

The Recognition of Customary Tenure in the Mekong Region

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The Mekong Region Land Governance Project

"Securing family farmers and communities
access to land and natural resources in the
Mekong Region"



MRLG Objectives

- **Goal** → Family farmers, especially those belonging to ethnic minorities, have secure and equitable access to and control over agricultural land, forest, and fisheries
- **How?** → Strengthening of „reform actors“ in the land sector (government, civil society, academia, private sector) to influence policies and practices in land governance in the Mekong region



The Mekong Region in Southeast Asia

Physical Map of the World, October 2010





The Mekong Region in Southeast Asia

The “Mekong Region” are the countries situated along the flow of the Mekong River

Agroecologically and geographically diverse, land issues vary across national territories

Commonalities: delta regions, lowland agricultural valleys and upland zones

Issue: high pressure on land (investment, domestic migration, population growth)

Challenges: limited capacities among actors, unclear legal frameworks, lack of implementation capacity

Result: disadvantage of marginalised groups (smallholders, ethnic minorities, women)





Why is customary tenure recognition important?

Customary tenure concerns millions of farmers, fisherfolk and other resource users in Cambodia, Lao PDR, Myanmar and Viet Nam and is the basis of their livelihoods and culture.

It covers different land use types: agricultural lands, forests, grazing land, fisheries, sacred, spiritual, burial sites.

Customary tenure systems consist of local rules, institutions and practices that are based on tradition, but which maintain flexibility to adapt to changing circumstances.

→ MRLG advocates for improved recognition of customary tenure



Laos





The Lao People's Democratic Republic (Laos)

Traces its routes back to the historical kingdom of Lan Xang

Under French colonial protectorate from 1893

Independence from France in 1953 leading to constitutional monarchy

Civil war shortly after independence (1959-75)

In 1975 the communist movement Pathet Lao overthrew the royalist government

Lao People's Democratic Republic founded in 1975 – a **socialist one party state** with close relations to Vietnam

Since 1988 a continuing opening to private enterprise and liberalisation of foreign investment can be observed



Geography of Laos

Territory: 237,955 km²

Population: 6.8 mio. (2016) – considered one of the lowest population densities in Southeast Asia

Only land-locked country in South East Asia, very mountainous terrain, thickly forested

Perceived as land abundant with very low population density, but arable land is scarce: only 10.3 percent

In these scarce lowlands usually **paddy rice** is cultivated

People outside lowland areas use hillsides for agricultural production (**upland dry rice**).

Soils quality degenerates typically within 3-4 years, creating the need to open new fields and leave used ones fallow. This rotational practice is called **shifting cultivation**.



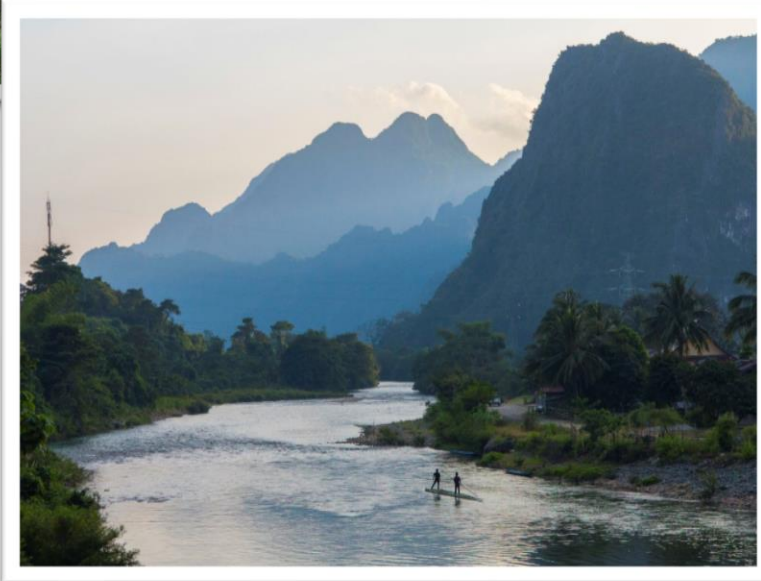


Cultural diversity

Constitution defines Lao PDR as multi-ethnic country. It ensures the equality and rights of all ethnic groups to protect and promote customs and traditions.

