



Public Disclosure Authorized

Public Disclosure Authorized

Public Disclosure Authorized

Public Disclosure Authorized

An Assessment of Customary Tenure Systems in the Lao PDR

Authors:

The report has been authored by Richard Hackman. The work was led by The World Bank team composed of Markus Kukkonen and Dr. Willem van der Muur. Invaluable feedback and inputs were provided by peer-reviewers Svend Jensby, Linus Pott, Asyl Undeland and Dr. Luck Bounmixay and several members of the Land Information Working Group's 'Advisory Group'. The study has been financed by the Forest Carbon Partnership Facility (FCPF).

Disclaimer:

This work is a product of the staff of The World Bank with external contributions. All omissions and inaccuracies in this document are the responsibility of the authors. The findings, interpretations, and views expressed in this guide do not necessarily represent those of the institutions involved, nor do they necessarily reflect the views of The World Bank, its Board of Executive Directors, or the governments they represent.

The World Bank does not guarantee the accuracy of the data included in this work. The boundaries, colors, denominations, and other information shown on any map in this work do not imply any judgment on the part of The World Bank concerning the legal status of any territory or the endorsement or acceptance of such boundaries.

The annexes in this publication have not been edited to reflect World Bank style or usage but are presented in the original formats as supplied by the author of each paper.

© 2022 International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington DC 20433
Telephone: +1-202-473-1000
Internet: www.worldbank.org

Rights and Permissions

The material in this work is subject to copyright. Because the World Bank encourages dissemination of its knowledge, this work may be reproduced, in whole or in part, for noncommercial purposes as long as full attribution to this work is given.

Third-Party Content

The World Bank does not necessarily own each component of the content contained within the work. The World Bank therefore does not warrant that the use of any third-party-owned individual component or part contained in the work will not infringe on the rights of those third parties. The risk of claims resulting from such infringement rests solely with you. If you wish to reuse a component of the work, it is your responsibility to determine whether permission is needed for that reuse and to obtain permission from the copyright owner. Examples of components can include, but are not limited to, tables, figures, or images.

Photos: Phetsakhone Somphongbouthakanh, Richard Hackman and Village Focus International.

Cover photo: Phetsakhone Somphongbouthakanh

Design and Layout: Quack Co., Ltd

Table of Contents

	P.
1. Executive Summary	1
2. Assessment Background	2
3. Customary Land Tenure in Laos	2
4. Methodology	6
5. Defining Customary Law and Tenure	7
6. Ethnicity and Customary Tenure	8
6.1 Ethno-linguistic Groups in Laos	8
6.2 Ethnicity – Customary Tenure Relation	11
7. The Extent of Customary Tenure Systems	13
8. Customary Tenure Systems Typologies	17
8.1 Kinship and Land Rights	17
8.2 Rights and Resources	19
8.3 Customary Private Ownership	22
8.4 Customary Collective Ownership	23
9. Customary Tenure Systems in Transition	26
9.1 Land Use Planning and Allocation	28
9.2 Establishment and Expansion of State Forests	31
9.3 Customary Rights within the Three Forest Categories (3FC)	32
9.4 Forest Categories and Administrative Dualism in Granting Land Use	34
9.5 Land as Capital and Land Concessions	35
10. Efforts to Formalize Customary Land Tenure	38
11. Recommendations and Options for Strengthening Customary Tenure Systems	44
11.1 Recommendations for Supporting Customary Tenure Systems	45
11.2 Options for Recognition and Formalization	52
12. Conclusion	59
13. Annexes	60
Annex 1: Research Framework	60
Annex 2: Layers of Customary Law and Tenure	61
Annex 3: Context Dependent Tenure	62
Annex 4: Efforts to Recognize Customary Tenure Systems	63
Annex 5: Guidelines for Governance of Land-based Investment	72
14. References	74

