



Connected and changing: An open data web platform to track land conflict in Myanmar

Catriona Knapman and Wai Wai Lwin



Legal tools for citizen empowerment

Around the world, citizens' groups are taking action to change the way investment in natural resources is happening and to protect rights and the environment for a fairer and more sustainable world. IIED's Legal Tools for Citizen Empowerment initiative develops analysis, tests approaches, documents lessons and shares tools and tactics amongst practitioners (www.iied.org/legal-tools).

The Legal Tools for Citizen Empowerment series provides an avenue for practitioners to share lessons from their innovative approaches to claim rights. This ranges from grassroots action and engaging in legal reform, to mobilising international human rights bodies and making use of grievance mechanisms, through to scrutinising international investment treaties, contracts and arbitration.

This paper is one of a number of reports by practitioners on their lessons from such approaches. Other reports can be downloaded from www.iied.org/pubs and include:

- Pillars of the community: how trained volunteers defend land rights in Tanzania. 2016. Massay, G.
- Genre et foncier : l'expérience des consultations juridiques gratuites au Sénégal. 2016. Kébé Diouf, K. In French only.
- Mainstreaming gender in Tanzania's local land governance. 2016. Kisambu, N.
- Community-based advocacy: Lessons from a natural gas project in Mozambique. 2015. Salomão, A.
- Bringing community perspectives to investor-state arbitration: The Pac Rim case. 2015. Orellana, M. *et al.*
- Advocacy on investment treaty negotiations: Lessons from Malaysian civil society. 2015. Abdul Aziz, F.
- Democratising international investment law: Recent trends and lessons from experience. 2015. Cotula, L.

In addition, under our Land, Investment and Rights series, we generate evidence around changing pressures on land, multiple investment models, applicable legal frameworks and ways for people to claim rights.

Reports in the Land, Investment and Rights series can be downloaded from www.iied.org/pubs. Recent publications include:

- Strengthening women's voices in the context of agricultural investments: Lessons from Kenya. 2016. Chan, M.-K. and Mbogoh, A.
- Strengthening women's voices in the context of agricultural investments: Lessons from Tanzania. 2016. Chan, M.-K. *et al.*
- Land investments, accountability and the law: Lessons from West Africa. 2016. Cotula, L. and Jokubauskaite, G. Also available in French.
- Land investments, accountability and the law: Lessons from Cameroon. 2016. Kenfack, P.-E., Nguiffo, S., Nkuintchua, T. Also available in French.
- Land investments, accountability and the law: Lessons from Ghana. 2016. Yeboah, E. and Kakraba-Ampeh, M. Also available in French.
- Land investments, accountability and the law: Lessons from Senegal. 2016. Fall, M. and Ngaido, M. Also available in French.

To contact IIED regarding these publications please email legaltools@iied.org

Connected and changing: An open data web platform to track land conflict in Myanmar

Catriona Knapman and Wai Wai Lwin

About the author

Catriona Knapman is a research consultant based in Myanmar. She works on a variety of topics related to changing dynamics of land governance in Myanmar and internationally.

Wai Wai Lwin is Executive Director of Open Data Myanmar (ODM), an organisation working to develop transparent data and to resolve land conflicts in Myanmar. Prior to founding ODM, she served as Executive Director of local NGO Badei Dha Moe, also working on land rights issues, especially in areas with heavy foreign direct investment.

Acknowledgment

The authors wish to thank Emily Polack at IIED for her feedback during the development of this paper and Céline Allaverdian at GRET/MRLG in Yangon for her comments as peer reviewer. We would also like to thank U Han Shin Win, a local lawyer working with ODM, for sharing many examples and experience from the field.



This report was funded by UK aid from the Department for International Development, but the views expressed do not necessarily represent those of the UK government.