However, the Lao ethnic group (traditional lowland dwellers) represent the effective majority population and dominate political institutions

Other relevant ethnic groups are the Khmu, Hmong, Akha and others





Land management in Laos

Very difficult to get reliable data

In November 2014 around 806,000 land titles had been issued

Official estimates indicate a further 2.6 million plots still need to be titled – however likely too low

Unofficial estimates suggest that 4.2 million plots still need to be registered based on known averages per village

Challenge for government authorities: Keeping an up to date cadastre available on relevant levels of authority to facilitate decision making



Customary Tenure in Laos

All land and natural resources of Lao PDR belong to the national community and are managed by the state. The state may devolve user rights to individuals, families, state and economic organisations

Extend to which land formalisation schemes have “penetrated” the periphery very limited

Nevertheless land has been and is being managed under customary rules and arrangements. Different ethnic groups devised different land tenure practices in different regions of the country.

Arrangements vary but it is common among all customary authorities to manage unassigned land and resources as common property. This allows for flexibility according to varying needs among community.

Unsolved: ongoing policy debate on how to formalise communal/collective land rights in Laos (currently no titles for shifting cultivation lands)



Effects of insecure land tenure

In the past, Lao government authorities have given concessions and/or leases on areas although they were under customary use

Creating conflicts between the customary users of the land and the new formal land owners

Resettlement often to areas of lower soil quality with limited arable land – risk to livelihoods of communities

Compensation (if paid) often under market value

→ Although communities have been using land customarily they are in danger of losing their lands



Challenges ahead

In Laos, the legal recognition of customary tenure is accepted in theory - however, provisions are generally weak and poorly implemented

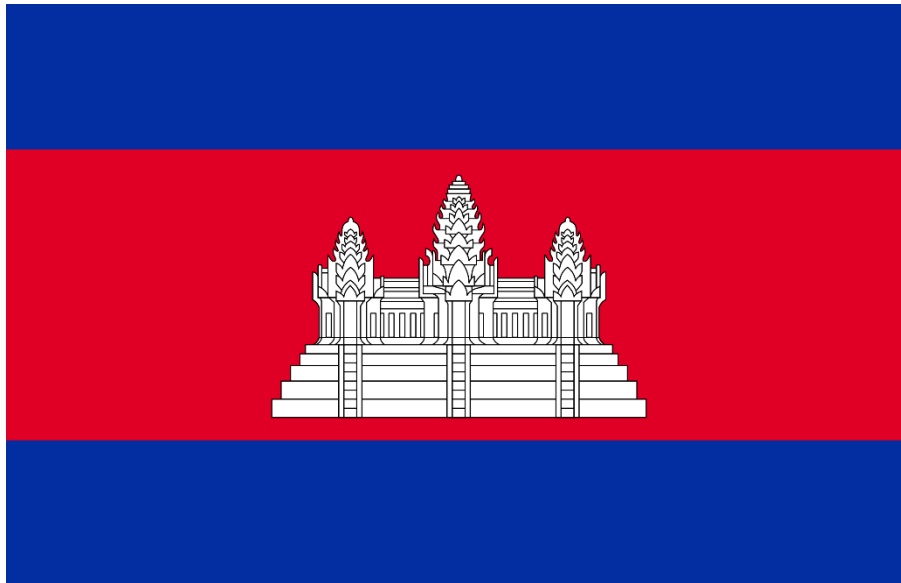
In effect, most rural communities struggle to attain land tenure security over the lands they are using for their livelihoods

Corruption remains a major challenge for the rule of law and the states ability to enforce contract and business regulations

Challenges lie in navigating the Lao political and legal system, communities' lacking awareness of their legal rights, inadequate conflict resolution mechanisms

The question around communal/collective land titling needs to be addressed

→ Clarification questions?