Acronyms

3FC	Three Forest Categories
CSO	Civil Society Organization
CLUC	Collective Land Use Certificates
CLT	Communal Land Titling
DALAM	Department of Agricultural Land Management
DoF	Department of Forestry
DONRE	District Office of Natural Resources and the Environment
EIA	Environmental Impact Assessment
GoL	Government of Laos
GLTN	Global Land Tool Network
INGO	International Non-governmental Organization
LWU	Lao Women's Union
LFND	Lao Front for National Development
LFA	Land and Forest Allocation
LUP	Land Use Planning
LUPLA	Land Use Planning and Land Allocation
MAF	Ministry of Agriculture and Forestry
MONRE	Ministry of Natural Resources and the Environment
MRLG	Mekong Regional Land Governance Project
NBCA	National Biodiversity Conservation Areas
NPA	National Protected Area
NTFP	Non-Timber Forest Product
PF	Protected Forestland
PFA	Protected Forest Area
RECOFTC	The Center for People and Forests
TLIC	Turning Land into Capital
VF MCC	Village Forest Management and Conservation Contracts
VFMP	Village Forest Management Planning
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure

Tables

P.

Table 1	Ethno-linguistics Groups in Laos	8
Table 2	Typology - Kinship Patterns and Resource Ownership	18
Table 3	Government Options for Recognition of Customary Land Rights	27
Table 4	Summary of Three Forest Categories	32
Table 5	Comparing Land Rights Inside and Outside of State Forestland	33
Table 6	Summary of Efforts to Recognize Customary Land Tenure	39
Table 7	Summary of Options for Formalization or Recognition of Customary Tenure	57

Figures

P.

Figure 1	Ethno-linguistic Groups and Population	9
Figure 2	Ethnic Composition of Village	10
Figure 3	Upland and Lowland Landscapes	14
Figure 4	Distribution of Villages Practicing Shifting Cultivation	16
Figure 5a	Typology Rights Holders	20
Figure 5b	General Customary Tenure System Typology	21
Figure 6	Land Tenure Transition	28
Figure 7	Expansion of Land Concessions	36
Figure 8	Land Type Change Caused by Land Concessions (%)	37

1. Executive Summary

The history of land rights in the Lao People's Democratic Republic (Lao PDR), hereafter referred to as Laos, is a history of customary land tenure systems which remain the most prevalent form of land tenure. As social systems, land tenure systems in Laos have been affected by and have adapted to external forces such as neighboring kingdoms, colonialization, geopolitics and war, migration, and global economic trends. Ongoing rapid changes in national socioeconomic conditions and domestic political goals continue to alter the customary tenure landscape. Customary tenure systems have responded differently to changes, but the predominant direction is a transition towards formalization (titling, land use planning, land taxes, family land books etc.) that provide varying levels of recognition and protection of land rights. As this transition occurs, a mixed customary-statutory tenure mosaic has emerged across the mountains and plains of Laos. Within this mosaic, the level of tenure security differs. Due to a lack of formal recognition, the most insecure tenure is land held fully under customary tenure. This desk-based assessment considers the culture and ethnicity of customary tenure systems, their prevalence in the country, general typologies found in Laos, customary tenure systems in transition, and past efforts to formalize customary land rights.

Before the year 2000, protection of customary tenure systems was not an urgent issue. However, the present development trajectory includes: large numbers of commercial investments in land, increased smallholder commercial agriculture, extensive infrastructure development, and greater overall commodification of land. These forces have increased the insecurity of customary land and will likely continue if actions are not taken to better protect it. Customary land rights in Laos are part of a complex cultural landscape with high ethno-linguistic diversity that results in multiple local tenure specific contexts. This includes customary land rights held collectively, individually, by households, by village founders, or by clans. Land and resource rights in local tenure contexts are complex and can have varying degrees of 'privateness' found embedded in collective rights. Many nuances exist around customary rights that are resource specific and linked to time and seasonal changes. Power dynamics within local customary systems and between rights holders and external groups, influence these systems. In some customary tenure systems, kinship and inheritance patterns marginalize or exclude women from holding land rights. To fully understand a local tenure context takes effort and time spent learning from the rights holders; without this, inaccurate conclusions may be reached and inappropriate or ill-conceived attempts to formalize customary tenure systems could be made.

