on Customary Communal Tenure 13-14 February 2015 in Nay Pyi Taw Generates the Following Policy Recommendations:

1. Recognize and protect customary land and resource management systems to ensure food security of rural ethnic populations, protect biodiversity and promote sustainability
2. An interim safeguard mechanism is needed to immediately protect and recognize customary tenure arrangements
3. A high level Customary Land Tenure Working Committee should be formed to take necessary actions to recognize and protect customary tenure and sustainable rotating fallow farming systems
4. A process for exploring and documenting various customary tenure regimes and protections should be set out in order to generate further policy recommendations

"Land is our lives, heart, society and culture. Without land our lives cannot exist, our heart broken and we lost our culture" – Myanmar CSO Panel, National Dialogue on Customary Tenure

An important aspect of the recently drafted national land use policy pertains to the recognition of customary land tenure practices and the formal recognition of customary communal tenure arrangements. The existing provision of the draft is most welcome and deeply appreciated by many in Myanmar society as a significant step forward, yet, nonetheless, requires further elaboration in order to ensure that the policy, and eventually the new land law, effectively anticipates the needs of ethnic communities employing customary communal tenure arrangements.

Toward this end, the Ministry of Environmental Conservation and Forestry, Land Core Group and Transnational Institute jointly organized the National Dialogue on Customary Communal Land Tenure and Rotational Fallow Farming Systems in Nay Pyi Taw, Myanmar from 13-14 February 2015.

The multi-stakeholder discussion drew on the perspectives of international experts as well as challenges and successes in the region. This was complemented by an open exchange of experiences by key stakeholders in the Myanmar context.

The dialogue generated the following policy **recommendations** and actionable **next steps**.

1. Recognize and protect customary land and resource management systems to ensure food security of ethnic rural populations, protect biodiversity and promote sustainability.

Ethnic communities in rural Myanmar engage in a variety of customary communal land and resource management systems, including rotating fallow taungya farming techniques. Though hostile assumptions and prejudices toward shifting taungya practices persist, "in recent years perceptions are becoming more sympathetic, mainly due to scientific studies which confirm that under conducive conditions swidden systems are efficient, productive, sustainable and environmentally beneficial."¹ Communal farm management techniques, including rotational taungya, are presently under pressure due to ongoing inappropriate economic developments such as large-scale land concessions that disregard customary tenure practices. A lack of tenure security around customary lands together with this inappropriate economic development is leading to high levels of land grabbing around the country. Recognizing and protecting sustainable customary land and resource management practices is necessary to protect the legitimate livelihoods of rural ethnic peoples in Myanmar and to halt land grabbing of customary lands.

2. An interim safeguard mechanism is needed to immediately protect and recognize customary tenure arrangements.

While the national land use policy is currently in a draft stage, it should be recognized that the policy is part of a longer process to develop a comprehensive national land law and harmonize existing laws to the policy. Hence a comprehensive legislative framework for the recognition of customary communal tenure will require both time and the collaboration of a variety of stakeholders to develop. In the meantime, ethnic communities will continue to face a lack of tenure security because of ongoing economic development that ignores their traditional land management systems. The loss of customary communal lands has serious detrimental effects on peoples' livelihoods and also creates long-term instability and tension between domestic and foreign investors and rural communities. As recently completed research by Michigan State University has suggested, "[g]iven ongoing granting of concessions, a major priority is to protect the land rights of traditional land users operating under customary tenure in extensive long fallow farming systems"² An urgent need exists to create an interim mechanism for the recognition of customary land use rights in order to protect the legitimate livelihoods of rural ethnic communities and preserve social stability and economic development until a more comprehensive long-term solution is formulated and written into law.

3. A high level Customary Land Tenure Working Committee should be formed to take necessary actions to recognize and protect customary tenure and sustainable rotating fallow farming systems.

The formulation of a comprehensive legal framework to recognize, protect and support customary communal tenure rights requires the collaboration and buy-in of a myriad of stakeholders. The National Land Resource Management Central Committee is uniquely positioned to ensure the high-level government collaboration needed for successful policy and legislative development. Experiences in the region shared during the recent national dialogue, particularly those from Cambodia³, stress the importance of a central coordinating body devoted to issues related to customary tenure. It is recommended that the Committee establish a Customary Land Tenure Working Committee to support the protection and promotion of customary communal tenure, with the participation of and dialogue between a variety of stakeholders, including ethnic communities and civil society organizations. The working committee could carry out such activities as research, the development of policy recommendations and the implementation of pilot projects.

4. A process for exploring and documenting various customary tenure regimes and protections should be set out in order to generate further policy recommendations.

Ethnic communities practice a diverse range of customary communal land use and communally managed farming practices; the recognition and support of these practices will not be accomplished through a "one size fits all" approach. Further research is needed into how lands are held and managed within ethnic communities. This may include research into communal arrangements and mapping of existing land use. Furthermore, research presented at the national dialogue noted "[a]dditional research is required to help prepare a compendium on lessons learnt on the procedures that can lead up to a cadastral communal land registration"⁴ A process for exploring and documenting these practices should be formulated so that community practices can be better understood. Such a process should feed into inclusive law and policy formulation and address long-term needs of communities. The proposed Customary Land Tenure Working Committee may manage the process.

Next Steps

1. Formulate an **interim mechanism** to immediately recognize and protect customary communal tenure arrangements.
2. The National Land Resource Management Central Committee should form a high-level **working committee** on customary communal tenure
3. **Explore mechanisms** for protecting customary communal tenure
→ e.g. Research & Development, Pilot Projects
4. Outcomes of exploratory mechanisms, and other work carried out by the working committee, **provide input to law and policy makers** on how to improve existing policies and laws.

¹ Springate-Baginski, O., *Rethinking Swidden Cultivation in Myanmar: Policies for sustainable upland livelihoods and food security*, University of East Anglia/Pyoe Pin; 2013.

² Byerlee et. al, *Agribusiness Models for Inclusive Growth in Myanmar: Diagnosis and Ways Forward*, MSU International Development Working Paper; 2014.

³ Sophorn, S. (2015, February). Cambodia Lessons Learnt Customary Communal Tenure. Presentation at the National Dialogue on Customary Communal Land Tenure and Rotational Fallow Farming Systems, Nay Pyi Taw, Myanmar.

⁴ Ewers, K., Study of Upland Customary Communal Tenure in Chin and Shan State, Land Core Group; 2014.