



STRENGTHENING CITIZEN AND CIVIL SOCIETY REPRESENTATIVES IN LAND GOVERNANCE MECHANISMS

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STRENGTHENING CITIZEN AND CIVIL SOCIETY REPRESENTATIVES IN LAND GOVERNANCE MECHANISMS

The November 2020 election showed that once again Myanmar citizens continue to support a transition to a federal democratic political system despite the threat of the Covid19 pandemic. The awareness that citizens have of their role in deepening democracy and state- building is not limited to voting in elections. As more citizens understand and exercise their legal rights, they have become increasingly involved in land governance mechanisms as citizens, farmers, and CSO representatives.

We appreciate the government encouraging the deepening of democracy as well as more participation and collaboration in land governance mechanisms. Namati and a coalition of non-governmental and civil society representatives have gathered constructive feedback for areas that require attention, to improve the functioning of the system specifically regarding the participation of non-governmental representatives in land management and governance systems.

This brief summarizes findings from the survey and discussions with 33 citizens/ farmers/civil society representatives actively working or involved in the land sector, who sit on various land governance bodies. We hope it will be useful in strengthening government action towards land management reform and in the process of drafting national land law with greater collaboration and participation of farmer/citizen/civil society representatives.

I. Background Context: National Land Use Policy, Land Laws and Management Mechanisms

After widespread consultation, the National Land Use Policy (NLUP) was enacted in January 2016. This policy presents a framework for good land governance and addresses some of Myanmar's historical land rights problems. Since the NLUP was passed, a central Land Reinvestigation Committee was established in May 2016 to resolve historical land-grab cases. Parliament has amended several land-related laws, including the Farm Land Management Law and Vacant, Fallow, Virgin Land Management Law. The National Land Use Council was established to continue the reform efforts.

In January 2018, the National Land Use Council was established to support the implementation of the National Land Use Policy.¹ Though there is no provision for the citizen/farmer/civil society organization representatives at the Council, working committees, working groups and sub-working groups have been created under it to give room for citizen/farmer and civil society representatives to participate in the National Land reform process.² The amendments to the

¹ Notification of the National Land Use Council 16th January 2018. (Notification No. 3/2019)

² Notifications of the National Land Law Drafting and Harmonizing the Land Management Laws Working Committee 26th August 2020. (Notification No. 1 to 7 /2020)

Vacant, Fellow, Virgin Land Management Law³ and The Farmland Management Law⁴ in September 2018 and February 2020, have also created space for citizen/farmer and civil society representatives.

Land governance mechanisms include: farmland management committees that manage the farmland registration process and farmland dispute resolution. VFV land management working committees manage VFV land management process but the Land Reinvestment Committee is tasked with investigating and resolving historical land grabs. These committees exist at multiple levels namely village tract, township, district, State/Region and central level (representatives sit on all of these bodies except the central, national level).

Land justice has been among the key priorities of the government since 2016 but the issue is complex and connected to many other matters that the government took on during its first term. The 2020 election manifesto of the National League for Democracy Party placed land rights, justice for farmers, the return of grabbed land, compensation arrangements, and the protection of smallholder farmers as a priority.⁵

II. Five Major Issues Facing the Citizen, Farmer, and Civil Society Representatives Working in the Land Management and Governance Mechanisms

This brief takes an in-depth look at five major issues or areas in which we urge the government to take action in order to improve the efficacy, utility, and functioning of the system. Throughout this brief we will use 'representative(s)' to stand for citizen, farmer, and civil society representatives.

- A. The selection process of representatives.
- B. Increasing clarity on roles and responsibilities of the representative.
- C. Providing adequate support and training to representatives.
- D. Access to information for representatives.
- E. Clarifying the position of the land governance committees and their relationship to the government.

A. The Selection Process of Representatives.

The current process of how representatives are chosen is messy, often unclear, and is a missed opportunity which damages the credibility of the representatives. The government should clarify the process and choose between election or selection. The current system is such that the government appoints the representatives. This is not done in a clear or transparent manner and needs to be reformed. One issue which has been raised by many representatives is that one person can be selected to be a representative at several different levels and in different mechanisms. This means they might be handling a case in a higher committee that they have already dealt with, while sitting on a lower level committee.

