Contestation & Consultation

The Politics of Myanmar’s Investment Law Reform

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• Turn to politics → more focus on contestation
• Elites with vested interests seen to oppose reforms
• Successful reform includes *limiting access to discussion of reform* to core team
• Contestation seen as problem to overcome
Contestation and Ideas

• Contestation → challenge bad ideas and promote social learning

• In short, why democracies produce “better” policies than autocracies

• Skepticism of consultations in transitioning states

• Public consultations a way to institutionalise contestation
The Republic of the Union of Myanmar

MYANMAR INVESTMENT LAW

Myanmar Investment Law
(2016, Pyidaungsu Hluttaw Law No. 40)
2nd Wanning of Thadingyut, 1378 ME
(18th October, 2016)
Overview of MIL Reform

• Two investment laws in 2014 – foreign and domestic.

• IFC to support Myanmar’s DICA to produce single new law.

• Initial drafts prompted strong criticism on several grounds:
  • Technically a ‘bad’ law (e.g. vague, poorly written, etc.)
  • Emphasis on protecting foreign investors w. little regard for locals
  • Myanmar Investment Commission (MIC) – discretionary powers etc.
  • Dispute settlement mechanism – unprecedented in any country
  • No regard for land rights, conflict, junta legacy…compliance issues - MIL/contracts “prevails over” other laws.

• Civil society (international/local) persuaded IFC/DICA to hold public consultation process.

• Heated discussions – however, prompted significant changes in MIL; passed end of 2016.
Limitations with IFC’s Expertise

1. Ideological bias - belief IL should serve (foreign) investors, free market approach, etc.

2. Lacked understanding of Myanmar context - Myanmar seen as blank slate, land rights, conflict affected regions, military rule legacy, etc.

3. Bias towards other actors - opposition due to ‘protectionist’ tendencies; civil society, politicians lack understanding of investment/econ, etc.
Importance of consultation process

- Biases of external actors
- External actors lack of understanding of (political) context in Myanmar
- Lack of expertise/capacity on investment law by domestic actors
- Speed of reforms in the country
- Lack of debate in Myanmar Parliament
Conclusion

• Reconsidering how political approaches view political contestation and public consultation.

• Public consultations could be especially important role in transitioning/high uncertainty contexts

• Public consultations as a way of institutionalising contestation on reforms

• When consultations important? And how best to organise/design consultations?

• Problem of “Machiavellian” approach to TWP
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Thank you for listening!