Inaugural Regional Consultation and Planning Workshop of the Mekong Region Land Governance Project

4-6 March 2015
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EXECUTIVE SUMMARY

1. Introduction

Over the next 7 years the Mekong Region Land Governance (MRLG) Project supported by Swiss Agency for Development and Cooperation (SDC) and German Cooperation (including BMZ and GIZ) will support regional multi-reform actor platforms and the bringing together of reform actors from civil society organisations (CSOs), government, research institutes and private sector that support the strengthening of smallholder tenure in land, and natural resources. The project recognises land policy is an inexorable element of nation sovereignty and identity. However, decades of international and national economic reform favouring the flow of capital across national borders, alongside recent economic crises, have resulted in new threats to land access security of smallholders.

The MRLG has a long term vision that goes above and beyond just this project:

Farming Families in CLMV countries, especially those belonging to ethnic minorities, have secure land and equitable access to and control over agricultural land, forest and fisheries.

There are a number of key issues the project seeks to address, including large scale land acquisition, the land security of family farmers and smallholders, the promotion of ethnic minorities and gender equity as well as food and livelihood security for all. In addressing these key issues, the project sees good land and natural resource governance as embodied in policy and practice, with transparent dialogue between actors in the four countries, as well as regional stakeholders, an absolute necessity to ensure tangible results.

The MRLG Project has two key objectives:

1. To strengthen the effectiveness of reform actors.
2. To assist the development and process of more favourable polices, institutions and practices.

The MRLG Project operates in Cambodia, Laos, Myanmar and Vietnam and with an overarching regional strategy. This regional strategy aims to bring together reform actors from different sectors to find areas of common interest, and to seek to build understanding amongst actors and provide space for discussing land and nature in a non-confrontation setting.

2. The Bangkok Regional Consultation

On the 4-6 March, the MRLG Project held its Inaugural Regional Consultation and Planning workshop as an initial venue for bringing reform actors together and to consult on the development of project regional strategies planned for 2015 and beyond. The workshop brought over 70 participants together over the 3 days with active participation allowing a key set of activities to evolve in an inclusive and consultative manner. The invited participants represented both national level MRLG stakeholders (who had already engaged in national level activities), regional organisations that expressed their interest in land tenure security for smallholders, and development partners. Among the stakeholders were representatives of civil society, intergovernmental institutions, governments, and research and academia.
The aim of holding a regional planning event open to various stakeholders was to ensure actors are informed, have the opportunity to be involved, design activities that respond to actor priorities, and avoid duplicating existing initiatives in the design process.

The workshop had 3 objectives with expectations of outcomes for each of these:
- Preparation of the Regional Learning and Advocacy Plan of Activities
- Elaborate on the project strategy on important cross cutting issues
- Provide an Exchange and Networking Forum for Regional Actors

3. Main outcomes

During the course of the workshop, working groups were established to respond to objectives 1 and 2, and the following describes briefly the progress made against each objective. More elaboration of the group work outcomes follows in Section 2.

Objective 1: Preparation of the Regional Learning and Advocacy Plan of Activities

- The workshop confirmed that three out of four proposed thematic areas would be developed, and strategies and a list of initial activities have been proposed.
  - Private Sector Engagement
  - Customary tenure for building a common understanding
  - Research as evidence for policy dialogue on large scale investments
- A fourth thematic area of dispute resolution was not considered a strong thematic area to work at a regional level, but was cross cutting across the other major themes and access to regional level training may be an option.
- Groups of stakeholders willing to engage in each of the three thematic areas were identified.
- A focal institution or two have agreed to take responsibility to coordinate activities in thematic area.
- An initial plan of action for each thematic area was presented at the workshop and further work has been agreed from each focal point institution to prepare a full and costed activity proposal to be supported by MRLG, in cooperation with the interested stakeholders from the national and regional level.

Objective 2: Elaborate on the project strategy on important cross cutting issues

- Strategies to identify entry points for ASEAN Engagement were established and further work to identify key actors with ASEAN representation is required.
- A key opportunity to work with FAO on Customary Tenure and the Voluntary Guidelines has emerged and will create more regional level dialogue on core MRLG points of interest.
- Linkages were made between the MRLG program and RECOFTC social forestry program and initial joint activities were proposed.
- Proposals for identifying and applying a rights based approach towards tenure security in the MRLG program were made.
- Suggestions were made how MRLG can proactively support the development of regional civil society networks and exchanges.
• Concerning the need for regional information platform, further consensus was gained from regional actors on the recommendation to not develop a new regional information system, but to complement and improve existing systems and promote their synergies.

