

## Briefing Note No 1 – Rights over Land for Shifting Cultivation

*Relevant to Articles 74,91,116,120,134 draft Land Law*

### Background

Shifting cultivation is a common livelihood and increasingly also a method applied to commercial agriculture in Lao PDR, particularly in the mountainous and remote areas of the country. Shifting cultivation practiced in Laos commonly involves the growing of crops on a piece of land for a few years, then leaving the land to rest (in fallow) for an average of 4-9 years, and then returning to the same piece of land for cultivation once it has sufficiently rested. Households rotate this practice on several patches of land, and the specific land patch to be used in a certain year, is traditionally decided in consultation and agreement with other community members.

Studies have shown that such ‘rotational’ shifting cultivation can be sustainable when conducted in a suitable area with reasonable rest periods between cultivation. Rotational shifting cultivation is different from ‘pioneering shifting cultivation’ that encroaches on new forests that were previously not disturbed. Pioneering shifting cultivation is a serious threat to deforestation. The Government has enacted policies and implemented programmes to halt pioneering shifting cultivation.

Almost all land used for rotational shifting cultivation in Lao PDR is under customary use. This means the farmers have been using and cultivating these lands for long periods of time, without formally recognized rights. Commonly, rotational shifting cultivation areas are collectively used by a number of households and sometimes even by the entire community. This means that these lands are unsuitable for individual land rights.

Presently, there are many reported cases of collectives losing access to rotational cultivation lands, which they have customarily been using, without receiving due compensation. When this happens, it poses a significant risk for many farming households that rely heavily on shifting cultivation for their subsistence and income.

Collectives that have been customarily using rotational cultivation lands should have formal rights to these lands, including rights to compensation in cases of expropriation. Collectives should also have rights to lease out such land, based on collective decision-making, and in accordance with the rules and regulations. Land Use Planning is a planning tool used to appropriately identify and demarcate the extent of the land collectively used including for rotational shifting cultivation. Formal rights over land for rotational shifting cultivation should be registered following the approval of a Land Use Plan developed in a participatory way. This ensures that all relevant legal, economic, environmental and social interests have been taken into consideration.

### Current issues in the draft Land Law

The protection of rights over land for shifting cultivation from a legal perspective includes 5 major issues:

1. **Protection of customary rights to land:** While the draft Land Law provides reasonable protection of customary land rights for individuals (Articles 116 to 120), it fails to do so for lands managed for collective purposes, such as rotational shifting cultivation land. The Resolution of the Party’s Central Committee 026/CC mentions that “the state must continue to recognize and protect land use rights held by individuals, entities, collectives and customary land use rights”.

2. **Inclusion of rotational shifting cultivation land as lands for collective purpose:** The draft Land Law has a narrow definition of lands for collective purposes under Article 74. The Article does not refer to agricultural and forest lands that make up the major part of land used collectively in many rural communities, and therefore also excludes land for rotational shifting cultivation.
3. **Defining ‘continuous use’ for rotational shifting cultivation land:** The draft Land Law has been prepared in such a way that only continuous land use (paddy, orchards, etc.) is envisaged for the recognition of land use rights and issuing of land titles. For example, Article 120 requires land to be used continuously for a specified period (e.g. 25 years). However, the case of rotational shifting cultivation is unique: For the purpose of rotational shifting cultivation, ‘continuous use’ needs to be understood more broadly, to include not only the use under agricultural cultivation, but the subsequent period during which the land may be resting, while still being used by the collectives for other purposes such as grazing, foraging, or collection of NTFPs.
4. **Loss of right for land used for shifting cultivation:** The protection of rights over land for rotational shifting cultivation is further weakened by Article 134 of the draft Land Law, which states that land use right holders who do not use the land for three years will lose it. If this provision is applied also to land for collective use, shifting cultivation land which is resting may be interpreted as ‘not used’ and therefore potentially prone to lose the land right.
5. **Identification and agreement on land for shifting cultivation through a Land Use Plan:** The draft Land Law does not specify the requirement to develop or update a Land Use Plan to correctly identify and demarcate land for shifting cultivation, ensuring that economic, environmental and social interests have been considered.

## Proposal

The draft Land Law should primarily be improved in the following sections, to allow better protection of rights over land for shifting cultivation:

1. Article 116 should be expanded to include “collectives”. This will allow collectives to acquire land through means specified in the following articles, especially Article 120, acquisition through customary use.
2. Article 120 should be amended to make special provision for rotational shifting cultivation agriculture. The requirement for continuous use for this type of land should be specified to include passive uses during the fallow period. (Simply reducing the current required use period of 25 years would ease the acquisition by custom for individuals, but not help the issue of shifting cultivation.)
3. Expand the village collective lands in Article 74 of the draft Land Law to include agricultural and forest lands.
4. Article 134 should be amended to accommodate the unique case for land for rotational shifting cultivation, which can include uses of the land during the resting (fallow) period.
5. Clarify in Article 91 the “forms of land titles”: Expand to “state land titles for state entities or for collective use and land titles for individuals...” This signifies that state land titles can be issued to

communities for collective use as mentioned in Art. 51 and not exclusively to state entities and organizations.

6. Expand Part V, Chapter 1 ‘Management of State Land Use’ through an Article specifying the obligation for developing a village Land Allocation and Land Use Plan (According to Articles 13 and 17), as means to identify and demarcate state land, as well as state land for collective purposes.