Importantly, formalization cannot rely on a single approach to address tenure diversity. Strict social safeguard frameworks are essential to ensure that marginalized groups do not directly or indirectly lose their land rights, if there is a transition from customary to formal tenure. In some contexts, no formalization may be the better option. Good examples of formalization are available in Laos and are ready to be scaled up. The main obstacles for doing so are a restrictive and unclear land governance legislative framework, insufficient funds, and a strong focus on economic planning and growth for which customary tenure has not been considered. This report includes recommendations for strengthening and protecting customary tenure and for improving recognition and formalization.

2. Assessment Background

The World Bank in Laos is supporting ongoing and upcoming projects¹ that have identified the government's limited recognition of customary land rights as a potential social and environmental risk. To inform the World Bank's project planning, design, decision making, implementation, and, ultimately, to enhance and improve greater equity of project results and the protection of customary land rights, technical assistance is being provided by the Forest Carbon Partnership Facility (FCPF). The technical assistance includes: i) an assessment of customary tenure arrangements, and current and past efforts to improve customary tenure in Laos; ii) organizing a regional conference on customary tenure to share the experiences of other countries; and iii) providing a legal assessment and recommendations to improve current regulations. This document, "*An Assessment of Customary Tenure Systems in the Lao PDR*", contributes to activities i) and iii) by looking at the history and context of customary tenure systems in Laos, presenting general typologies, and formulating options and recommendations to be considered by the government for strengthening their recognition² of customary tenure.

The assessment assumes that better recognition of customary tenure systems by the government would result in positive local and global benefits, but there are potential risks. The most obvious benefit is holding legal rights over the natural resources and land that people's livelihoods are based upon. The recognition of these rights builds a sense of human dignity, greater inclusion in society, and membership in the national community. On a broader scale, recognition of customary land rights brings benefits for the protection of biodiversity and supporting climate mitigation (Rights and Resources Initiative, 2020). Conversely, there are identified risks that come with formalization of customary land rights that have to be taken seriously (Dywer, 2015). These may include a decrease in the flexibility and inclusiveness of some customary land tenure systems and an increase in the fungibility of land; facilitating land transactions leads to potential landlessness.

3. Customary Land Tenure in Laos

Historically, customary tenure systems in Laos are directly linked to customary law that has existed in many different forms throughout the pre-state territory of Laos (Daviau, 2011). During the Kingdom of Lanxang (14th–18th centuries), until its formal dissolution in 1975, the king was considered the ultimate owner of all the land. While this existed as a theoretical right, at the village level the land was managed according to customary rules (Taillard, 1974). Immediately

¹ WB's Enhancing Systematic Land Registration Project (ESLRP, \$31 million IDA, P169669), Lao Landscapes and Livelihoods Project (LLL, GEF and Canadian Clean Energy and Forest Carbon Partnership Facility, \$57 million IDA, P170559), the Carbon Fund Emission Reductions Payments Agreement (ERPA, \$42 million, P165751) linked to the Northern Lao Governance, Forest Landscapes and Livelihood Program (GFLL), and Public Information and Awareness Services for Vulnerable Communities in Lao PDR (PIASVC, \$2.5 million JSDF TF, P170640).

² Formalization is any process that records and identifies (mapping, inventories, etc.) customary rights. However, some types of formalization (e.g. community mapping) may not imply recognition of rights. The recognition granted depends on the type of formalization (e.g. mapping versus state titling) and how widely it is accepted as legitimate in a specific social-tenure context.

after independence from France was gained in 1949, customary tenure systems continued to prevail in nearly all areas of the country. In 1975, after the establishment of the Lao People's Democratic Republic, land collectivization that disrupted customary systems was attempted in lowland areas but was not widely adopted (Evans, 1988). It was not until after the promulgation of the first constitution in 1991 and clearer authority between the executive, legislative, and judicial branches of government existed that statutory land governance systems began to be established and expanded. The 1991 Constitution³ (Article 16) recognizes property rights, including individual rights, but with ultimate ownership of all land under the national community represented by the government. As of 2021, formal land titling has reached far less than half of the population/households in Laos, leaving customary tenure as the dominant system through which people hold land rights (World Bank, 2021).

