



**Kayah Earthrights Action Network (KEAN)
Analysis Paper**

**Toward a future land governance system
(Section II)**

September 2020

Now is the time to question the current national land law drafting process whether and how it ensures federal land governance or how it secures the rights to land of indigenous peoples, peasants and working peoples.

Toward a future land governance system: Section II

Since 2012, Land reforms ensued along with political transition under the new government administration in Myanmar. Some significant reforms included the enactment of new land sector related laws and regulations as well as the annulment of old laws. But the new legislations received criticisms and protests for failing to recognize and protect the land rights of indigenous peoples, farmers, peasants, and land-dependent working people, on top of its impracticality on the ground. Although the National Land Use Policy (NLUP) was passed in 2016, the level of acceptance varies. The drafting process of NLUP faced widespread protest from the people ranging from the land-dependent working people, peasants, indigenous peoples to land rights advocates and the technical experts at different levels, from the grassroots up to the union level, for not being a transparent process and its shortcomings in protecting the right to land. However, as the NLUP has been approved in January 2016 and one of the objectives of the policy is to enact a new national land law, therefore, under its direction, National Land Use Council has formed working committees, sub-groups and supporting groups, and started to organize meetings since 2018. By 2020, the process for drafting a new national land law appears to have gained more momentum.

Therefore, it has become critical to monitor the formulation process how the government will implement the established workplans and objectives while questioning the drafting process of the National Land Law. Discussions and decision making around land is not only about land issue but also directly linked to politics, national reconciliation and peace, and building a federal democratic union. Hence, land issue is included as one of the sectors being discussed in the national peace process. Fundamentally, it has become crucial to question first if the land ownership and management rights of the land-dependent working people, peasants, workers and indigenous people would be protected in the new law, and how the law would benefit and provide security for them. From there, another question would be how the new national land law would support the federal land management and what kind of approaches are to be taken to materialize it. Then, how the national land law will support and have coherence with the national peace and reconciliation process and the building of federal democratic union needs to be further explored. Hence, review needs to be done regarding to the approaches taken towards formulation of the National Land Law in terms of their status, the stakeholders directly involved, and the procedures.

Initial steps of the National Land Use Council and Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management

Visions and objectives of National Land Law development include the aspiration towards a future federal union, and to sustainably promote transparency, justice, equality, sustainable development, peace, land rights, socio-economic and food security. Additionally, it is to support the systematic implementation of Myanmar Sustainable Development Plan (MSDP), Myanmar Climate Change Policy, Federal & Peace – Union Peace Accord, conflict resolution, land tenure and security, sustainable development goals, and compliance with other international standards such as (Crisis/ Conflict, Land Tenure & Security, Sustainable Development Goals- SDG, International Compliance).

Article 77 (a) of National Land Use Policy ratified in January, 2016, states that “A new National Land Law shall be drafted and enacted, using this National Land Use Policy as a guide for the harmonization of all existing laws relating to land in the country”. To implement the policy, a National Land Use Council was established with a decree no. 15/2018 from the Union Government on January 17, 2018 and assigned Vice President U Henry Van Thio as Chair of the Council. The council has since convened bi-yearly for five times. As part of the workplans of National Land Law formulation, the council has organized meetings to develop Myanmar national mapping system, and with other respective departments to identify prioritized plans. By late 2018, state/region level national land use committees were formed - in some areas, up to the level of district and township.

On January 27, 2020, National Land Use Council signed a Record of Discussion (RoD) for collaboration with the European Union (EU) and Swiss Agency for Development Cooperation (SCC) to collaborate on the activities to be implemented by the National Land Use Council. The RoD states that EU will provide

financial assistance of approximately 5 million Euro for 4 years for “Promoting Integrated Land Use Planning and Management in Myanmar” project through Food and Agriculture – FAO, in order to contribute towards land sector reform.

The National Land Use Council, in order for the development of National Land Law making process through the establishment of working committees and work plans, formed the Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management with the decree no. 3/2019 on August 1, 2019. The committee organized two workshops on December 19-20, 2019 and January 29-20, 2020 in accordance with decisions from the first working committee meeting held on October 2, 2019. The workplans from the workshops were approved during the 2nd meeting of the Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management which was held on July 17, 2020. Announcement of the Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management on August 17, 2020 called for suggestions and feedback on the draft workplan of the National Land Law formulation process with the deadline of September 15, 2020.