First published by the International Institute for Environment and Development (UK) in 2016
Copyright © International Institute for Environment and Development (IIED)
All rights reserved

ISBN: 978-1-78431-445-3
IIED order no.: 17592IIED

For copies of this publication, please contact IIED:
International Institute for Environment and Development
80-86 Gray's Inn Road
London WC1X 8NH
United Kingdom

Email: newbooks@iied.org
Twitter: @iied
Facebook: www.facebook.com/thelIIED
Download more publications at www.iied.org/pubs

A catalogue record for this book is available from the British Library.

Citation: Knapman, C. and Wai Wai, L., Connected and changing: An open data web platform to track land conflict in Myanmar. IIED, London.
Cover photo: Farm landscape in Chin State, Myanmar. © Duncan Macqueen
Typesetting: Judith Fisher, www.regent-typesetting.co.uk

Contents

Acronyms	ii
Abstract.....	iii
1. Background	1
2. Open Data Myanmar: key features	3
3. Achievements and challenges	5
4. Refining and upscaling the tool.....	7
5. Top tips for replication	8

Acronyms

MIMU	Myanmar Information Management Unit
MPs	Members of Parliament
NLD	National League for Democracy
ODM	Open Data Myanmar
SLRD/DALMS	Settlement and Land Record Department/Department of Agriculture and Land Management Services (name changed to DALMS in 2015)

Abstract

Conflict over land is a key concern in Myanmar. Land governance bears the mark of past injustices, and as the country opens up to new investments in its farmland and natural resources, changes are putting the livelihoods and land of smallholder farmers at risk.

Open Data Myanmar (ODM) (www.opendatamyanmar.com) is a web-based database providing information on land disputes from across the country. Focusing on conflicts between individuals and companies or government actors, its aim is to present accurate credible data in a way that can be used by civil society, Members of Parliament and policy makers in the development of new policies and laws. The website, based on data gathered from across two regions so far, was launched in 2015, so it is still relatively new. Over time it hopes to collect data from across the 14 states and regions in Myanmar, to show patterns in land grabbing geographically. It also aims to build in graphs, maps and other visual tools to help communicate the nature and effects of land grabbing across the country. Through a pool of pro bono lawyers, ODM also provides legal literacy training and legal advice and representation to the affected communities. ODM also seeks to resolve disputes where possible through mediation. This paper shares lessons on the first stage of the ODM project, including the challenges of developing a web-based platform in a country with limited telecommunications infrastructure.

1. Background

Land disputes are a key concern for rural development in Myanmar, despite the recent political changes. Land governance in Myanmar remains steeped in the problems inherited from previous administrations. These include disputes driven by land grabs and large scale land acquisitions by military, companies and the state. Since 2010, political change is also bringing more business investment to Myanmar, due to both interest from foreign investors and government policies which encourage economic growth through large scale business.

Historic power dynamics continue to play out across the country and need to be understood when addressing contemporary land conflicts (Woods, 2014). Three distinct periods have shaped land alienation in the country: notably land grabs during the military era from 1962 to 2011; land alienated since the beginning of the transition to democracy in 2011 and land which is vulnerable to current or future confiscation (Displacement Solutions, 2015). Types of land confiscation currently taking place in rural Myanmar, identified in a study by the NGO coalition 'Land Core Group', include: the establishment of agro-industrial plantations by private entities, state-sponsored agriculture projects, large industrial development projects, military settlements, large public infrastructure projects, urban expansion and land speculation by individuals (Land Core Group, 2012). The result is that land conflicts between state and/or private investors and local farming communities currently mark much of rural Myanmar, and the need for reform is widely recognised.

