



# CUSTOMARY TENURE RIGHTS IN LAO PDR

**BRIEFING NOTE**

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## ISSUES

*Photo: A landscape with a remote village in Huamueang district, Huaphan province (Photo by LIWC)*

While the Lao Government is making progress in issuing Land Titles to land rights holders throughout the country, **most farmers in rural areas remain without formal tenure documents**. Their land tenure is often part of customary tenure systems based on traditions and agreements within communities. Both individual and collective (commonly understood as “communal”) tenure rights are part of these customary tenure systems, which are diverse and localized. Due to the lack of research and sufficient information, these systems are not well understood and, as a result, there are gaps in, and areas of confusion around customary tenure in legislation in Lao PDR.

The revised Land Law of 2019 provides some level of recognition and protection for customary tenure, although this is **limited to individual tenure rights** (Art. 130 Land Law). The Law makes **no mention of the recognition and protection of customary rights to collective land areas**, community forests or any other forms of customary land.

Apart from the intention to issue individual Land Titles for plots acquired by custom, which fulfil the criteria in Art. 130 of regular use of more than 20 years duration before the Land Law became effective, no further details are provided about **how the recognition and**

**protection of customary rights would be exercised** in practice. The Law further raises the question of **how customary rights to land established more recently than 20 years would be treated**, leaving potentially large areas of land and communities without tenure recognition. The Law provides **no guidance about the tools and processes to be applied** in order to ensure the recognition of customary rights, as well as their protection in cases of conflicting claims to them.

While local Land Use Plans can sometimes provide a source of information about the whereabouts and extent of customary land, their reliability rests on the quality of, and participatory nature in which these plans were developed, which is not consistent and is often dependent on external support. Coupled with their low legal status, **Land Use Plans are presently insufficient to effectively protect customary land tenure**. Development projects, or investments of any nature, **lack the legal requirements to conduct thorough land tenure investigations** to determine all of the communities’ land rights, customary or formal, collective or individual.

For the three categories of State Forestland, the Land<sup>1</sup> Law refers in Art. 44 to the recognition of land rights for people who have been living and making a living



in these areas through the issuance of Land Use Certificates. It is unclear **whether customary claims inside the State Forestland that fulfil the criteria of Art. 130 would also be subject to land titling.** The revised Forestry Law of 2019 makes **no further mention of tenure rights**, referring only to “customary utilization” of forest resources (Art. 60, 64 and 123). Although the Ministry of Agriculture and Forestry (MAF) generally acknowledges the responsibility of the Ministry of Natural Resources and Environment (MoNRE) to register land rights and issue formal tenure documents,<sup>2</sup> its mandate to govern and take the lead in land management activities inside forestland, there needs to be **a unified understanding, approach and agreement between MAF and MoNRE about how customary rights to land are identified and recognized.**



Photo: A group of farmers threshing the rice harvest in Ngoi district, Lungprabang province (Photo by LIWC).

## BACKGROUND INFORMATION

Customary land tenure or customary tenure is a set of rules, norms, institutions, practices and procedures created by communities that have evolved over time. These rules and norms govern the allocation, use, access and transfer of land and other natural resources. Customary tenure is often referred to as a “customary tenure system”, to highlight the complexity of these practices.

While customary tenure in the international community is well understood, the policy and legal framework of Lao PDR lacks a clear definition: The Land Law interprets customary tenure (Art. 130) as a process of acquisition of individual tenure rights through the regular use of the land, without formal tenure documents, rather than as a fundamental right of Lao citizens. Through the issuance of Land Titles, such customary tenure can be turned into formal tenure. Art. 130 states that “*while land registration has yet to be conducted for the issuance of individual land titles, the State recognizes and protects the customary land use right [...].*” Further legislation is needed to define how recognition and protection would be realized in practice, especially for land held collectively by communities.

In rural communities in Lao PDR, tenure claims are commonly endorsed by the village authority - the *naiban* - together with adjacent land rights holders. This form of local testimony is also the basis for the registration and issuance of formal tenure documents. However, Lao legislation does not describe a status, wherein such local endorsement would be sufficient to fully protect landholders’ rights in cases where they are challenged. Such protection of rights would include legal provisions for full compensation in cases of expropriation. Meanwhile, holders of Land Titles are often treated favourably compared with those who merely claim customary rights without documents.

The narrow interpretation of customary tenure in the Land Law reveals one of the disparities in respect of an international understanding of the recognition of all forms of customary tenure rights, as articulated for example in the VGGT,<sup>3</sup> No. 5.3. This propounds that “*States should ensure that policy, legal and organizational frameworks for tenure governance recognize and respect [...] legitimate customary tenure rights that are not currently protected by law.*”

<sup>1</sup> Conservation, Protection and Production Forest

<sup>2</sup> Stated in the official Minutes of Meeting of an inter-ministerial exchange on 09.07.2021

<sup>3</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security





*Photo: Upland fields, fallows and secondary forest in Huameuang district, Huaphan province (Photo by LIWG)*

## RECOMMENDATIONS

- 1.** Draft sub-legislation that specifically covers Customary Tenure rights and provides an elaborate definition of “Customary Tenure” and the accompanying spectrum of rights according to international standards, such as the VGGT. This sub-legislation should describe and clarify:
  - o The tenure rights that would be granted to the customary land.
  - o The validity of customary tenure rights under Art. 130 at any given time when they are being challenged or claimed by the rights holder.
  - o How customary land will be recognized and protected during the interim period before titling or certification can occur.
  - o The process and documents involved in the recognition of customary rights.
  - o How customary land rights can be recognized by allocation (Art. 127 LL) if and when conditions of Art. 130 are not fulfilled.
  - o The process of recognizing customary rights to collective land, including those ministries and departments that are responsible.
- o The provision of compensation to communities when State land for collective use is taken for public purpose or State investment projects.
- o How Art. 44 on the “Use of Forestland” interacts with Art. 130.
- 2.** Make provisions in relevant legislation or guidelines stipulating that, for any kind of project or intervention involving land at village level, a “tenure investigation/analysis” must be conducted. This investigation is to determine:
  - o The extent of land ownership of individuals and collectives through formal land documents.
  - o The extent of customary land tenure of individuals and collectives, without formal land documents.
  - o The extent of areas used for controlled and sustainable shifting cultivation and village forests.



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