Objective 3: Provide an Exchange and Networking Forum for Regional Actors

• Space was provided for the participants to display their experiences and ongoing activities, and to hold formal and informal discussions during various breaks and sponsored social events.
• As a result, informal networking among government representatives was conducted, as well as one on CSOs networks, with various suggestions made to MRLG to develop regional exchange activities for these two groups of stakeholders. For the CSO group, a regional visit to Cambodia was proposed to be organised by the NGO Forum, in order to see how government is working with NGO groups in the country, and how they collaborate together was planned for July 2015.
• The final evaluation indicated that practically all participants were very satisfied by the opportunities for networking opened by this forum which was considered quite unique on this topic, and welcomed the idea to regularly meet in next years.
DETAILED FINDINGS

1. Political economy analysis – Setting the scene

A Political Economy analysis of land governance in the Mekong region is being undertaken as part of the MRLG project, led by Professor Philip Hirsch of the University of Sydney Mekong Research Group. The results will be made public in an open access repository to be hosted by a regional institution.

Some core initial findings and points of note were presented by Prof. Hirsch:

- All four countries have come out of a socialist political economy over the last four decades, and this, alongside the postcolonial contexts, has implications in the way in which land is discussed and defined in national constitutions.

- Geography also has an impact, with ethnic composition, topography, population distribution and the interaction between indigenous groups and the state all impacting the way in which land governance issues are framed.

- The role of patronage is different in each country. For example, neo-patrimonialism guides the roll out of land concessions in Cambodia, whilst the socialist impact is perhaps stronger in the other countries in terms of the role of the state in the Constitution.

- Donor programs have had a significant impact across all four countries.

The implications reaffirm the need for flexible policy implementation. Given the close ties of land and sovereignty, it also provides some guidance to the methods which donors can most effectively implement to ensure broad government, private sector and community buy-in.

Three specific questions were then addressed:

1. Are land registration programs effective for securing land rights of small farmers?

There are many studies on the effectiveness of land registration programs. These discuss, for example, the tendency to equate land registration with titling, the impact of titling on security (and particularly tenure security outside of the titling area). They also discuss the effectiveness of land titling on poverty reduction. However, what the literature really seems to indicate is that there are no set answers, and that context is very important. "Effectiveness" is a subjective term, and further research is clearly needed around this question.

2. Are the results of Foreign Direct Investment (FDI) and Economic Land Concessions bringing the expected results in terms of economic growth, fight against poverty?

The literature does not address or answer this question very well. A study from 2012 undertook an inventory process, systematically trying to map out previously unmapped concessions. An interesting finding was that in Cambodia, there is actually more land under concession than there is being farmed for rice. This raises the question of transparency. Other studies look at context of economic land concessions, particularly focussing on border issues.
3. How are customary tenure / communal rights recognised in new land policies and with what effect?

This brings into question the core relationship between indigenous and ethnic minority status and customary rights. There are major constraints such as the bureaucratic process and limitations on indigenous and ethnic peoples who want to move in other directions. That is, we equate indigeneity with communal practices, and force many indigenous and ethnic peoples to make a choice.

A panel of representatives from the four CLMV countries and from different stakeholders, joined by Prof. Hirsch, proceeded to discuss these three questions.

A summary of the comments is provided below:

- It is important to understand the diversity of smallholders and communities (heterogeneity).
- It is necessary to understand context (Social, institutional, legal) and historical basis of land reform, investment and customary tenure. Land registration is not just land titling, and it does not happen in isolation.
- There is often a large gap between policy and implementation, so attention should be given to practices and experiences that help to reduce this gap.
- There are many research gaps that need to be addressed: holistic impact of land registration, quantify the benefits of FDI, benefits of smallholder agriculture over large scale agriculture, etc.
- Address the misconception that indigenous and ethnic peoples cannot manage land/farms/forest on their own — and identify good practice customary land law implementation.

2. Proposals for the Regional Learning and Advocacy Plan of Activities

Working group of interested stakeholders were formed during the workshop second day, and prepared an initial proposal for thematic learning and advocacy activities that should be supported by the project at regional level.

PRIVATE SECTOR

The Private Sector Thematic Area Working Group was comprised of the following core organisations: Oxfam (lead organisation), RECOFTC, Land Issues Working Group, and PACT. Unfortunately no private sector representatives were in attendance, but these will be sought. The group decided on a core objective of:

C+ PPP

That is:

**To support community (C) and public private partnership (PPP) for responsible, profitable and inclusive development.**

Key outputs for the working group are suggested to include the following:

1. **Establish the C+PPP working group**, to include a focal point person/agency and key country leads
2. **Develop a needs assessment to direct the core output.** This would include the identification of core needs, activities, stakeholders, necessary funds, and a strategy to achieve the core objective.

