

# Draft Country Strategy - MRLG in Myanmar

September 2016 – March 2018

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## Background of MRLG in Myanmar

Mekong Region Land Governance Project (MRLGp) was introduced to Myanmar in June 2014. In the inception phase of the project, Reform Actors Mapping and Stakeholder Analysis were conducted in order to identify the potential partners and learning alliances for the small holder's tenure in the country. At this time, the stakeholder decided to work mainly on the recognition of customary tenure and conflict transformation. However, only the customary tenure group continued the activities and is entering in the second phase. The conflict transformation group couldn't find a common entry point to start the activities. Furthermore, the second project year was marked by the national elections and government agencies and civil society organizations were difficult to mobilize on this sensitive topic.

In 2016, a new facilitation team has taken the lead on the customary tenure learning and alliance and was exploring the best opportunities to engage stakeholders on the regulation of large scale land acquisitions.

## Policy Context

Since decades, the country's small holders have been affected by governance issues such as abuse of power by military and other powerful individuals, land concessions granting for agro-business, armed conflicts in ethnic areas, and an overlapping and complex legal framework. This has caused significant negative impact on access to land, land tenure security and livelihoods.

In 2012, in line with the country's opening, Myanmar's "land turn" occurred: the government approved the Farm Land Law, as well as the Vacant, Fallow and Virgin Land Management Law. This first law authorized land transactions and also gave way to a very hasty land registration process through the delivery of Land Use Certificates. In addition, the VFV law, in continuation of the VFV instruction of 1991, raised the risks of massive land grabs since non-registered lands considered as vacant despite being used by communities (for permanent or shifting cultivation, grazing, etc..) may be taken by the State for reallocation to business projects.

President Thein Sein's pledged in 2012 for the return of confiscated lands to the original owners. This led to the set-up of a specific parliamentary investigation commission. Cases of land releases multiplied, in the midst of the national elections campaign. However, the commission's findings were very partial and incomplete. Furthermore, the amount of lands which have actually been returned is minimal when compared to massive scale of land confiscations in the past decades. Also, the land reallocations has often been conducted hastily through opaque processes and insufficient data, thus leading to further complaints.

In 2014 and 2015, the government formulated a National Land Use Policy, aiming for it to be the over-arching framework for all future laws related to land. The NLUP was developed through a participatory process that included the consultation of civil society for the first

time in recent Myanmar history. MRLG supported the process through a QDF to organize a pre-consultation within civil society across the country. The initiative was led by LCG and Lokha Ahlin with various CSOs throughout the country.

Although the NLUP has been criticized in being too pro-business by some CSOs on one side, and being too pro-poor by some government and private sector stakeholders on the other, the document represents a major breakthrough with the recognition of customary tenure and land rights of ethnic nationalities. As approximately half of the Myanmar territory is part of “ethnic states” and occupied by ethnic groups who manage their lands and forests under customary rules and arrangements, this is a very important step with strong potential implications for securing ethnic peoples’ rights and national conciliation. However, the formulation of the laws and mechanisms that will effectively recognize customary tenure systems remains a huge challenge.

The newly-elected government who came officially to power in May 2016 has made commitments, for issues such as rule of law, the return of grabbed lands, and halting land allocations. However, the political transition raises many issues. The policy dialogue has slowed down since the new government is still defining their “modus operandi”, their orientations and future activities. Major challenges for government are ahead to improve land governance, amidst growing commercial pressure on natural resources.

The land issues across the regions of Myanmar will require long and continued efforts from all, from farmers themselves, up to senior levels in government and parliament. It also calls upon the need for Myanmar’s currently-divided civil society to identify common interests and form strong alliances.

Two other major issues faced by present government are the return of grabbed lands to original owners, and then to take a position on future large scale land acquisition and ELC granting.

For the first point, the mechanisms and regulations for returning land needs to be developed at all levels. The difficulty lays in a) clarifying the multiple claims on a given piece of land, b) arbitrating in a high diversity of situations and establishing proper compensation mechanisms for farmers who cannot get back their land. This process is highly complex. Its importance is underlined by the fact that more than 20 % of farmers in lowlands are landless ( up to 50 % in some Delta areas), with a resulting enormous need for land for these landless farmers, with discussion going on on additional “land reform” mechanisms.

On the question of LSLA, on one hand, the government is pursuing a policy to attract foreign direct investments, which may imply continuing the granting of large concessions to foreign companies (such Land Concessions are at the moment particularly developed by Chinese and Thai investors), on the other hand, it plans to recognize customary tenure rights. As most LC are located in customary held lands, often in forested areas and in conflict areas (where local populations had to abandon their lands temporarily because of armed conflicts), both aims are largely contradictory.

### **MRLG strategy**

MRLG as a regional project with a small Yangon-based team (composed of the National Facilitator, a Research assistant, and Land Tenure Advisor) is looking at strategic opportunities for engagement to support reform actors who aim to pursue actions collectively towards improved access to land and natural resource tenure.

The team will focus on key priority areas targeting specific influential and beneficiary groups according to the following priority areas:

### **1. Empowerment for recognition of customary tenure**

To address these issues and following the core objectives of MRLG, in Myanmar, MRLG will support civil society to improve coordinated efforts and enhance their capacity to document customary tenure systems and engage in policy dialogue, based on the evidence built. This will contribute in promoting customary tenure, at all levels up to the Mekong region level.

A key activity that is being completed (by October 2016) is the elaboration of a guidebook for community and CSO leaders to be able to support the documentation of customary tenure systems with local communities. It builds on the lessons learnt of a first cycle of case studies done by local youth organisations in different areas of the country.