According to the Myanmar Constitution, all land is owned by the government. However in 2012 two laws were created with new provisions on use and transfer rights for certain classifications of land. Of particular relevance is the 2012 Farmland Law which provides for use rights to be allocated on land classified as farmland. This allows farmers rights to sell, bequeath and mortgage land. Also of relevance is the 2012 Vacant, Fallow, Virgin Land Law which provides for the allocation of land to companies and farmers for commercial agriculture.¹ The latter law is seen by many civil society groups as a threat to smallholder's land access. Much of these uncertainties are due to the fact that cadastral maps in current use by government departments are outdated and often do not reflect the reality on the ground. The large number of informal land transactions and acquisitions, and the lack of recognition of customary land practices by central government² contribute to this dynamic. As such, land can be officially classified as vacant, fallow or virgin when it is actually under cultivation by smallholder farmers. This is made more complex by many of the non-government controlled areas having their own systems

1. This law is linked to previous Wasteland Instructions and includes similar provisions.

2. The new National Land Use Policy 2016 provides for the recognition of customary tenure. There have been recommendations to reform the policy by new NLD administration (Htoo 2016). However it is still currently unclear how it will be implemented in practice.

of land governance. The peace process which is currently ongoing will add clarity to their legal status, but this requires time and relies on political willingness to engage in these complex issues.

In the past, Myanmar citizens have been unable to object to land confiscation or to speak out about the impact this was having on their livelihoods. A climate of mistrust also meant that organisations and institutions were often unwilling to share information on land deals or key land management data. While this trend is beginning to change, the implications are still felt. Notably there is little sharing of data between government departments which leads to confusion around land management and a notable lack of transparency.

In November 2015, democratic elections took place, handing power from the USDP (Union Solidarity and Development Party) civilian government (linked to the military) to a new National League for Democracy (NLD) government. The new Parliament took up office in April 2016. The proposed policies of the new NLD government for land administration are not yet clear. Legal and policy change has moved very quickly during the past five years and is expected to go through further changes under the NLD administration, including potentially to land and investment law and policy frameworks.

It was against this backdrop that in 2015 Open Data Myanmar (ODM), a national CSO, was established to develop an online source of unbiased, verified data on land conflicts in a searchable format. ODM also seeks to support policy makers, NGOs and donors to understand local land conflict dynamics. Over time, ODM hopes to build a picture of land conflicts across Myanmar, and by developing more accurate data, demonstrate the extent to which, and how, current land use is in conflict with proposed development projects. It aims to feed information from affected communities into national level decision making on land. It currently displays data from 800 cases, affecting 4000 people in Taninthayri and Ayerwaddy Divisions. ODM also engages directly in conflict resolution, and provides legal empowerment support to affected communities, including pro bono legal training, representation and mediation.

2. Open Data Myanmar: key features

Data Gathering: ODM identifies land conflicts in its target regions based on a number of secondary sources, notably reports from The Land Allotment and Utilisation Scrutiny Committee³ and from lawyers and local NGOs. ODM then visits the communities where conflicts have been reported to further investigate and compile data on the conflict and its impacts. Data is collected by ODM staff who are usually either lawyers, activists or researchers with a good knowledge of local land dynamics. In each conflict area a survey is conducted to gather quantitative data on land, gender, the history of land occupation and confiscation, and the socioeconomic situation of the affected communities including details of migration, health, and education. The data is disaggregated by sex. Collecting socioeconomic data alongside land data enables ODM to demonstrate any links between cases of land dispute and other social factors.

Compiling and analysing this data aims to build an accurate picture of how many people have been affected by land grabbing locally and nationally and the type of businesses that have taken land. Over time, it will also show other emerging trends in relation to the geographical focus of investment and the type and practices of investors in Myanmar.

Verification and credibility: Once information has been collected at field level, where possible it is then verified at local government offices and with the Settlement and Land Record Department/Department of Agricultural Land Management. It is then entered into the database and becomes available online. The data displayed provides case details as well as displaying the information visually through maps. ODM have chosen to limit case details to key facts because credibility with target audiences is critical. Future articles written by other organisations may also be included. For now, ODM wants to focus on collecting facts with strong evidence - not story-based information. This is particularly important in Myanmar, due to the history of conflict in the country, as well as the current transition, which has created a context in which people still mistrust government institutions.

