

## **MRLG - Cambodian Government Engagement Strategy** (Final version 4/05/2016)

Land governance questions in Cambodia intersect with the interventions of many actors from government, private sector and civil society groups. On the government side, the actors are not restricted to Ministry of Land Management, Urban Planning and Construction (MLMUPC). Whilst MLUMPC is responsible for land administration (registration, land titling and subsequent registration), land distribution (clear allocation and use of State land for public and private purposes) and land management (i.e. spatial planning and land use planning), other ministries have had a very large impact on land policy and its implementation. The role of Ministry of Agriculture, Forestry and Fisheries (MAFF) and Ministry of Environment (MoE) in granting economic land concessions has been significant and has de facto resulted in expropriating large numbers of smallholder farmers and indigenous people with customary rights. In fact, most observers agree that the main decisions concerning the land policy are effectively taken by the Prime Minister, as was release of *Order 01* in an attempt to regularize many land occupations by small of medium farmers in areas considered as forest State land and to reduce tensions within the concession areas by issuing land titles to actual land occupiers (“leopard skin” policy).

Most observers and researchers also agree that there is a vast gap between the official policy and the legal system on one hand and the implementation on the other. Whereas the legislation is quite advanced in terms of recognizing indigenous customary rights and protecting small holders, its materialization on the ground is either very slow or inconsistent with the legal and policy framework. It is notorious that most ELC granting has not followed the sub-decree provisions, such as the need to conduct preliminary EIA studies and consultations, etc.... In this sense it can be said that they do not fully comply with the legal framework. Yet, there is no venue for citizens to contest these land allocations in front of an administrative court in Cambodia.

Land issues have become a central theme in national political debate, and are therefore highly controversial and complex. The ruling party nearly lost the last election, mostly because of the discontentment resulting from land expropriations and land issues. One can assume that there is now a genuine interest of the political elite to try to solve or reduce the tensions. The moratorium on new ELCs instituted under Order 01, as well as the more recent cancellation of a significant number of ELCs are among the signs pointing in this direction. Recent declarations from PM, concerning the redistribution of land to landless farmers, is another sign of this willingness, at least on a rhetorical basis. The PM also announced changes in the roles and responsibilities of MAFF and MOE: Based on the sub-decree just issued on 4th March 2016, MoE will transfer all ELC to MAFF, and MAFF will transfer all protected/conservation area to MoE. However, the status of ELCs that were cancelled by both ministries is not clear, which presents opportunity for further dialogues. And last but not least, the PM also decided some changes in ministerial positions, particularly at the head of MAFF and MLMPUC.

This offers a big opportunity for initiating new conversations with these Ministries. Now (in May) is the right time to engage, as they are already one month in office and start to

develop their strategy and take action. The new Minister of Land, in particular, has shown strong interest to engage in dialogue with civil society and to try to solve on going land conflicts as quickly as possible. The new Minister of Agriculture has been cooperating with Gret for a long time when he was State Secretary for Water Management, on the development of irrigation systems and Farmers Water Users Associations.

Most observers also agree that the implementation of an effective conflict resolution and redistribution policy has become quite complex and difficult, given the spread of conflicts and the difficulty to apply the rule of law on the ground.

Based on the various studies conducted so far and on its political economy and political stakeholder analysis, MRLG considers that the main opportunities for engaging with the government on improved policies and practices are at this moment:

1) **The question of the reallocation of cancelled ELC:** this concerns mostly MAFF and secondarily MoE, as both ministries have granted large scale concessions, and could potentially result in the reallocation of significant areas to indigenous communities, but also to Khmer farmers who were long term or recent occupants of some forest areas. It could also give a boost to the redistribution of land to landless or land poor families, either as social land concessions (however, this would involve MLUMPC and can be a complicated process) or better through some other mechanisms such as direct donation of land ownership rights. Whilst MOE must in short future transfer concessions to MAFF, the fate of their cancelled concession remains somehow unclear, in the case in particular where MOE proposes to get it back in the protected area, there might be scope for reallocating land to traditional communities, as part of the PA management plan.