3. **Identify and elaborate on good practice and informative case studies**

4. **Build capacity** through collaboration with professional institutes and regional organizations and networks and to bring key stakeholders into the working group.

5. **Develop a workshop** and/or learning event to share core knowledge, review experiences and develop a strategy for the next phase

Oxfam will prepare a detailed activity proposal, based on these proposals and in consultation with the potential stakeholders.

**CUSTOMARY TENURE**

The working group on Customary Tenure attracted many participants to actively join the discussion. It was ultimately decided that FAO and AIPP would agree to jointly lead this working group, subject to other organisations wishing to do so. Oxfam was also identified as a potential lead partner.

The working group discussed initially a summary of each of the four countries to gain an understanding of the different treatments of customary tenure. It was noted that Cambodia was the only country where the State is not the ultimate owner of all land, and this has unique implications for customary tenure. Across all countries, customary land practices need further recognition, and the implications of economic investments need to be better understood. A recurring theme was the need to ensure stakeholders understand that indigenous and ethnic peoples do not necessarily solely have customary practices as vice versa. Furthermore, the documentation (through titling or registration) of land rights does not necessarily secure them, further enforcement steps are required. A gendered approach is particularly important in this area.

The workshop participation indicated the high level of interest in the recognition of customary rights. It was identified that a strategy in this thematic area would need to cover:
- Documenting the ‘on-the-ground’ reality (not just the theory or implications)
- Focus on land tenure security (and how this is and is not delivered through land titling and other activities)
- The impact of customary title in economic development terms

Some actions to address this include:
- Exchange good practices between countries
- Stocktaking exercise is needed:
  - What types of rights, responsibilities and restrictions exist
  - Who are the right holders
  - What is the object of the tenure rights
  - Governance and administration of tenure rights, and the support provided to communities
  - What is the method of customary right recognition and technical requirement (what would you need at a technical level to identify the right).
  - What technical precision is really needed?
  - Link with livelihood – does obtaining tenure right have an impact on livelihood? Vulnerability?
  - Marginal groups (women, minorities, youth, etc.)
  - Conflict resolution and grievance mechanisms
These activities lead into the following goal:

To increase the recognition of customary tenure and to increase tenure security of customary lands.

Core activities were identified to be the below:
- **Define the project** (to be undertaken by lead organizations, and completed by end of April)
- **Collect data and partners in country** (to be lead by national facilitators)
- **Organize a first exchange in the region** (June)
- Establish an (annual?) Summer School (Cambodia, Lao, etc.) visits etc.
- Prepare a joint input to ASEAN forum on customary rights in Malaysia (November)
- Produce common or shared recommendations to identified policy makers
- Attend and contribute to Asia Peoples Forum, Australian NGO forum, etc.

Participants at the workshop identified that the above agenda was very ambitious, and that many further partners – at country level and regional level – will be required to contribute. This will need further work.

**RESEARCH BASED POLICY DIALOGUE ON FDI IN AGRICULTURE AND LARGE SCALE LAND BASED INVESTMENTS**

The Research Based Policy Dialogue on Foreign Direct Investment had the following members in attendance and/or identified to contribute in the future:

- Regional level organisations: Mekong Institute (lead), Open Development Mekong (+ affiliates), Oxfam, FGS and Cifor (TBC)
- National Level focal organisations: NERI (Laos), CPS (Cambodia, CISDOMA (Vietnam), MDRI (Myanmar), LCG (Myanmar). Other Interested organisations : Laos LIWG, Helvetas, NUOL, NAFRI (TBC), Cambodia Centdor, URA (TBC), Vietnam : Forest trends, Oxfam, IPSARD and CIEM (TBC)

Experiences within each organisation included the following:
- FGS works with Cambodian government and private sector on workers minimum wages
- CPS has undertaken research on large concessions in agriculture
- Oxfam has undertaken a variety of work on land concessions, direct investment, land grabbing, etc.

Lessons learned from experience
- The broader context needs to be considered in terms of political economy, power relations, international relationships and historical context
- Research should be undertaken as part of a coalition process
- Associated stakeholders should be identified.