Outreach and stakeholder engagement: ODM aims to use the website to contribute to changing policy and law. Prior to the 2015 elections, ODM has been carrying out awareness raising activities with Members of Parliament (MPs), investors and other actors about the site. A series of fact sheets have been generated presenting summaries of the information by type of land grab and geographical area and including simple visual aids such as graphs. These

3. The Land Allotment Committee is a Cabinet-level body, established in July 2012. Its remit is to address national land-use policy, land use planning and allocation of land for investment with the objective of creating a better balance between the competing demands for land-use, especially in the context of increased demand as a result of accelerating economic development and investment.

are intended to provide MPs at regional level, lobbyists, activists, political parties, civil society organisations and campaigners with basic information from which to make informed decisions and form well-grounded strategies for reforming land governance. As there has recently been a change in administration in Myanmar, ODM will need to start this process again with new MPs.

Legal aid provision: Where possible ODM provides legal services to those affected by land disputes. The legal aid services have two elements: firstly, an ODM lawyer and a local CSO staff member carry out a legal literacy training with the affected community. The training usually takes place over two days and according to the availability of community members. A diversity of members are usually represented in the trainings. During the training, participants have opportunities to discuss key aspects of law and policy relevant to their case, highlighting strengths and weaknesses of the law and empowering community members by building the knowledge required for engaging with government authorities and other parties. Secondly, ODM offers a free comprehensive legal service to affected community members. The lawyers work pro bono to act on behalf of affected communities, writing letters of complaint to relevant authorities and representing them in mediation and court cases as needed. ODM covers basic costs for the lawyers, such as transport, copying costs, accommodation and per diems but the lawyers receive no payment for their services. They are therefore lawyers with a strong commitment to land governance issues and with the ability to obtain income from other cases or sources (for example, a private family donor). Therefore much of the legal aspect of this work is assured through networks, contacts and personal friendships. In expanding further, ODM sees having a strong network of willing pro bono lawyers as the most essential part of developing their work.

Legal aid work was not originally part of the plan for ODM. However during some of the initial fact finding interventions, it became apparent that through asking questions about land conflict, researchers were creating a space for dialogue between key stakeholders in some of the cases they investigated. ODM saw an opportunity to bring in local lawyers to work on mediation between the communities, authorities and companies in some affected areas, and to encourage peaceful resolution of conflicts through the application of relevant laws. This has worked well and a number of disputes have been successfully settled through mediation. The willingness of the legal team to work pro-bono has enabled legal services to be provided in all data collection sites. It is important to note however that ODM only offer comprehensive legal services where it does not compete with existing legal advisory services sought by the beneficiaries.

3. Achievements and challenges

ODM has had a number of key achievements so far. The database has for the first time brought together data from different sources in the country. Until now this has been challenging due to the severe lack of trust between different stakeholders and very little transparency and sharing of data even between stakeholders of the same type such as CSOs and government departments. The database currently displays data from 800 cases, affecting 4,000 people in Taninthayri and Ayerwaddy Divisions, collected during its first year of operation. The development of a website of this type in Myanmar is also a significant step forward, as five years ago internet access in the country was extremely limited. ODM has also started a process of engagement with different stakeholder groups and this will be further developed as the data collection continues. ODM has received support from a number of civil society organisations including technical support from Land Core Group, Paung Ku and Land In Our Hands have helped publicise the site with their networks across the country. At government level, ODM has received useful written information from the Land Allotment and Utilisation Scrutiny Committee.

ODM has also faced a number of challenges. Firstly, in the current environment in Myanmar it can still be difficult obtaining data from relevant government institutions. SLRD/DALMs at township level have not been forthcoming with the relevant government data on the land conflict cases. ODM found that visiting the township offices with a lawyer helped overcome this as the lawyer was better placed to convince officials of the need to share data such as current land maps of the area, accurate scale Form 105 (for Farmland registration) and land classification information. However, even with a lawyer present, obtaining this data was not always possible. In some cases, ODM measured village boundaries with handheld GPS to obtain digital data as government data is not digital. Nevertheless, this is not counted as official data and when used in court, it is in the judge's hands as to whether they accept this evidence. This has also caused problems for land registration under the Farmland Law. There are few mechanisms through which to verify land access rights and third parties with connections to local authorities have been able to register farmers' land in their name. Also in some cases, companies buy land but do not change title or ownership and allow communities to live there. This is seen as a strategy to monopolise land, but makes identifying land owners very difficult as the reality on the ground does not always match the data in government department records.