Over the last three decades, interest in customary tenure systems in Laos by the government, development partners, researchers, and civil society organizations has fluctuated. In the 1990s, in response to planned land titling projects, International Non-governmental Organizations (INGOs) and some donors expressed their concerns⁴ to the government about the weak recognition given to customary land rights, especially women's land rights and the associated social and economic risks (Kirk, 1996). The government responded by drafting a ministerial order specific to customary tenure⁵. Communal resources⁶ were addressed through a "delegated management model" of collective rights to villages rather than full collective ownership (IFAD 2013: 6). However, as the natural resource legislative framework developed and expanded around statutory recognition, customary tenure systems were largely overlooked⁷. In 2017, the status of customary tenure was defined as "legal recognition of customary tenure over land and forests in Lao law shows some acceptance in it but provisions are generally weak and poorly implemented" (Ironside, 2017). Later in 2017 customary rights received high level attention in the Party Central Committee Resolution 26 (3/8/2017) on *'The Enhancement of Land Management and Development in the New Period'* (See Box 1 below for a complete description of customary land in the present legal framework) and in the 2019 Land Law customary rights are specifically mentioned. The government's attention to customary rights continues and now involves two ministries, the Ministry of Natural Resource and the Environment (MONRE) and the Ministry of Agriculture and Forestry (MAF). The most recent upsurge of interest in customary tenure occurs in an era of continued pressure on land to serve economic growth and the government's continued efforts to expand formalization of land tenure.

In recent decades, external factors⁸ have put local communal resource tenure systems under pressure and sent them into flux. The result being, few if any, "traditional" customary tenure systems remain uninfluenced. The reality on the ground is that customary systems have adapted quickly to external pressures and taken on hybridized characteristics on a spectrum between

³ Article 15

⁴ In 1995 a coalition of INGOs submitted a letter to the Department of Forestry stating the case for better inclusion of customary rights into the resource-related legislation.

⁵ Ministry of Agriculture and Forestry, 'Order on the Customary Rights and Uses of Forest Resources', Draft 5, April 5th, 1995.

⁶ In Laos, the term collective is included in legislation translated from Lao to English. This assessment uses communal when referring to the resource and collective when referring to rights.

⁷ Customary tenure was noted but not given complete recognition in the 1992 Land Decree and the Land Law in 2003. More substantial progress towards formalization was made in the 2019 Land Law.

⁸ The origin of these are diverse and complex and related to international, regional and national economic policies and many related and intertwined social variables.

customary and statutory (Suhardiman and Scurrah, 2021). However, there is a high demand for land for infrastructure, agribusiness, and by state-corporate commercial investments in land - 'from above', and through local privatization of land 'from below', driven by smallholder engagement in commercial agriculture and village land markets (Barney and van der Meer Simo⁹). The enclosure, privatization, and capitalization of communal land is a central threat to the future of customary tenure that results in uncertainty in the capacity of communal resources to act as traditional livelihoods' 'safety net'. The challenge for the government is to create a legal framework that recognizes customary land tenure systems in their present form and complexity and that provides secure land rights to Lao citizens, while also promoting local to national level economic benefits. Creative thinking and open minds are the foundation for achieving these goals.

⁹ https://kyotoreview.org/issue-25/laos-forest-land-commons-in-laos-in-the-twenty-first-century-agrarian-capitalism-and-the-non-commodified-subsistence-guarantee-2/?fbclid=IwAR1ux2Fk7-ihYZ8lh13PcQLiD6WJOI9RrnC1HyaiXhiPXJgzm_DE8z_jEs

Box 1: Customary Tenure in the Legal Framework of Laos

The Constitution describes Laos as a multi-ethnic country and provides all ethnic groups with the right to protect, preserve, and promote their customs and cultures (Article 8). Customary rights received high-level attention in the Party Central Committee Resolution No. 026/CC, 3/8/2017 on 'The Enhancement of Land Management and Development in the New Period'. The resolution recognizes the importance of land as shelter and a source of livelihoods, and points out that the state must continue to recognize and protect land use rights held by individuals, entities, collectives and customary land rights.