Key strategies identified:
- Organise a regional dialogue based on research evidence with governments and stakeholders on FDI impacts to agriculture and tenure security
- Develop communication and framing of discussions allowing government involvement
- The context of ASEAN integration experience can be used
- Associate with the host countries of FDI companies (China/Thailand/Vietnam) as well as recipient countries
- Consider both FDI in large holdings (LEC) and contract farming

Key objective:

**Improve FDI policies and practices in order to guarantee security of smallholder’s rights of tenure and livelihoods**

Identified outputs:
- Document positive and negative experiences on smallholders as inputs for dialogue
- Develop statements for policy makers on priorities and information needs
- Development of a collation (or platform) of various stakeholders interested in this topic

Activities (First year)
1. Verify and identify who in government is interested in FDI impact assessment
2. Learning exchange on research based successful policy dialogue experiences
3. Plan regional seminar with all interested stakeholders
4. Develop a communication strategy
5. Identify and synthesize existing research
6. Organize regional seminar (research findings + policy dialogue)
7. Identify new research needed.

The next steps of this working group will be to:
- Confirm country leaders and others organisations interested
- Confirm national government interest/entry points (by National Focal Points + National Facilitators)
- Develop a detailed plan (including activities, budget, etc.) in consultation with all partner organizations
- Commence activities outlined above.

A critical comment from the audience was the need to consider whether this thematic area working group should focus only on Foreign Direct Investment, or also on Large Scale Land Based Acquisition / Large Scale Investment, given the role of national companies in Large scale land acquisition.

**DISPUTE RESOLUTION**

Dispute resolution is difficult to begin at a regional level and engagement needs to happen at country level first. Hence no strong regional plan was developed. There are three countries targeting conflict mapping, collective learning opportunities and there is hence a role for MRLG to link with facilitators in those three countries to ensure that common actors are identified and common guidelines developed to support good practice community-led dispute resolution mechanisms. Prevention was also a discussion point, with free and informed prior consent a key prevention action.

The working group attendees identified common ground.
Activities:
- RECOFTC identified as a training provider in dispute transformation and resolution practices. MRLG will work with RECOFTC to facilitate trainings, with country level representatives to contact the MRLG secretariat to identify where assistance is needed.
- Country level activities to continue.
- Facilitators and focal points in dispute resolution to draw lessons out for sharing within the MRLG network.
- Possible meeting of mediators in the region to share experiences and country-level guidance.
- Identified lessons and good practices to be developed and presented at, for example, ASEAN and other high level platforms.

The strategy on dispute resolution therefore centres at country level, with emergence to the regional level through sharing of lessons and the identification of good practices. Conflict resolution should perhaps not be considered as a thematic area, but more cross-cutting. This could be reassessed throughout the first year in light of the above activities.

3. Cross Cutting Issues

MRLG identified five important cross-cutting issues during the reform actors mapping and workshop preparation:
- Identify the opportunities and challenges are there to incorporate the Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in policy dialogue at the regional level.
- Identify effective strategies to work with ASEAN.
- Learn about opportunities to maximize synergies and complementarities with the existing regional network on social forestry.
- Learn about opportunities to maximize synergies and complementarities with the existing regional network on access to rights.
- Discuss the possible ways through which information platforms can contribute to improved land governance in the region and complement MRLG activities.

Five sessions were organised amongst interested participants in order to get feedback and strategic suggestions to MRLG how these cross cutting issues should be addressed.

VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs) promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment.

A number of constraints to implementing the VGGTs were identified by workshop participants, including: political will; their voluntary nature; awareness; complexity; need for leadership, and local resource availability.
Proposed strategies identified to better implement the VGGTs included:
- Develop a clear process and strategy for utilizing the VGGTs within the Mekong region, identifying entry points and existing forums or mechanisms that can be used.
- Promote awareness and understanding of the VGGTs, through e-learning and partnerships with key stakeholders as well potentially a regional level exchange platform
- Identify opportunities to integrate VGGT principles into national legislation and policy processes
- Identify potential common areas of key interest with stakeholders in the region, and particularly key areas of government interest (eg. food security)
- Identify priority topics, such as responsible investment with private sector
- Identify effective mechanisms for monitoring of application and impact
- Use intergovernmental institutions as conveyers
- Identify key leaders at regional level (implementer, funder)
- Identify key documents and policies that provide the best opportunity to link the VGGTs with – such as Lao PDR national food security action plan.

ENGAGING WITH ASEAN
The Association of South East Asian Nations (ASEAN) presents a significant opportunity for MRLG activities as a regional entity with political influence. It is, however, a large and complex association, that requires strong planning to effectively engage. Key suggestions made by workshop participants to do this included:
- Utilise existing networks of BMZ and SDC
- Undertake ASEAN mapping to identify entry-points linked with the strong economic and trade focus of ASEAN (and ASEAN Member States)
- Utilise the ASEAN Intergovernmental human rights commission as an entry point for social protection where relevant
- Identify and cultivate champions within the ASEAN networks, and potentially stage a policy dialogue to advocate and promote MRLG awareness
- Identify and promote opportunities for government-government exchange and experience sharing in relation to ASEAN
- Engage with economic research institutes from each of the MRLG countries to identify MRLG entry points to trade flow research (for example, identify the impacts on smallholder farmers)
- Stay aware of ASEAN activities through ASEAN CATS google groups (CSO group looking at ASEAN activities).