This has been an obstacle as it has meant that it is not always possible to have government evidence to back up the desk-based research and community surveys. This also links to wider issues of land data transparency across relevant government departments, which is one of the issues that ODM hopes to overcome. ODM has decided to still make use of the data that cannot be verified by government sources

and considers it credible if it can be verified by a minimum of two different sources. ODM has also decided to accept community stories on face value, checking information where possible. This includes triangulation with court reports and other litigation documents, parliamentary committee reports as well as with lawyers.

In some cases, it was possible to cross-check data with information from township government departments, but not in every case.

As internet infrastructure in Myanmar is still in the early stages of development, ODM has faced some challenges ensuring users can access a web-based platform. ODM plans to counter this in the future by offering an email update service and face to face events such as seminars as well as circulating information on social media. A recent article shows that Facebook is becoming widely used in Myanmar, especially amongst farmers who use it as a source of information and news (Mod, 2016). ODM also faced some difficulties in working with a web developer, notably in explaining concepts and ensuring that the desired functions were built as required. In Myanmar some types of software were not available, which made developing the project more complicated than it might have been in other countries.

In addition, detailed information from Google Map is not available in Myanmar and as such it is difficult to have an in-depth digital picture of the terrain at present. Although Myanmar Information Management Unit (MIMU) has geolocation coding, its coordinates are not very detailed, so when villages have boundaries close to each other it can be difficult to distinguish between villages. This affects the detail that can be provided on the ODM website. In order to further develop visuals and graphics, more work is needed. As a local NGO, ODM is further challenged by the high costs of web and platform development and securing sufficient funding to cover these.

A final challenge relates to working with communities. ODM noted that there was often a lot of pressure and expectations from communities that they would win back land immediately and also in some cases suspicions about ODM's relations to companies or other actors. ODM found it important to be clear about what can be achieved through this process. In arbitration processes, communities have not always been satisfied with a compromise and often want extra benefits, which means finding a solution can be difficult to negotiate between parties.

More widely the project has faced challenges relating to the complexity of land disputes in Myanmar. Land disputes are sensitive issues for companies and government alike and working on these issues requires care.

Despite these challenges, given the country's recent past of being isolated from the rest of the world, using a web-based platform is particularly important for ODM to ensure a connection with an audience both inside and outside of the country.

4. Refining and upscaling the tool

ODM is still in its initial phases of implementation and has a number of key plans moving forward. In 2016, it plans to develop more visual graphics of the currently available data including maps and graphs to help communicate the information collated to target audiences. The use of colour coding will help reflect the intensity of land grabbing by geographic regions. It will also display both ongoing and finished cases to present current and historic information on land disputes. ODM is also undertaking an analysis of cases from different thematic entry points for example, illegal processes, and will develop data reports on these. This will also enable NGOs and others to use the information to understand more about different methods for addressing land conflicts, including contextual factors and particular local dynamics which shape outcomes.

In 2016, the website has presented data on conflicts in Kachin, Mon and more of Ayerwaddy region. In the longer term, ODM plans to investigate and present patterns of land grabs right across Myanmar including data on conflict resolution. These activities will provide important insights to stakeholders on the way the rule of law is operating in the country, including highlighting the differences between legal and illegal land confiscation. ODM also intends to present the patterns of effects of land grabbing on vulnerable groups and to include a deeper gender analysis as part of the work.

ODM is also currently working on implementing a leadership development initiative, working with potential community leaders identified during the legal literacy work, to build a network of active and skilled local champions on land rights.