According to the draft workplan of National Land Law formulation process, the law formulation process will begin in mid-2020 and to be completed in 2022. Meeting on workplan of National Land Law formulation process identifies 25 points and three most crucial points are:

- 1) To share the process for drafting the National Land Law with the public and conduct public consultations
- 2) To make preparations to draft the National Land Law
- 3) To draft the National Land Law

To implement the workplan, the working committee has a mandate to form subgroups consisting of supporting groups, technical assistance groups and external experts, and other stakeholders, and to assign their roles and responsibilities. Officials from the respective government departments were selected as chairs or members or secretaries based on the title of the sub-groups, while civil society representatives are invited to participate. By late 2020, sub-groups started to function. Seven sub-groups have been set up which included:

- 1) A sub-group on harmonizing laws, corruption eradication, rule of law, steps for land management organization structure, and national-level collaboration
- 2) A sub-group on land types and land classification, land information portal, land use plan/project, zoning and mapping, urban land use, and management related issue
- 3) A sub-group on rights, land ownership (tenure), land confiscation, compensation, forced relocation, resolution of land-related conflict, return of land to original owner or land substitution and squatter issues
- 4) A sub-group on indigenous peoples and customary land rights
- 5) A sub-group on immovable property (land) tax, and other taxes
- 6) A sub-group on budget, donor relation, coordination with Non-governmental organizations
- 7) A sub-group on public communication and online portal system

Review on Myanmar’s land reform to date

Although both USDP-led administration in 2012 and the new NLD-led administration in 2015 has embarked on land reforms along with political transition process, neither has yet made any significant changes or success. The new land-related laws, regulations and policies appear to protect land ownership of the elite and legitimize their land claim obtained through land grabbing, rather than to protect right to land of the land-dependent working people, peasants, workers and the indigenous peoples. As a result, across the country, ancestral and customary lands of the local people are being confiscated, especially that of the indigenous peoples. They are being incriminated and imprisoned, and suffered from loss of their land. Many see their livelihoods destroyed, and their socio-economic status damaged. Despite some land reforms carried out during the early days of the new Government administration in 2015, no significant change has happened.

On the other hand, land reforms issues have been discussed at the national level political dialogues. During the second gathering of 21st Century Panglong conference held in May, 2017 and the third gathering of 21st Century Panglong conference held in 2018, 51 principles including 12 principles on land and natural resource management as Part I and Part II of the Union Accord were agreed and signed. Although the parliament has approved the 51 principles, the actual implementation is yet to take place. However, those 12 principles on land and environment agreed at the 21st Century Panglong conference are still not strong agreements in line with federal land management especially because they did not include the right to land ownership and management of the indigenous peoples, but rather intended to implement the agreed principles in line with the existing laws. Moreover, concepts relating to federal land management are missing in the agreement. Most importantly, it did not include how to solve the issues of land confiscation by the military and right to land of the internally displaced people due to civil wars. As a result, land reform process through the peace process has not made significant progress on federal land management but only at the level of agreement which is to conform with the existing laws, procedures and policies.

Harmony between the 21st Century Panglong conference and implementation of National Land Law formulation process

The 4th Session of the Union Peace Conference - 21st Century Panglong conference was held in August, 2020, and brought together representatives from the government and the ethnic armed organizations that have signed National Ceasefire Agreement (NCA). During the conference, part III of the Union Accord was endorsed together, and included 20 points of the agreement and work plans and implementations in the post-2020. In general, the plan to implement 51 principles agreed at 21st Century Panglong conference, were mentioned in the part III, agreement 1, and the stage-by-stage work programmes and step-by-step in the post-2020 were mentioned in agreement 2, and fundamental principles to establish a Union based on democracy and federal system in agreement 3. Meanwhile, workplan spearheaded by the National Land Use Council to formulate National Land Law becomes more concrete by the time the 21st Panglong conference was held in mid-2020.

According to the workplan of the draft National Land Law formulation process, implementation will begin in mid-2020. Therefore, there should be a review on how transparent and inclusive the process has been and will be; the representation of those participating and to what extent they can participate; autonomy and justice; if there is sufficient time given; and how Free, Prior and Informed Consent from the local communities, local groups and organizations would be obtained. There should be a review on whether the members have any liberty to make decisions or express their views/positions in the process to develop a national land law.

In accordance with the National Land Use Policy approved in January, 2016, National Land Use Council was established with decree no. 15/2018 on January 17, 2018. National Land Use Council consists of 15 members. The Vice President (2) chairs the council and the Union Minister of Ministry of Natural Resource and Environment Conservation serves as the secretary. According to the National Land Law draft making workplan, the draft prepared by the supporting groups and the sub-groups should be submitted to the National Land Use Council through the work committee and the National Land Use Council is responsible for reviewing the law draft and to proceed with the next steps. Most of the members of the council are high level officials from the respective Union Ministries. Therefore, it is critical to monitor their capability, political will and the approach to take ensure that **the national land law reflects and protects federal land management system, or the right to land of the indigenous people and the land-dependent working class people.**