SOCIAL FORESTRY
In the case of forestry, there is a constant and compelling focus on tenure that is too often identified as a silver bullet to achieving sustainable social forestry. The workshop participants identified that tenure should instead be considered as a starting point, and one that needs to be accompanied by:
- Clear and protected rights
- Appropriate resources (such as good quality forest, land)
- Appropriate regulations (that are flexible, enforced and that encourage above-subsistence production for smallholders and indigenous peoples)
- Appropriate capacity
- Market (moving beyond subsistence for community forestry; creating tangible employment/livelihoods)

Proposed strategies to achieve this identified included:
- MRLG could provide linkages and capacity for research and associate with wider organizations, such as CIFOR
- Support the building of capacity of national research institutions to promote local capacity (RECOFTC is working on this)
- Provide linkages and engagement with the private sector (promote responsible forestry and provide leverage for more appropriate regulation)
- Information is key – MRLG to promote both inter and intra sharing of experiences, and sharing of data to facilitate community link to the market.

In addition to the above, a particular opportunity lies with the existing regional network – the ASEAN Social Forestry Network (ASFN). MRLG should prioritise linking with ASFN (current focus is on training) to facilitate a broad scope at landscape level, research expansion, policy level involvement.

HUMAN RIGHTS-BASED APPROACH (HRBA)

The right to land is not recognized as a human right, yet it is a key human rights issue that underpins many rights that are recognised – cultural identity, livelihood, and shelter. Procedural rights, such as participation, further supports such rights. HRBA have already been used by many workshop participants in their work (such as gender mainstreaming, legal training, private sector engagement, etc.), additional steps for MRLG to take could include:
- Reframing actions and debate in softer and less confrontational language, as human rights language can be contentious.
- Identify and promote good practice and access to redress
  - Case studies on the use of trans-boundary mechanisms such as the ASEAN Human Rights Commission
  - Community driven land dispute resolution mechanisms
- Develop a strategy or guidance to rights awareness amongst communities, particularly identifying how rights impact other rights, and how to manage the flow-on effects of rights-awareness, and rights activism.
- Identify entry points for private sector engagements, and successful cases
- Provide a platform for sharing of community experiences (eg. support a social media platform to share learning materials)
- Identify and support activities that specifically support indigenous peoples rights, gender equity and the rights of minority groups.

REGIONAL INFORMATION PLATFORMS

During the initial SDC appraisal of the Mekong Regional Land Governance project, the need for a regional information platform was identified as a critical mechanism required to strengthen the effectiveness of local through to regional stakeholders and reform actors. In support of this aim, SDC held a first workshop from 10-11th February 2015 to develop a plan for establishing this regional information platform.

This first workshop comprised 40 participants from Cambodia, Lao, Myanmar, Thailand and Vietnam and included a large number of moderators and managers of existing information platforms in the region. An important finding was that 64 platforms across the region already existed – including 9 global, 18 regional and 22 that were land related in...
some way. A clear outcome of that first workshop was that it would be important to link to the existing wealth of platforms and information, and ensure that any solution was complementary rather than overlapping.

The working group confirmed this conclusions, and recommended that:
  - The first analysis of existing systems was crowdsourced, so a more systematic analysis is required;
  - A specific target of the activity should be support for interoperability between existing systems and data sets
  - Users and data providers are particularly important, and further face-to-face meetings should be held to identify gaps, data needs of different user groups, and to identify the most strategic platforms (that particularly align with MRLG objectives)

Importantly, it was recommended not to develop a new system but to invest in existing regional activities and to identify complementary and value-adds to existing regional and national information activities.

Future MRLG investment should prioritise:
  - regional analysis and synthesis
  - dialogue/engagement/learning with private sector and governments
  - support linkages and interoperability
  - complement with face to face meetings, focus on people-centered platforms not just data-centered. Virtual platforms are not enough.

SDC is considering to invest a pre-approved 1.4million USD into a third funding window, in addition to the Quick Disbursement Fund and Innovation Fund, to specifically support information and networking-related activities by applicants.

Wikispace: mekongplatformlearning.wikispace.com
ANNEXURE

Annex A – Agenda
Annex B – Revised Profile of Participants (including email addresses)
Annex C – Participant Evaluation