

Contestation & Consultation

The Politics of Myanmar's
Investment Law Reform

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TWP and Reform Coalitions

- **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**



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!

