

Draft policy recommendation of customary land management practice

Introduction

The earth and the water as equal to self-determination required by the people are the cores for the human beings. The customary land management system and the land policy are currently acknowledged and practiced in the modern world. The public-owned system and the customary system cost less than the private-owned system that is become getting acknowledged by the international governments and suggesting that it has to be aware of what the government's intervene in local land right system and on the other hand, it should be relevantly based on the system being practiced by the local ethnic communities.

Myanmar customary land management system has to be recognized at the state level. However, it is difficult to go ahead for that not only the controlling role of natural resources and but also the right of property is put under the current constitution and the legislature.

To acknowledge and protect the customary land management is the crucial part for the sustainable peace process and then, it includes both the needed contract of the customary land rights of the communities and describing the customary land management system in federal union constitution as well as in the decentralized legal frame. ECDF proposes to recognize the customary land rights officially as below.

Objectives

The objective of proposed policy draft is as the following:

- To officially acknowledge and be issued by the law of the land management rights in according with the local communities' customary law,
- To support livelihood and life security of new generations are to be supported.
- To sustainable sustain the natural resources

Guideline principles

- To draw the land policy and make law need to be consistent with the federal policy.
- To set up the land policy, there have to be based on right of property of the grassroots, right of management, right of decision making and the interpretation upon the sustainability by the local people.
- To set up the land policy and law, there has to be based on the international human right norms.
- For any projects implementing in local, there has to be based on the local people's decisions.
- To set up the land policy and make law, there has to be based and issued on the diversity of ethnic groups.

Draft policy Recommendations

1. The ethnic customary land management system, as the decentralized framework, should be acted in the future federal constitution. Afterward, being based on the village area, including the resources under or above the ground, the official documents of rights to property have to be recognized for the local people.
2. It needs to amend the constitution in order to protect the customary land management system. The new land law must be made in consistence with the related villages and wards.
3. The land confiscation cases must be pending in local area where practicing the customary land management system till the achievement of NCA.
4. Any authorities should not threaten the villages which practice the customary land management system and then, the following matters should be allowed.
 - (a) Supporting and protecting the practical practices to be better

- (b) Drawing village mappings by villagers, making land right documents and identifying village area
- (c) Any authorities should not threaten and interrupt the village system while the villagers reject the private land right documents issued by the authorities
- 5. The central government, including any levels of government administrations, should not intervene within the village self-administration practicing traditionally in the ethnic states.
- 6. The matters to be acknowledged at every levels of Myanmar Land Management System;
 - (a) The women have rights to inherit land, rights to property of land and rights to participate in decision making process.
 - (b) UNDRIP and the international human rights are to be respected.
- 7. The political parties (PPs) and the Ethnic Armed Organizations (EAOs) must be recognized and stand for the local people and the CBOs which are practicing the land management in reality.
- 8. The related EAOs must urge and demand for the land right documents to be acknowledged and achieved officially.
- 9. There is a negotiation with the related local government to recognize the public-owned lands existing in the area where the EAOs and the government sectors taking control together.
- 10. CSOs, NGOs, the parliament representatives, villagers, religious groups and ethnic groups require close coordination and collaboration to draw the customary land right policy.
- 11. In all land of ethnic groups, those related indigenous ethnic groups must have rights of beneficiary, rights to property and rights of management.
- 12. The participation of the local people in preserving the inherited customary land right system must be recognized.