MRLG is leading this initiative working in close collaboration with FLU, TSYU, 88 generation, KYO, Point, FRDO, LCG, DDA, DRA, KNPP ... The group is open to bring on board new partners who are interested in support the finalization of the guidebook and in using the guidebook to expand its application.. A training of trainers will be developed and implemented in hand with local partners in different regions.

The next steps will be to develop, and scale up a capacity building program at the national level in synergy with other national and local State level organisation and networks,

### **2. Collective action on advocacy on customary land and tenure security issues**

Continued advocacy on the principles of the NLUP and those which are aligned with the VGGTs require further advocacy toward regional and central governments, as well as awareness raising among communities and grass root organisations. It will be critical to improve policy makers' vision on development, the importance of small holder farming and inclusive development. There will be a number of activities to contribute towards this action:

- There will be public consultation by the government on the Land Law that is being drafted, and given the success of the pre-consultation exercise for the NLUP, a similar process will be supported once again by MRLG.
- The regional L&A project on customary tenure with FAO, Asia Indigenous Peoples Pact (AIPP) and Oxfam and aims at strengthening recognition of customary land tenure in Cambodia, Laos, Vietnam and Myanmar. It has already conducted country-level studies in each of the 4 CLMV countries, including Myanmar. Next steps are: the regional synthesis, the road map, regional multi-stakeholders workshop, engaging with national and regional platforms for advocacy. The Myanmar report can serve as a starting point to discuss issues and strategy with the interested organizations and government

- In the plight towards improved customary tenure recognition, MRLG will be funding a two-year intervention (Innovation Fund project) to be led by the Department of Forestry in collaboration with LCG to strengthen community access to tenure in Forest areas through pilot activities. The project will start in December 2016 with a sharing and learning workshop among different communal customary forest initiatives, in particular those supported by USAID.

Focal points for each region are being selected to plan a collective strategy for advocacy working to train and inform at communities and advocate upwards to Regional and National government and parliament members.

Focal points include: TRIPNet, DRA, FRDO, FLU.

LCG, USAID and the DOF will be important partners at the policy dialogue process. The aim of this dialogue will be to develop appropriate pilot mechanisms and regulations for the recognition of customary tenure by the administrative and legal systems.

### **3. Advocacy for a moratorium on land concessions for agribusiness**

MRLG “RESEARCH-BASED POLICY DIALOGUE ON FDI IN AGRICULTURE AND LARGE-SCALE LAND-BASED INVESTMENTS” initiative aims at investigating the impacts and the future of Large-Scale Land Acquisition and Foreign Direct Investment in terms of economic development, rural employment, poverty reduction and income generation and social impact, especially on family farmers and local communities. The project will facilitate a dialogue between policy-makers and researchers to create conditions of a constructive exchange between governments and research institutions with the aim to reconsider policy and investment conditions in the Mekong Region by CLMV governments for the mutual benefit of investors, government and communities. Now, research has started in the countries. In Myanmar, the research is being led by U San Thein. The outcomes will be the discussions notes for country and regional level, the presentation of findings at the regional land forum planned in may 2016

The findings clearly point towards ELC severely impacting smallholder farmers. This information will be used for evidence towards advocacy to promote a moratorium on land concessions, until proper regulations and mechanisms for customary tenure recognition are not set in place. This issue has also been identified as being as key interest of different CSOS. A focal group key to this activity will be TRIPNet and DRA, as well as TNI.

### **4 Return of grabbed lands and conflict transformation**

At the moment, the entry point for MRLG to engage in this topic has not yet completely defined. Yet, given the expected challenges in setting up and implementing an effective and transparent mechanism for return of lands to the original owners, there will be many needs to support the definition of the mechanism and the monitoring of the processes. This should include technical support to government and to civil society.

There are a few existing MRLG supported initiatives working on various entry points and strategies for improving conflict transformation approaches:

- LCG, Namati GPI and Share Mercy are engaged in an Innovation Fund project that aims to improve local capacities and community-based legal support systems to resolve land conflicts in the Ayeyarwaddy Region;
- Earth Rights International and Puang Ku are working with communities in the Thilawa Special Economic Zone (SEZ) to collaborate with land developers, including corporations and governments, to obtain access to community-driven, non-judicial remedies to address grievances.
- An innovation fund proposal by DCDG will actively work on gathering evidence of affected farmers who have had their land grabbed
- FRDO is proposing to develop a pilot project to support and help build capacity of the “review committees for the return of grabbed lands” which are now being put in place at State, District and Communal level

## **5. Expanding the type of stakeholders involved**

For now, MRLG is essentially working with civil society and now with government. MRLG’s strategy is to progressively extend its operations to new stakeholders such as academia, media and enhance collaboration with bilateral land programs.

### Academia

**Long term objective:** to improve education and awareness on research for policy dialogue towards improved land governance. This activity will be conducted from a regional perspective and led in conjunction with activities of the Land Research Forum, hosted by RCSD and MRLG supported exchanges.

It is the aim of MRLG to work with lecturers and graduate students at Yezin Agriculture University and Yezin Forestry University to engage in small initial activities. To collaborate on regional research in LSLA and Customary Tenure and link to conference activities paper submissions. It will work collaboratively with current Gret capacity and research discussions through LIFT.

### Media

Media are an important stakeholder for MRLG. Up to now, MRLG has not worked closely with various media counterparts, however it plans to enhance collaboration with journalists and artists to help disseminate information and public awareness on key customary tenure and land governance issues, particularly through local media representatives at regional and township level.

MRLG will develop contacts with networks of journalists and artists, to mobilize whenever needed in link with our activities. This is potential for training of media to support awareness raising on land governance issues and improved reporting on land & natural resource issues.