According to Articles 16 and 17 of the 2020 Land Law, the State protects and promotes all forms of property rights: state, collective, private, domestic, and foreign investment. Rights of possession, use, exploitation, disposition, and inheritance are included. Article 17 and Article 3 of the Land Law prescribe that land and natural resources belong to the national community and are managed by the state. According to the Land Law, the state can grant long-term and secure land use rights to Lao citizens, legal persons, collectives, and organizations of Lao citizens. The acquisition of customary land use rights is based on Article 130 of the Land Law. The article enables the issuance of individual land titles for customary-based land use lasting over 20 years without documents certifying the acquisition. It also requires the state to protect land use rights while waiting for land registration, but provides no regulation on how this should be accomplished.

The Land Law does not recognize collective land titles. It neither contains provisions on customary rights in collective land areas, community forests, or any other forms of customary land. Collective land use rights can, however, be recognized through Article 81, which allows granting land use rights to communal areas located on state land. Rights can be granted for collective use to the villagers in one or more villages collectively. These rights can be certified by issuing state land titles or land use certificates. The Article specifically mentions cemeteries, sacred forest, common ponds, temples, schools, health centers, village administrative offices, and village markets. However, this list is not exhaustive and the article could be applied also to the main communal land uses such as shifting cultivation, rotational agriculture, grazing, and forestry. Furthermore, Article 44 of the Land Law enables recognition of land rights in three categories of state forestland including the use of land by people who have been living and making their living in forestland before the area is classified as forestland. The regulation under preparation for implementation of the Article contains provisions on issuance of land titles and land use certificates. Collective and customary land use is included in the scope of draft regulation.

The Forestry Law 2019 has few references to customary utilization of forest, timber and Non-Timber Forest Products (NTFPs), but contains no regulation on recognition or protection of customary use rights. The forest management regulation, however, provides additional options for securing customary tenure especially through Village Forest Management Plans and Conservation Contracts prescribed in Articles 39 and 120 of the Law.

4. Methodology

The research methods follow, and are designed around, the structure and content of the assessment terms of reference (ToR). For a more structured research framework, questions embedded in the ToR were lightly revised and then research question groups (RQ 1, 2 and 3) were formed. An overall research framework is presented in Annex 1.

Customary Land Tenure Assessment Research Questions (RQ) Group 1:

- What are the prevailing customary systems/typology and institutions?
- How are gender and women's land rights defined and embedded in these systems?
- What are the relations of these systems to state institutions?
- What is the tenure security status of these systems as perceived by different groups?
- What are the main external and internal cause of customary tenure insecurity?

Progress Towards Customary Land Tenure Recognition Research Questions (RQ) Group 2:

- What have been the past, ongoing and planned efforts to improve customary and communal/collective tenure recognition and formalization and how successful have these been?
- What are the potential gaps of these efforts in the recognition of customary tenure?
- What has been the interest and capacity of government in advancing these efforts?

Research Output (RQ) Group 3:

- What recommendations can be made (from the perspective of the customary land holders) to improve the recognition and formalization of customary tenure?

RQ 1 concludes with general typologies of customary land tenure found in Laos; these are structured around: i) kinship (residence patterns, inheritance, gender related power dynamics); and ii) rights and resources. A sub-typology "context dependent tenure" is included as Annex 3. Ethno-linguist groups and tenure systems are considered, but cannot provide a complete framework to assess land rights.

RQ 2 delves into past efforts to improve customary tenure systems recognition and formalization and to learn lessons from piloting and to detect potential gaps in recognition. The results from RQ 1 and RQ 2 are then combined to help inform the results to RQ 3, which provides recommendations as in the ToR, "from the perspective of the customary land holders and their tenure security". Formulation of the recommendations included: cognitive interpretation, discussions, ranking, classifying, and a summary of all data collected during the research. This assessment is based on a literature review and interviews held with representatives from government, civil society organizations, and individuals with experience and expertise in land management in Laos. An important step in reaching the final recommendations involved consultations with the World Bank and discussions with other specialists. An important acknowledged limitation of the assessment is that it did not include field work and interaction with customary land holders. An additional challenge is the limited representation of the diversity of customary tenure systems in the typologies. To capture this diversity would require anthropological and sociological field work that this assessment will help initiate.