³ According to the amendment to Vacant, Fellow, Virgin (VFV) Land Management Law dated 11th September 2018, ethnic group representatives, farmer representative and civil society representatives must include in the State/Regional VFV Land Management Committees (Article 3a)

⁴ According to the amendment to Farmland Management Law dated 14th February 2020, township level committee must include 5 farmer representatives. (Article 16 c) The village tract/ward level committee must include 2 elders and 3 farmer representatives selected by the local farmers. (Article 16 d))

⁵ 2020 Election Statement of National League for Democracy Party.

How representatives are identified and chosen to sit on the committees in a way that supports the proper functioning of the committee and fulfills the mandate of ensuring that real voices from the community are represented, is of critical importance. The National Land Use Policy gives some guidance on how non-governmental representatives such as farmer representatives should be selected by local associations.⁶ However, in practice this is rarely followed: One of the selected representatives shared that the implementation of these policy guidelines still requires a lot of focus and attention from all parties. In his own words, he admitted that *“I don’t even know how I became a committee representative.”*

The government should make a clear decision between allowing the peers to elect representatives or to keep the system whereby the government selects the representatives. Whatever the government decides, it should be with the aim of making the system clearer and more transparent.

If Selecting Representatives:

The selection criteria for the position should be laid out and shared widely with the public. The state/regional government should also support and work closely with local CSOs in the selection process at every level so that the right persons can be in the right position to meet everyone’s expectation to perform well in the committee mechanism. The government should publish the list of who has been selected and make this widely available.

Suggestion of criteria for selection of future farmer representatives.

Farmer representatives must:

- Be a farmer.
- Have farmland and understand the nature of farming.
- Have a fair understanding of land-related laws.
- Be able to be vouched for and trusted by other farmers and the local community.
- Be willing and able to dedicate sufficient time to committee activities.
- Not have any ongoing land disputes.
- Be living in the area.
- Have the organisation or union that they are a member of support their appointment. Have a minimum education level at middle school graduate level (or they should have good literacy and numeracy skills)
- Not sit on the same committee at a different level and ideally should not sit on any other type of committee (though we accept this might not be practical given the number of qualified people available for an unpaid position)

Suggestion of criteria for selection of a future land expert representative:

Land expert representatives must:

- Be an individual/member of a well-recognized CSO or Farmer’s Union.
- Have a minimum of three and ideally more than five years of experience working on land issues.
- Have a good understanding of land-related laws.
- Have time for the committee activities.
- Be able to explain laws, rules and procedures and capable of discussing these in the committee.
- Be of good character, attitude and morality

⁶ National Land Use Policy, Part II Land Use Administration, Chapter (1) 10(b)

- Not have been involved in land grabbing activities in the past – with no personal land disputes
- Not sit on the same committee at a different level and ideally does not sit on any other type of committee (though we accept this might not be practical given the number of qualified people available for an unpaid position)