National Land Use Council is also responsible to set up state/region and pyidaungsu (Naypyitaw council) level land use committees, and they did accordingly, starting from late 2018. Kayah (Karenni) State land use committee was established in October, 2018 and it was also directed to establish one at the district level. The chief minister of Kayah is the chair of state land use committee while the director from State Forestry Department is the secretary. The committee is comprised of 22 layers with 27 members. The 17 layers of the committee consists of 17 officials from the respective ministry departments, and the

remaining 5 layers have 10 representatives - 4 from CSOs, 2 farmers, 2 local ethnic people, and 2 community leaders. Therefore, the current composition is a clear example of how local people are not being fairly represented in the committee because majority of the members, who are government representatives, will override the votes in case of making important decision for the local people. Hence, any proposal to achieve **federal land management system or security of land rights of the indigenous people or land rights of the land-dependent working-class people and peasants** will definitely fail to go forward. Kayah State Land Use Committee have held five meetings so far, and it has been over one year since the last meeting, meaning the committee operation is non-functional.

Furthermore, there should be a review on the ‘Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management’, which was established with the decree no.3/2019 on August 1, 2019. In addition, composition and representation in sub-groups and supporting groups formed by the Work Committee should be reviewed based on whether it has been transparent, and their ability to make free and just decisions. Especially it is crucial how they can contribute towards fostering **federal land management system or security of land rights of the indigenous people or land rights of the land-dependent working-class people and peasants**.

With the leadership of the Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management, sub-groups have been implementing workplans to formulate a draft National Land Law; their undertakings should fully collaborate with stakeholders from other respective sectors to ensure a **federal land management system or security of land rights of the indigenous people or land rights of the land-dependent working-class people and peasants**. Otherwise, negative consequences deriving from the process could become a roadblock on the pathway towards building national peace and reconciliation, and a federal democratic union. Approaches to foster a future **federal land management system or security of land rights of the indigenous people or land rights of the land-dependent working-class people and peasants** should be prioritized.

Identifying alternative channels or going beyond the current framework

There should be a review on the implementation process of the draft work plan of the Work Committee on Drafting the National Land Law and Harmonization of Laws Related with Land Management, formed by the National Land Use Council to analyze how much they have linkages or deviate from the future land management system or a federal land management system development. Organizations working on federal land issues and land rights, and the indigenous peoples have been striving to develop a federal land management system for a very long time.

It is necessary to have a strong land policy to foster land reforms; which is why individuals, organizations, associations from various sectors across the country provided comments/feedback to the National land use policy which was approved in January, 2016, in multiple forms as the land right activists, organizations, networks, individuals and experts collaborated during the process. However, acceptance of the policy varies until today, especially if we look at the policy from the lens of the security of land rights of the indigenous people or the land-dependent working class people and peasants which are not strongly guaranteed.

National land use policy, passed in January 2016, is the first policy directly related to land; the policy states that a national land law shall be enacted. Therefore, National Land Use Council started working to formulate a national land law starting from 2018 and they started to inform the public regarding the draft National Land Law formulation process by mid-2020. Formation of sub-groups and planned activities shall be implemented with timeline according to the draft workplan of the process. The draft workplan was made publicly available on August 17, 2020; and all suggestions/feedback shall be submitted by September 15, 2020. Therefore, the process would go forward as planned.

Thus, those who are working on fostering a federal land management system must continue fighting for the development of a new Federal Land Law. To achieve our original goal, we should seek for alternative channels as soon as possible, not only following the current mechanism. It would be a risk to assume that

current draft workplan and mechanism will lead us to attaining our ultimate goal gradually. Current structure requires sub-groups and supporting groups, which were established to formulate a draft national land law and to submit any suggested changes to National Land Use Council; on that account, the council is pivotal in ratifying the draft law. Legislation will then follow. There is no way of knowing how much autonomy the council has or how transparent or just their conduct is. On top of that, the council is highly centralized. Should we follow and participate in the current draft land law formulation process, we might be able to make our voices heard, but could not be involved in decision making. Current composition of sub-groups, supporting groups and the Work Committee for National Land Law formulation and Harmonizing Land Management Related Laws is a proof for that and our aspirations for a federal land management system is still far-fetched.

Thus, peoples struggling to foster a federal land management system must increasingly seek for alternative channels in line with our original visions and objectives, without giving in to the formal mechanism. The reason is that visions and objectives of the draft national law formulation describe that the drafting shall be based on 21st Century Panglong accord; nevertheless, chances to achieve a federal land management system is small since the accord does not include a federal land management system. Moreover, although Hluttaw approved Union Peace Accord agreed on 21st Century Panglong conference, they cannot go beyond the 2008 constitution, and the failed attempt to amend the constitution is a case in point. As long as 2008 constitution, which is a barrier to the process for building a federal democratic union, prevails over others legal instruments, genuine political reforms will still be unlikely and a federal land management system could never emerge from 2008 constitution. Thus, we would like to recommend to collaborate among each other under different strategies and keep on moving forward to realize a new federal land management system.