



LIOH's Position Paper for an Umbrella Land Law

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A. INTRODUCTION

Land in Our Hands (LIOH) is a multi-ethnic national platform where smallholder farmers, customary communities, local farmer organizations, supportive community-based organizations and allied CSOs across country comes together for the peoples' rights to land. LIOH believes that the promoting, protecting, respecting & fulfilling the land tenure rights of smallholder farmers, small-scale land users, fisher-folks, and particularly of rural youth, women & ethnic communities, and including those who have been and remain displaced due to war/armed conflict, big development projects, and/or big conservation schemes, is integral to the realization of their human rights and is essential in striving for durable peace with social and economic justice, genuinely equitable and sustainable development in the country. In this regards, LIOH always contribute Myanmar land reform effort by commenting and criticizing positively.

A national statement, a congregated discussions of (& demands from) land rights CSOs, farmers and IDPs from different states & regions in 2018, says existing laws, amending laws and bills related to land are not proceeded democratically; are not based on sufficient policy & principles; but they are enacted without proper public consultation. The statement also demands to abolish VFV law¹ and to make a federal land law that respects the land ownership rights & management, and includes the measures reinstating the territories².

LIOH also demands that the process of drafting a land law should resolve the existing land issues and land conflicts justly; should guarantee the peoples' sovereignty on land & natural resources in the future; should be the democratic process where the affected and vulnerable peoples can decide³. Currently, the government is initiating some efforts for drafting a national land law those include forming committees/working committees, creating roadmap and drafting work-plan. Therefore, LIOH together with its allies from different states and regions, prepared this position paper composed with the principles that an umbrella land law must be based on, after analyzing the current land rights situations through the perspectives of peoples' rights to land.

B. PURPOSE

- ❖ To briefly analyze the current situation of the Myanmar land reform through the perspectives of peoples' rights to land
- ❖ To provide the basic principles that should be included in an umbrella land law which is suitable for a social justice, peace and democracy oriented federal system
- ❖ To support in building a peaceful and democratic federal union that guarantees equality and self-determination by institutionalizing land ownership & land governance that is socially just and ecologically harmonized

¹ The Vacant, Fallow & Virgin Land Management Law 2012 and the Amendments 2018

² https://lioh.org/wp-content/uploads/2019/11/LIOH_statement_20180523_MM.pdf

³ LIOH_comment_on_NLUP_forum.pdf

C. FINDINGS

C.1. The Overall Situation of Drafting/Amending/Implementing the Land Related Laws

The existing land-related laws do not have clear provisions for smallholder farmers, customary communities, small-scale land users, fisher-folks, rural youth, women & ethnic communities, and including those who have been and remain displaced due to war/armed conflict, big development projects, and/or big conservation schemes; however, the new laws are imposing more penalties instead.

Under government's legislative reform on land, the laws that are being implemented, amended and drafted are contradicting the land use & land management practices of rural working people. Land-related laws neglect customary land tenure systems and force dispossession of peoples who use and manage the land and related natural resources through customary practices.

Existing land related laws do not have clear principles & provisions to protect, to fulfill and to provide remedies for the rights to land of refugees, people displaced by armed conflicts and victims of land grabbing due to various reasons.

Many ministries/departments/committees/groups for governing the land without clear decision making process and authorities creates ineffective mechanisms for resolving land conflicts⁴. Different land types governed by different ministries are not aligned with what the peoples are practicing on the ground (including the practices of those who would be engaged in small scale food and farming practices if they had not been displaced) and even conflict with their official maps. Mapping efforts without prior resolution of conflicts would also create more conflicts.

We conclude that the Survey Law (2019) allows only the government or government approved agent to conduct surveys of the land. The valid map that reflects actual land uses of peoples (including the land uses of IPDs-refugees before they were displaced) is not available without the participation of local communities who understand well on how they are using their land.

Policies, laws & rules (bylaws) are passed within a short period of time after making just merely an announcement to public. There is no clear & prior announcement on the processes, plans and agendas for public consultations. There is no sufficient time for quality public debates or for digesting well enough for commenting. There is not enough communication channels, time and conditions for proper public debates and for reaching out to ethnic peoples and farmers representatives who have less access to formal discussions.

Government's consultation processes and legislation procedures are lacking clear design or structure to utilize the voices, discussions and demands of peoples gathered through peoples' forums and public workshops supported by civil society organizations. It can be concluded that the decision making process of drafting the bill doesn't have the ability to accept wider public consultation.

In summary, the processes of legislative reform on land neglects democratic standards & practices; is lacking wider & meaningful public consultations (especially with ethnic communities); neglects the voices of land-grabbed victims, landless peoples, IDPs/Refugees & ethnic peoples; and neglects the representation & voices of CSOs.

