

Briefing Note No 6 Grievance Mechanism

Relevant to Articles 151-155 of draft Land Law

Background

In order for the Land Law to be implemented to ensure that all individuals and communities have a voice in deciding how their land is used, with regards to both customary and titled land, it is important to ensure that an independent grievance system is in place. Currently, the Lao PDR has a number of customary, semi-formal, and formal mechanisms through which conflicts, including those related to land, are addressed. Most local-level conflicts are dealt with through customary law and practice. However, a semi-formal mechanism available at the village level is the Village Mediation Unit (VMU), whose job is to provide justice at the village level, in part by settling minor civil and criminal disputes. Cases that cannot be addressed at the village level can be sent to the District Mediation Units (DMU). The most formal way of dealing with civil or criminal cases is to take them to the courts, at the local, provincial, and national levels (People's Supreme Court). Finally, petitions can be made to an administrative body, judicial body, or the National Assembly when government officials have made decisions that infringe the law or affect the interests of the community (UNDP 2011).

Current issues in the draft Land Law

The draft Land Law contains some new provisions on resolution of land related conflict, but they do not cover all the important aspects as follow:

1. There is no legally specified grievance mechanism for land conflicts between villagers and investors. Some large investment projects, especially in the hydropower and mining sectors, do set up such a grievance mechanism. However, it is not completely independent as it is funded by the investor.
2. The village mediation unit is mostly used for addressing conflicts between villagers and is not equipped nor given the responsibility to address conflicts between villagers and outside investors. While the case could be passed on to the district level, it has been found that cases do not often get passed on.
3. While the village could go to the relevant administrative department, DoNRE for addressing administrative matters, this is the same office that allocates land to the investor and thus there is a conflict of interest and a lack of independence.
4. Taking the case to the court is often seen as too costly for poorer villagers. Additionally, there is a perception among many villagers that the courts have improper or undue influence, particularly that it is difficult to win cases if you do not have money or the other party has more money, which would certainly be the case if villages took a company to court.
5. Making a petition to administrative bodies, judicial bodies, or the NA is a possible choice but is also expensive and very risky as it does not deal with the conflict in a non-confrontational way, as many communities prefer.

Proposal

The draft Land Law should primarily be improved especially in the Chapter XII, to allow better mechanism to resolve land disputes; ensure peace and justice; build confidence in land use and land utilization of the people, business units, domestic and foreign investors; and decrease negative social phenomenon:

- To create conflict resolution mechanisms which are accessible nationwide through;
 - Independent land commission
 - A committee of people recognized for their commitment to resolving land disputes. It would be connected to the National Assembly and have the authority and responsibility to investigate land disputes and enforce implementation of justice.
 - Land Conflicts Ombudsman
 - Government agency responsible for investigating disputes and enforcing justice, this agency would have staff in all provinces and be supervised by the Independent land commission.
- Any person or entity has the right to bring a land dispute forward for resolution without fear of persecution. Awareness should be raised among local communities regarding their rights related to land conflicts.
- All stakeholders should be involved in the process of resolving a land conflict. In particular, affected communities must participate.
- If affected parties are unable to afford independent legal advice, the State will organize the provision of free legal advice to them.
- Villagers would be entitled to receive assistance from non-government organizations to help them present their grievance.
- Settlement of administrative land disputes should be assigned to the natural resources and environment sector in coordination with the concerned sectors at central and local levels. If no agreement can be reached, the dispute should be forwarded to the Land Dispute Independent land commission.
- Settlement of land disputes shall be conducted in a timely manner, and results of the grievance process shall be communicated to all stakeholders.
- Appeals from the grievance process would be considered by the courts. Similarly, decisions agreed during the process could be enforced using the court's powers of enforcement.