As the political changes in Myanmar are happening quickly, there will be a need to pay attention to systems introduced by the new government. The teams will continue to monitor previously documented cases, largely through networks, however they are also developing a mobile application which will allow farmers to send case updates. This is facilitated by the extent of mobile phone coverage and ownership in Myanmar – in the past six years internet users have risen from 110,000 in 2010 (or 0.2% of the population) to 11,000,000 in 2016 (or 19.3% of the population) (Internet World Stats, Myanmar n.d.). Data sent through the application will then need to be verified through field visits.

5. Top tips for replication

ODM suggest that building a relationship with key contacts in the communities where data is collected has been of primary importance in developing the tool, as this has facilitated access to accurate household level data and local government township data. These contacts include Village Heads, local activists, local MPs, local members of political parties and other members of affected villages. These relationships facilitate the local level research and mediation work and are important for the development of trust between local communities and initiatives such as ODM over the long term. Working with a lawyer who is an expert in land law who understands and is able to navigate the complexities of the arbitration process is also important.

Secondly, ODM learned a lot from sharing its experiences through informal processes with other individuals and agencies during the development of the database. This allowed other Myanmar and regional NGOs to critique the work and offer recommendations for improvement throughout the design process. This enabled ODM to learn from the experience of others and to succeed in establishing such an initiative in Myanmar, where internet access is still limited and this sort of tool is fairly new.

Finally, ODM believes strongly in an approach in which the needs and interests of the affected communities are centre stage. ODM believes that its primary role is to respond to the needs of these original beneficiaries and keeping these at the centre of its approach is an essential part of their mapping and future plans.

References

- Displacement Solutions (2015) "Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations". See <http://tinyurl.com/ht44y79>
- FSWG (2012a) *13 Case Studies of Land Confiscations in Three Townships of Central Myanmar*. Land Core Group of Food Security Working Group.
- FSWG (2012b) *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law – Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*. Land Core Group of Food Security Working Group. See http://www.forest-trends.org/documents/files/doc_3274.pdf
- Htoo, T. (01 December 2016) "Parliamentary Commission Advises Overhaul of the National Land Use Policy". *Myanmar Times*. See <http://tinyurl.com/zfwfhkz>
- Internet World Stats, Myanmar (n.d.), viewed 24 August 2016, <http://www.internetworldstats.com/asia/mm.htm>.
- Mod, C. (21 January 2016) "The Facebook-Loving Farmers of Myanmar". *The Atlantic*. See <http://tinyurl.com/h3nspab>
- Woods, K. (03 March 2014) "A political anatomy of land grabs". *Myanmar Times*. See <http://tinyurl.com/mzctwbx>

Connected and changing: An open data web platform to track land conflict in Myanmar

Conflict over land is a key concern in Myanmar. Land governance bears the mark of past injustices, and as the country opens up to new investments in its farmland and natural resources, changes are putting the livelihoods and land of smallholder farmers at risk.

Open Data Myanmar (ODM) is a web-based database providing information on land disputes from across the country. Focusing on conflicts between individuals and companies or government actors, its aim is to present accurate credible data in a way that can be used by civil society, Members of Parliament and policy makers in the development of new policies and laws. Through a pool of pro bono lawyers, ODM also provides legal literacy training and legal advice and representation to the affected communities.

This report presents the establishment of ODM, set against the recent political changes that took place in the country. It outlines the key features and activities that form the first stage of the ODM project, reviews the successes achieved and the obstacles encountered so far, including the challenges of developing a web-based platform in a country with limited telecommunications infrastructure. Finally, it shares lessons for future development and tips for successful replication elsewhere.

ISBN: 978-1-78431-445-3

IIED order no.: 17592IIED



Knowledge
Products

Research Report

December 2016

**Law, Land acquisitions
and rights**

Keywords:

Open data, land conflict,
Myanmar, legal empowerment,
lesson sharing