⁴ LIOH, Olive Branch, Civil & Political Rights Campaign Group et al., (2017). "The Promise Unfulfilled: A Critique of the Land Reinvestigation Committee", <https://www.slideshare.net/EthnicConcern/a-promised-unfulfilled-a-critique-of-land-reinvestigation-committeeburmese-version>

C.2. The Process of Drafting National Land Law

We have known that the Land Use Council was formed and many committees, technical groups and working groups are being organized for drafting the national land law. We also heard that there are sub-working committees where the representatives from civil society organizations will be invited.

Although the concerned committees, technical groups and working groups include the seats for CSOs' and farmers' representatives, there is no consideration for ethnic leaders (from respective areas) and IDPs & Refugees (e.g., IDP/Refugee committees from respective areas). And there are no clear roles, criterion and selection process specified for inviting/selecting those representatives.

We are seeing the centralized, top-down process in all of the activities: forming the concerned committees, formulating the roadmap and drafting the work-plan. Although the members of the groups and committees formed for NLL process can participate, there is no concrete standards for decision making process.

The national land law drafting process includes harmonizing and represent the existing land related laws as one of the main processes. The analyses on existing land related laws show the laws are complex, overlapped and unable to solve land conflicts effectively; meaning that the effort of making the national land law to harmonize with those laws would be just drafting another similar law.

The processes of land reform and drafting national land law till now are not showing any significant moves towards federal land governance, and only prioritizing to continue in accordance with existing land laws, policies and rules. There is no clear information on which peace agreements are being implemented and no clear sign on how the ethnic land policies would be recognized⁵. In summarizing, the process of drafting the national land law doesn't show the notions of federal land governance thus contradicting its perceived objective to be a land law which contributes federal union.

D. PRINCIPLES FOR AN UMBRELLA LAND LAW

D.1. The Meaning of Land and Peoples' Rights to Land

Land is directly related to political, social, economic, cultural and geo-histories of a country. Land is also interrelated with peace, development, democracy, environment & conservations; thus making & implementing policies, laws & procedures should consider its impacts. Land shapes the living patterns of societies and human activities define the value on land. Land is an indivisible set of land, water, forest, fisheries and all the natural resources.

Land, water and forests are for those who live on it and work it; whose lives, livelihoods and identities depend on this. As peoples are the owners of the land, management & decision rights remain in their hand.

Peoples' rights to land covers territory specification, lives making & different land use practices (including cropping, fishing and using for religious beliefs), land resources management & conservations (land, water, forest and all the natural resources), conflict resolutions and/or

⁵ KEAN (2020), "Towards the new land governance – 2",
<https://www.facebook.com/KEANearthrights/photos/pcb.2617673155002734/2617665768336806/>

judiciaries. Right to land and possessions of each person must be effectively protected as right to land is also a human right.

D.2. Land Size Ceiling & Land Size Flooring

Land ownership includes individual, communal and diverse form of ownerships practicing in different areas; those must be recognized and protected. Land resource management must ensure that future generations are able to make their lives with dignity on their land, have a sustainable relationship with natural resources, and thus contribute to building social harmony & peace in the present and the future.

Land size ceiling and land size floor should be specified in accordance with geo-context of different areas as both a remedial and preventive measure to stop and prevent future land polarization, to remedy landlessness, and to address past land injustices.

D.3. Types of Land and Classification

Specifying land types should reflect the actual land use practices of local communities and should guarantee to protect peoples from dispossession. The process of land classification should include the farmers whose livelihoods and survival are relying on the land and the process should enable their decision making & fulfill their rights.

Inclusion in the process of the peoples who are actually using the land and depend on the land for their lives and livelihoods, can help to mitigate land conflicts, to achieve the right land classification, and even mitigate the possible conflicts between peoples whose lives are depending on land and incoming investors who see the land only for profits.

D.4. Investment, Development and Environment

Land-related laws should recognize and respect the following measures for development, investment and environmental conservation aspects:

- ❖ Investments should encourage poverty eradication within country and recognize & promote diverse agricultural practices & systems of farmers and peoples whose lives are depending on land.
- ❖ Any investment & development projects should abide by Free, Prior, Informed, Consent (FPIC) practices; especially to seek the permission of either directly or indirectly affected communities.
- ❖ Any investment & development projects should do environmental & social impact assessments (EIAs & SIAs) with the inclusion of local communities. Those assessments should be done transparently and prior to project approval. The projects should enable responsibility and accountability mechanisms together with monitoring & evaluation processes at all stages before, during and after the implementation of the projects.
- ❖ Investments & development projects (including agricultural investments) should guard against the loss & damages of local varieties, local seeds and related resources. The projects should encourage peoples' sovereignty on food in addition to local food security.
- ❖ Land & natural resources management should support the peace within present & future societies, the sustainability of natural resources and the new generations to live on land with dignity.
- ❖ Food production, climate adaptability (& regeneration), biodiversity and ecological systems those are essential for all human & living beings should be conserved and protected.