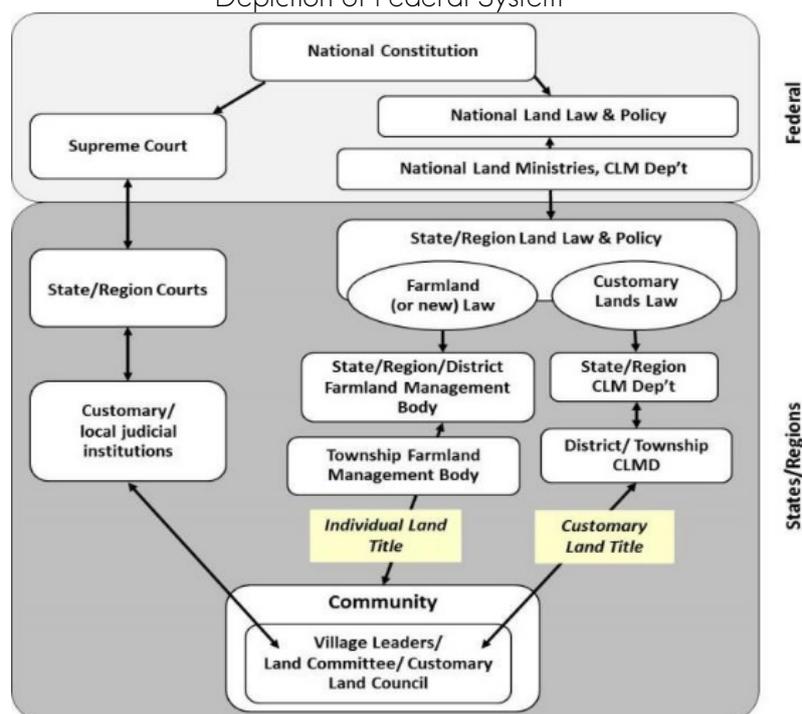
Proposed Process to acknowledge officially practicing the Customary Land Management System

1. The customary land management system within the areas being practiced should be protected continuously. In the areas being lack of fully practicing the customary land law because of the wars causing the internal displacements, the local communities (not only the origin dwellers that are the former owners but also the new settlements) should be given the rights of making decisions whether they would like to accept the customary practices or not under the customary land law.
2. The terms and usages that the local people used to say should be applied firstly in law rather than the official terms and usages were passed on as the law terminology where the domestic law is not imposed yet.
3. The communities or the communities that require the land documents due the customary law are able to apply for depending on the village area. While applying for the documents, the representatives of the communities and the neighboring communities collectively identify the village area and sign together.
4. The separate department should be formed by the central/state government with the purpose to provide the land documents along with the customary law. These are the suggestions being able to establish:
 - By forming the customary land department-CLD that is accountable to the state/division government of the federal union, the procedures and impositions for this department should be put in detail in the legislative body of the states/divisions. The CLD staffs have to be aware of the local ethnic culture and languages. CLD application forms must be issued by the local government's authority. To solve the disputes in sequence and step-by-step, both the formation of official judicial bodies and the dispute solving process should be recognized by the related ministry.

- The local administrations (land management boards, village councils, sub-district customary land management committees) are under managed of Customary Land Department-CLD. The administrations at this level should consider all inclusiveness and effectiveness. The, village heads, the village leaders, the community members and the CLD authorities elected by the local people come together and form a management team. The local customs and traditions should be imposed in the official impositions and procedures.
- The representation of the women groups must be supported at the local management level. The leading role of the women groups should be also encouraged.
- The accountability of mechanism and not only up-down but also down-up supervising must be built at the local management level.
- The role of the local management level has to confirm or reject relating the recognition of customary land and the process of applying for the land.
- It needs to measure the customary land areas and carry out the associated work.
- It needs to manage the registration of the customary land (including reinvestigation and extension of documents), the documents relating with the customary land and filings.
- It has to make the final decision for the rent of the customary land owned by the families or the transfer of property.
- The planning to use the lands and carry out the development projects has to be coordinated with the local people.
- The local government must directly manage and collect the taxation procedures concerning with the customary land use, also sentences the people who violate the law.
- The impositions of land use are to be enforced precisely and followed.
- The judicial institution and the court should have the close coordination in solving the disputes of land use.
- In order to have full accountability along up-down and down-up supervision, the judicial system ought to follow precisely and after that the current judicial mechanism at local level is to be considered.

Customary Land Law being reliable to implement under the Federal Union Constitution

----- Depiction of Federal System-----



Effectiveness

1. Acknowledging and protecting the customary land management system are the important part for the sustainable peace process and there have to impose in the federal union constitution and the decentralized legal framework. It is because:
2. The customary practices effectively support the local government system.
3. The customary practices are the system being handed over many generations and the villagers exist with their lands firmly.
4. The customary practices preserve the sustainable environment.
5. The customary practices create self-reliance and ecological sustainability of social system.
6. The customary practices preserve lasting the traditional and cultural heritage.