Cambodia





The Kingdom of Cambodia

Historical Khmer empire (9th – 15th century)

French protectorate from 1867 – 1953

Independence in 1953

Constitutional Monarchy (1953-70)

Civil war (1970-75)

Khmer Rouge regime (1975-78)

Vietnamese occupation and transition
(1978-92)

Today: elective constitutional monarchy, president as the head of state

David Roberts, Human Rights Watch: *“vaguely communist free-market state with a relatively authoritarian coalition ruling over a superficial democracy”*



Geography of Cambodia

Population: 16.2 million
(07/2017 est.)

Territory: 181,035 km²

Mostly low, flat plains;
mountains in
southwest and north







Cultural diversity

“Khmer” majority makes up more than 90% of population

The government of Cambodia recognises “indigenous peoples”, granting specific rights to these groups

Less than 2% of the total population are classified as indigenous

Most indigenous peoples live in upland areas



Land management in Cambodia

Between 46%-58% of the land owning population have a land title

Approx. 3.5 million titles have been issues through systematic and sporadic registration

Full coverage of land titles likely to take 15-20 years



Customary Tenure in Cambodia

Traditional rights based on system of “land acquisition by the plough” granting exclusive rights to the family that cleared a piece of land and brought it into production (*paukeas* rights)

Cambodian Land Law recognises *paukeas* rights, **individual** titling is possible after 5 years of peaceful possession (after 1979)

Customary **communal** lands: forests, fisheries, grazing lands, shifting cultivation areas

Local communities have managed these lands and resources using varying customary systems in the past

Collective ownership is possible for indigenous communities through issuance of communal land titles



Communal Land Titles for Indigenous Peoples

Indigenous people (IP) may claim a communal land title (CLT) over their customary lands. CLT owners have all the rights and protections of ownership as private owners.

Traditional authorities have responsibility to exercise community ownership rights according to their customs.

Shifting cultivation may be carried out in specifically identified “reserve land”. Apart from this, forest land is excluded from being titled.

Process is complicated, expensive and slow. Without external support communities are highly unlikely to achieve title. As implementation is slow, many communities have lost areas to various forms of encroachment while waiting for title.

Also, only IP may claim a communal title – this excludes the majority population from enjoying similar rights.



Challenges

Cambodia developed a strong legal framework, however implementation and enforcement are lacking

Systematic land titling was able to deliver large amounts of land titles in relatively short amount of time – but focussed on lowland areas

Granting of economic land concessions in customary areas challenged customary systems

Particularly upland areas experienced increased tenure insecurity leading to increased land conflicts

Many communities were not able to claim full rights to their customary lands due to the pressure on upland areas and slow IP-CLT process

Issued CLT experienced encroachment even after titling - no enforcement

Lacking rule of law and widespread corruption present severe challenges

→ Clarification questions?



Conclusion

- Many areas under customary use are not (yet) formalised by the nation states, penetration into the rural periphery is very limited
- Shifting cultivation presents a challenge for formal recognition of land use rights in the Mekong Region
- In some cases legal framework exist and need to be implemented, in others the respective policies still need to be developed
- Existing rules and regulations are oftentimes not being implemented and enforced, due to limited capacities, government budget and wide-spread corruption



Opportunities

- Shift in perception: large scale agribusinesses have failed expectations of national development in many cases
 - ELC cancelling in Cambodia
 - Moratoria on rubber and banana plantations in Laos
- Mindshift from smallholder farmers as backwards to being more productive per hectare than large scale agribusiness
 - Combinations like outgrower schemes have potential to combine private investment in land with formalised land rights of smallholders
- Secure land rights will encourage smallholders to invest in their land and contribute to national development goals



Thank you very much for your attention!

Let's discuss!

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