D.5. Customary Land Tenure Rights

Customary land practices are existing historically as a distinct land governance system passed down from generation to generation. Therefore, these practices should be put clearly in the land-related laws as a decentralized formal framework. The laws should ensure to reinstitute, protect and not to alter the historic land, landmarks (such as cairn) and naming.

Diverse land tenure and farming practices from different areas (of both hilly & plain regions) must be recognized. The rights to decide, manage and use on the land resources must be in the hand of those who live & work on the land.

D.6. IDPs/Refugees and Landless

IDPs and refugees have the rights to restitute their original land & properties they have left by armed conflicts. Restitution and resettlement processes should include local authorities, local ethnic leaders, local elders, concern local representatives and IDPs/Refugees themselves. Processes and mechanisms should prioritize & implement the desires and decisions of IDPs/Refugees.

There must be no forced return and resettlement for IDPs/Refugees. No investment projects, no declaring of forest area and no granting any forms of land use must be allowed in the areas of IDPs/refugees.

Restitution to peoples who have lost their land in any forms and redistribution of land to landless peoples should have effective rules and procedures; and needs prior specifying land size ceiling & land size flooring in accordance with the geo-context of the specific area.

Restitution and distribution of the land must not be the reason either for further land grabbing or posing more conflicts. In order to avoid these situations, the responsible & accountable mechanisms must be established and implemented in accordance with international standards⁶. The mechanisms and processes of land restitution and redistribution must enable the decision making of peoples who have direct concern; however, these activities and processes must not be implemented only for accomplishing a task.

D.7. Conflict Resolution Mechanism

Past, present and future land related conflicts within the country need independent land conflict resolution mechanisms and also specific arbitrations. Those mechanisms and arbitrations should be organized democratically and justly with the involvement of local leaders, local authorities, women, representatives of elders who are expertized on local context.

Independent conflict resolution mechanisms and democratically elected representatives of local peoples and local groups should form a monitoring mechanism on conflict resolutions.

D.8. Representation

Every step of land law making process and every level of committee work should ensure the representation of stakeholders (whose lives depends on the land), affected peoples, vulnerable peoples, landless peoples, urban landless squatters, IDPs & Refugees, land-grabbed victims,

⁶ Pinheiro Principles - <https://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>

small-scale land users, peoples who are practicing customary systems, fisher-folks, ethnic armed organizations (EAOs) and civil society organizations (CSOs).

D.9. Consultation

Consultation/Discussion is not a one-time meeting to inform but means involving people in decision making processes. The consultations should guarantee to avoid setting up as a “**showcase**” or an “**endorsement of**” participating ethnic peoples and CSOs.

Sufficient timeframe, tentative agenda and proposed schedule for consultations should be provided through proper & effective communication channels. Consultation meeting/workshops should have enough discussion time and should encourage meaningful discussions. The inputs, discussions and suggestions/recommendations should be fully considered. A mechanism should be set up to monitor how and why the inputs & suggestions are used or reframed or discarded. The monitoring mechanism should include peoples who are expertize in geo-context according to their area and the processes should encourage criticism democratically.

The decision making process (approval process for consultations) should be principles-based consensus building process. The final draft composed from different consultations should also be opened to public for further discussions prior to approval.

E. CONCLUSION

Land is dignity for individuals, families and societies; thus the land reform process is directly related to the peace building process. Genuine federal land governance is the only solution for both land reform and peace building in Myanmar; which needs trust and meaningful processes. A new (umbrella) land law must clearly include the diverse land management systems & practices, and ethnic land policies, which are not currently considered by existing land-related laws.

The visions and actions for policies and laws related to land resources are important for Myanmar as it constitutes the dignity, rights & sovereignty, peace and development of the State and the citizens. A new land law needs to accept diverse land use practices and ethnic land policies; those are still neglected in existing land related laws.

Political agenda and economic policies, laws, rules (bylaws) and managements around land resources must be aligned with the reality of Myanmar context and must be able to solve complex land issues. The process of drafting the new national land law must have inclusive, effective & systematic processes.

The law drafting process must also be clear on how it would be linked with the ongoing peace process and reform processes, as the land issue is directly related to peace. We expect a process of drafting a national land law that ensures land sovereignty and peoples’ rights to land of future federal union citizens.