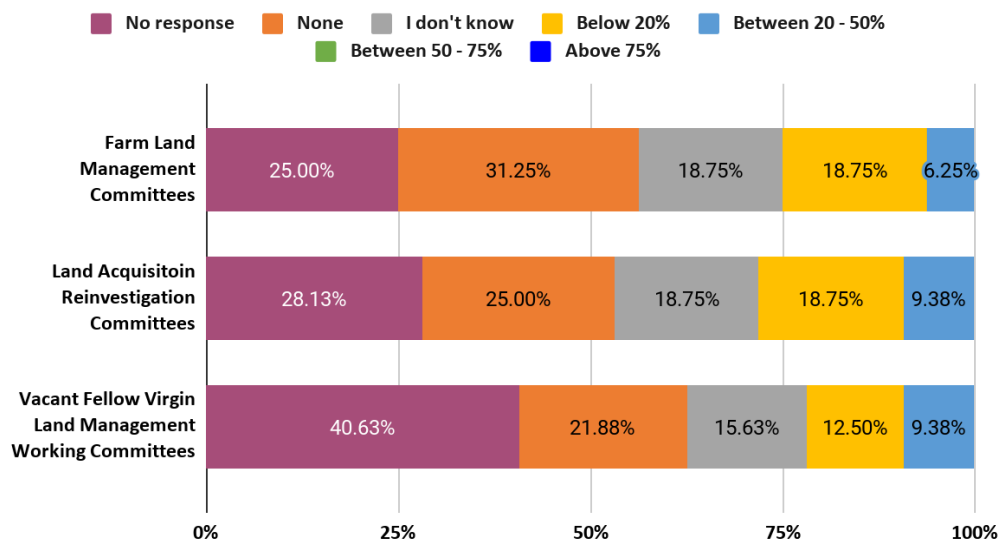
When Electing Representatives:

This will be the most complex process. The government will need to clearly articulate the criteria for who can be a candidate, who is eligible to be a voter, and what election process will be used. It is critical that all three of these elements are transparent and clear for all to see.

Before the election of representatives from a given area, the following six factors should be taken into account: 1) Does the candidate have a genuine passion to serve as a representative? 2) Is the candidate an active individual with experiences in the field? 3) Does the candidate have a basic understanding of the law and system? 4) Does the candidate have a strong desire and willingness to stand for justice? 5) gender equity and social inclusion 6) recommendations from MPs and others.

Currently it seems the gender balance of the committees is quite poor with most committees having very few women on them and a large number with zero women. This fact should be taken into account when electing or selecting representatives.

What is the percentage of women participation in your committee?



B. Increasing Clarity on Roles and Responsibilities of the Representative.

Currently there are no specific terms of reference or descriptions for the roles, duties, and obligations of the representatives within the committee. The roles and responsibilities of representatives should be centrally drafted and sent for consultation with committee representatives as it would be of enormous benefit. First, by clarifying the role of the representatives it would resolve difficult issues such as access to information and roles on field visits. Second, it would allow the representatives to fully play their role without having to push for space or upset other committee members who are unsure what role representatives should play or what information they need to access. Third, it would allow the wider public to understand what they do, which would increase their legitimacy. Fourth, it will allow the government to produce materials and training to provide the skills

and knowledge the representatives need to fulfill their roles. Fifth, it should open the conversation about any support in the form of stipends that ought to be provided to cover transportation or photocopying expenses, which the representatives may incur. Lastly, it would help in identifying the experience and skills required that new representatives may need.

C. Providing Adequate Support and Training to Representatives.

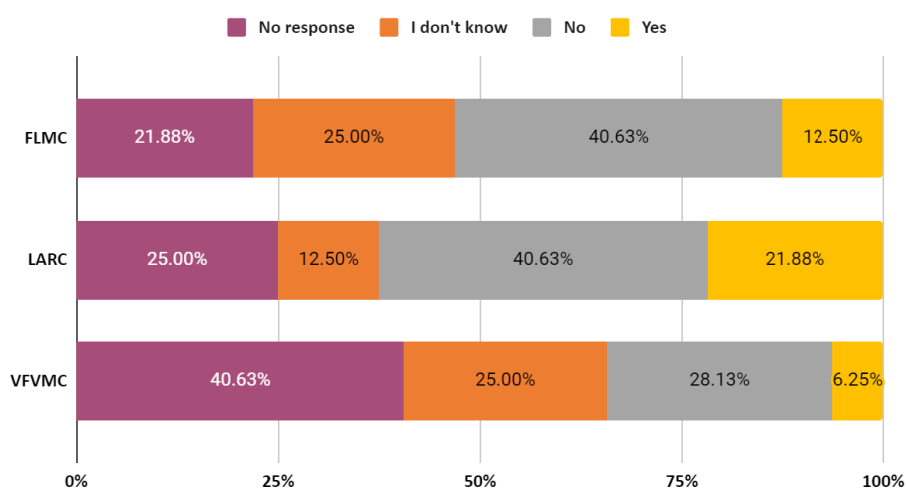
The skills and knowledge of representatives varies highly. In the case that the representatives are not qualified and lack legal knowledge, they cannot play a meaningful role in their committees. Representatives have numerous roles to play on the committees and need a corresponding set of skills and knowledge. The more precisely their roles can be defined, the better (see B. above). However, it is critical that the government provides training and support materials to ensure the representatives have the skills and knowledge they need to adequately perform their duties on the committees. This will require a dedicated budget line for the committees.