2) **The recognition of customary rights in protected areas:** there is an interest, within MoE, to develop adequate mechanisms for the zoning and management of protected areas (which cover quite a large areas in Cambodia), taking local community's rights into consideration

3) **The development of alternative conflict resolutions mechanisms** or the reform of the existing ones: the cadastral commission has proved to be quite inefficient in tackling land conflicts. The existing system needs to be improved in a process endorsed by MLMUPC, which requires their commitment to engage in the reform. In fact, one of the topics which was contentious with the German cooperation was the refusal of government to cooperate on a national-level independent conflict resolution mechanism. On the other hand, supporting independent mediation mechanisms can help solve some of the problems (especially as there is some interest from large foreign companies to solve conflicts, e.g. following the EC sugar case) but certainly not all of them.

4) **Improve the justice system** in order to develop its capacity to recognize customary rights and solve conflicts, even though there is not title involved (at the moment courts only accept to judge cases where a land title can be presented). However, other legal evidences of legitimate customary tenure could be accepted in court. This would involve cooperation with MoJ and Bar Association of the Kingdom of Cambodia (BAKC) probably possible but again a long term bet since at the moment the court system is not independent from government or other powerful interests. Many observers fear that the court system will only support the rich and powerful and may actually aggravate the

situation. At this stage, a multistakeholder dialogue could be initiated, but not yet a definitive action plan.

As a summary, MRLG feels its engagement with Government has to be flexible and proactive. The first step is to establish a formal contact and dialogue with some key ministries (MLUMPC, MAFF and MOE), and to get their own view on what are their needs and what are the potential areas for cooperation, considering MRLG own potential priority areas (see Table in Annex). Opportunities may arise on relatively short notice, depending on the changes of the political situation and on the government strategy at the PM cabinet level. From a practical point of view, cooperation has already been initiated with MoE, focusing on the question the recognition of customary tenure and reallocation of some of the cancelled ELC by MOE. With MAFF there is a great opportunity to develop innovative projects linked to cancelled ELCs and redistribution of land to smallholders and customary right holders.

Keeping a dialogue with MLUMPC is also important, even if there is no sizeable opportunity at the moment. An approach with MLMUPC could be to build on on-going reforms within the ministry (i.e. the development of the national Spatial planning policy) and in particular the different sub-national spatial planning initiatives (provincial and district level) in different corners of the country. Other possibility areas include opportunity to strengthen the existing conflict resolution and improve the legal and policy instruments for better land governance in Cambodia.

To a certain extent, some problems can be attributed to communication deadlock between government and civil society groups. Rationales and messages are not conveyed in proper ways by legitimate actors so to present and deliberate their divergences. Based on previous experience, MRLG could position itself as a bridge to enable this dialogue.

But we also favor a more indirect approach, through the organization of research-policy dialogues, such as the one started with MoE, which provide a relatively neutral ground to exchange information and ideas with government officials, first at a technical level, but then also involving respected academics who can be close to government and can convey messages, create a certain confidence, and facilitate more direct dialogue at a later stage, when windows of opportunity appear. In Cambodia, like in many other countries, but maybe in a stronger way, personal networks with influent individuals are at least as important if not more important than official canals to exchange information, ideas and possibly develop policy dialogue.

## Annex: Priority areas of interest for potential cooperation of MRLG with Ministries

Ministry	Existing activities (where ministries could take a bigger role)	Potential areas
MLMUPC	<ul style="list-style-type: none"> <li>- Exchanges on the Voluntary Guidelines (VGGT) with FAO</li> <li>- Participation to regional exchanges on communal recognition and Customary Tenure (CT) recognition</li> </ul>	<ul style="list-style-type: none"> <li>- Conflict resolution – alternative mechanisms</li> <li>- Improved recognition of Customary tenure (through legal reform)</li> <li>- Spatial planning</li> <li>- Recognition of communal lands within ELC (after negotiation with ELC holder)</li> </ul>
MAFF	<ul style="list-style-type: none"> <li>- Research- Policy dialogue on FDI and LSLA (and canceled ELC)</li> <li>- QDF with Recoftc, FA on CF development in canceled ELC</li> <li>- Regional exchanges on the regulation of FDI for LSLA</li> </ul>	<ul style="list-style-type: none"> <li>- Reallocation of cancelled ELC</li> <li>- Monitoring of existing ELCs</li> <li>- Revision of ELCs when agreements are reached with companies</li> </ul>
MOE	<ul style="list-style-type: none"> <li>- Research – policy dialogue on cancelled ELC and on recognition of CT in protected areas</li> </ul>	<ul style="list-style-type: none"> <li>- Pilot activities on recognition of CT in protected areas</li> <li>- Reallocation of cancelled ELCs to local communities (if this is managed by MOE, under the new arrangement decided by the PM)</li> </ul>