



TENURE RIGHTS TO LAND FOR COLLECTIVE PURPOSES

BRIEFING NOTE
DECEMBER 2021

ISSUES

Photo: Paddy and vegetable fields in Vangvieng district, Vientiane Province (Photo by LIWC)

Communities living in the mountainous areas of Lao PDR depend on collective land for securing income, nutrition, livelihoods and environmental services.¹ This land, which is often also referred to as “communal” land, is used for shifting cultivation, livestock raising and other agricultural, agro-forestry and forestry purposes. The **secure access to such collectively² managed land by rural communities is at risk**, through inadequate provisions in the revised Land Law and Forestry Law of 2019. While these Laws have made significant progress in introducing the principles for recognition of the customary use of lands (Art. 130, Land Law) and the concept of collectively managed land (e.g., Art. 81 Land Law, and Art. 118 Forestry Law), they **fall short of specifying tenure rights for collectively managed land**, which are critical for rural livelihoods based on collective agriculture and village forestry.

Land Use Plans or Village Forest Management Plans are often the only documents in which such land uses are mentioned, but they do not serve as an adequate means to provide tenure security.

Stronger tenure security and a clearer framework to manage collectively used lands through formalized tenure, could enhance the motivation of local communities to invest in and improve land management towards more sedentary livelihoods. Formalizing collective tenure rights would legalize the communities’ use of these areas and create a better distinction between areas that may be assigned for other purposes, such as land investments, infrastructure projects, or forest protection and conservation – all of which are important elements of the sustainable socio-economic development of Lao PDR.

¹ Combined, collective management of village lands contributes to larger-scale (district, province etc.) ecosystem services.

² Collective management refers to the management of different land types (agriculture, forestry and others) by all village members. Most collective management systems are customary in origin.



Photo: A group of villagers during a legal awareness activity organized by youth volunteers from LIFE project in Phonthong district, Lungprabang province (Photo by LIWG)

BACKGROUND INFORMATION

Collective land management has long been a traditional form of customary tenure arrangement in Lao PDR. Communities of all ethnic backgrounds organize the access to, and distribution of these lands on a regular, mostly annual basis. This often includes rotational shifting cultivation on land not suitable for perennial or long-term production. Beyond that, plantations and agro-forestry, livestock grazing land, or other periodical crop production is often also managed on collective land.

Past efforts by the government of Lao PDR (GoL) targeted the eradication of shifting cultivation. In more recent years, with a better understanding of the nuanced differences in shifting cultivation practices,

the focus of GoL policies and programs has shifted towards reducing shifting cultivation and particularly towards expansion into new areas. Notwithstanding, shifting cultivation continues in most parts of the country and remains an important part of livelihoods in upland communities. However, when Lao farmers are presented with alternative livelihood options and opportunities, the future trend will no doubt be a transformation from shifting cultivation to other, more continuous and permanent use of these land areas. Recognition and adequate legal protection of their collective land areas, and areas used for shifting cultivation, would facilitate this transition and help to ensure household income and food security.



Photo: A group of villagers collectively harvesting an upland rice field in Ngoi district, Lungprabang province (Photo by LIWG)

RECOMMENDATIONS

1. Draft appropriate sub-legislation, providing Land Use Certificates to be issued for land used for collective purposes. This should:
 - a. Expand the list of State lands used for collective purposes - as stipulated in Art. 81 of the Land Law - to include land used collectively for agriculture, agro-forestry and forestry.
 - b. Provide for the issuance of Land Use Certificates for collective land, both inside and outside of State Forestland. Such Certificates would formalize communities' right to use the respective area of State Land for the collective purpose according to the local Land Use Plan, and, simultaneously, legally secure prolonged access to that land for the community.
Note: By the nature of the rights to collective land being granted as a use of State Land, the right to transfer is excluded.
 - c. Provide for the acquisition of land use rights for collective purposes by the same concepts as for rights to individual land - acquisition through allocation by the State (Art 127) and acquisition of customary land use rights (Art 130).
 - d. Clarify that any land used for controlled and sustainable rotational shifting cultivation, even during its fallow period, is also considered to be a type of "continuous land occupation and use" as per Art. 130 of the Land Law.
 - e. Ensure that Land Use Certificates for collective lands are registered in the official Lao Land Registry, to be stipulated in the Ministerial Instruction 6036.
 - f. Develop a legal and unique registration format for Land Use Certificates for Collective Land, which includes the boundaries, type of land use, rights holders of the collective land and the description of the management agreement for the respective land plot.
2. Ensure that land areas under collective use by communities are explicitly excluded from potential areas identified and granted for State land leases and concessions, including by means of registration through the Lao Land Registry. Provide adequate and transparent data and information for the relevant government sectors/departments and investors so that they can make informed decisions.
3. Ensure that any conversion of State Land for collective purposes is based on the full consent and agreement of the collective rights holders and the community, together with the provision of full compensation for the converted land areas.
4. In legislation regarding Land Use Planning and Village Forest Management Planning, ensure that the identification and demarcation of State Land for collective purpose is a mandatory part of the process and output.



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This Briefing Note was written by Julian Derbidge, reviewed and edited by Akiko Inoguchi, Avakat Phasouysaingam, James Bampton, Manoly Sisavanh, Richard L. Hackman and Violaine Fourile.

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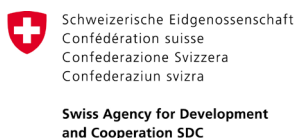
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