CSO representatives sometimes organize their own workshops and are occasionally invited by the land and statistics department staff to gain further understanding. It would be excellent to create linkages between the committee members from different locations for the representatives to share good practice, exchange alternative approaches and brainstorm ideas to solve common problems. Training needs are greatest at the lower levels such as the village tract level committees. At all levels representatives have to buy their own reference laws and books. Training and meetings related to land should be organized to share and discuss understanding on the guidance and instructions from the highest level.

D. Access to Information for Representatives

If representatives are to play a meaningful role on the committees then they need access to the same information as the members of government that are on the committee. At present this lack of access to information is one of the key barriers preventing representatives from playing a full role in the committees. When asked, very few representatives felt that they have equal access to information. In part this is because government officials often think the information they have access to is in their capacity as officials, not as committee members. Once again, a full and proper terms-of-reference for committee members would help clear up this issue.

Do CSOs have equal access to information as other committee members?



E. Clarifying the Position of the Land Governance Committees and their Relationship to the Government.

It is necessary for the government to clarify the nature of the land governance committees. Are they part of the government or are they independent of the government and instead advisors to the government?

A critical issue that would be cleared up by answering this question is: Where can representatives complain if they see committees are not properly performing their role? For example, it is regrettable but true that in many land grab cases the official in charge of resolving the cases has been directly involved in the original case or appointed by those who have been involved.. Representatives should be made aware that complaint mechanisms are in place to provide reassurance that the representatives will be protected if they use them.

Methodology

This brief relies on qualitative and quantitative research. The majority of the information was gathered through participatory action research with civil society committee representatives. We convened CSO representatives and also some non-representative CSO members from ten different states/regions via serial, virtual meetings and workshops during the Covid19 pandemic period. This was an opportunity for vibrant discussion, debate, and generation of shared recommendations. Interviews with clients of the new committee rounded out perspectives on the functioning of existing mechanisms of, in particular, non-governmental representatives.

The quantitative dataset analyzed for this brief compiled by Namati also used grassroots cases experiences of a network of paralegals. These community paralegals are present in a limited number of townships in each state and division in which Namati works and take on cases as requested by clients. As such, this dataset does not benefit from either full coverage or randomization. It should not be considered comprehensive or representative of all issues related to land rights in Myanmar. Rather, it provides a snapshot of people who are actively trying to make use of Myanmar's laws, and contains qualitative and quantitative information. They are also intimately aware of the qualitative information surrounding the issues in each land mechanism, the community members involved, and the bureaucratic processes.

Acknowledgements

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About Namati

Namati advances social and environmental justice by building a movement of people who know, use, and shape the law.

Namati works in partnership with community paralegals in six countries. The paralegals support their communities to protect common lands, enforce environmental law, and secure basic rights to healthcare and citizenship.

Globally, Namati convenes the Legal Empowerment Network, more than 2,200 groups from 160 countries who are learning from one another and collaborating on common challenges. This community successfully advocated for the incorporation of justice into the United Nations' 2030 Sustainable Development Goals.

Namati established a program and office in Myanmar in early 2013, with an exclusive focus on land rights (registration, reclassification, and land grabs). Since then, the Myanmar Program has grown to a network of 45 paralegals in six States/Regions. Our current partners are: Civil and Political Rights Campaign Group, Thanlwin Thitsar and Green Peasant Institute.