5. Defining Customary Law and Tenure

Customary tenure systems are intimately related to and deeply embedded in systems of customary law. Customary law is grounded in the foundational core values and beliefs of a social group. From customary law come rules and norms which operate through locally recognized social mechanisms and institutions and ultimately manifest as the land rights of groups and individuals (See Annex 2). Customary tenure systems evolve through processes of trial and acceptance or adaption, normally occurring over many years or even centuries (Aswani et al. 2018). These systems are not closed but are open and influenced by numerous variables that include: ethnic composition of villages (homogenous, multi-ethnic), location and topography (rural, urban, peri-urban, lowland, upland), gender relations and power, livelihood systems (paddy rice, upland rice, large livestock, forest reliance), a complex intermixing of state land and forest management policies, and local, national, and international economic forces.

Customary tenure patterns are community rules, regulations, and practices that are inherited from ancestors (Larson and Springer, 2016). In Laos and other countries, these are then (re) interpreted (i.e. evolve) and are enforced (i.e. sanctions) by communities and may or may not be recognized by the state. The types of tenure recognized in customary law reflect the views of that society about individual interest compared to that of communal interests and equality. The rights of individuals will encourage private tenure systems whereas the rights of groups, to ensure individuals benefits, will encourage communal tenure systems (WIPO, 2013). While customary institutions recognize both individual and group claims, they often privilege the group, in order to maintain the right to subsistence by the most vulnerable members of the community. They may put limits on individuals to enclose the resource (exclude outsiders) or liquidate (exhaust) it. The definition below details many aspects of customary tenure systems and provides a touchstone for discussion throughout this assessment.

“Customary tenure systems express, order and regulate the local possession, access, use and transfer of lands and the resources in and around a village (or cluster of villages) by its members, primarily for their own use, according to self-government traditions, and expressing their cultural understandings and knowledge.” (Springate and Kamoon, 2021).

Two additional quotes from Lao villagers regarding their customary tenure systems are valuable for showing the origins and roles of customary rights and how customary land holders define their own systems (Somphongbouthakanh, 2022)

Mr. Xienghung, age 81, a Khmu Ou man from Hacha Village, Phongsaly Province: “Customary rules are traditional practices, principles for living peacefully together, and passed on to each generation.” (p.9)

Ms. Nang, Khmu Ou, Hacha Village, Phongsaly Province: “Customary land rights are rights over land inherited from our mother and father, we have rights over it, other people cannot take it away from us, it is only for our children”. (p.14)



Photo: Phetsakhone Somphongbouthakanh

6. Ethnicity and Customary Tenure

6.1 Ethnolinguistic Groups in Laos

Laos is the most ethnically diverse country in mainland Southeast Asia with its population made up of four distinct linguistic families, each with a varying number of ethnic groups. Until recently there were 49 official ethnic groups in Laos and in 2018 this was increased to 50¹⁰ (Table 1). This number can be further subdivided based on sub-linguistic groups with some estimates reaching 160 groups (LFNC, 2005). Government recognition of an ethnic group in Laos involves a lengthy process across several Party organizations and ministries; a decision to recognize an ethnic group is an important cultural and political event.

Table 1: Ethno-linguistics Groups in Laos

<i>Linguistic Family</i>	<i>Ethnic Groups</i>
Mon-Khmer	Khmu, Katang, Makong, Yrou (Laven), Xuay, Ta Oy, Triang (Talieng), Tri, Phong, Brao (Lavae), Bru, Katu, Oy, Pray (Thin), Harak (Alack), Lamed, Pakoh, Kriang (Ngae), Yae, Xing Moun, Cheng, Nya-heun, Khmer, Toum, Samtao, Bid, Lavy, Sadang, Ngouane, Oedou, Moy, Thaen, Kri
Tai-Kadai/Lao-Tai	Lao, Tai (White, Red, Black), Phou Tai, Lue, Phuan, Nhouan, Tai Neua, Yang, Xaek
Hmong-Mien	Hmong (White, Green, Black) and Lumien
Sino-Tibetan	Akha (Kor, Khir), Phunoy (Singsili), Lahu (Musir), Hor, Sila, Lolo, Ha Nyi (Hayi)

(adapted from Schlemmer, 2017)

¹⁰ <http://kpl.gov.la/En/Detail.aspx?id=42092>

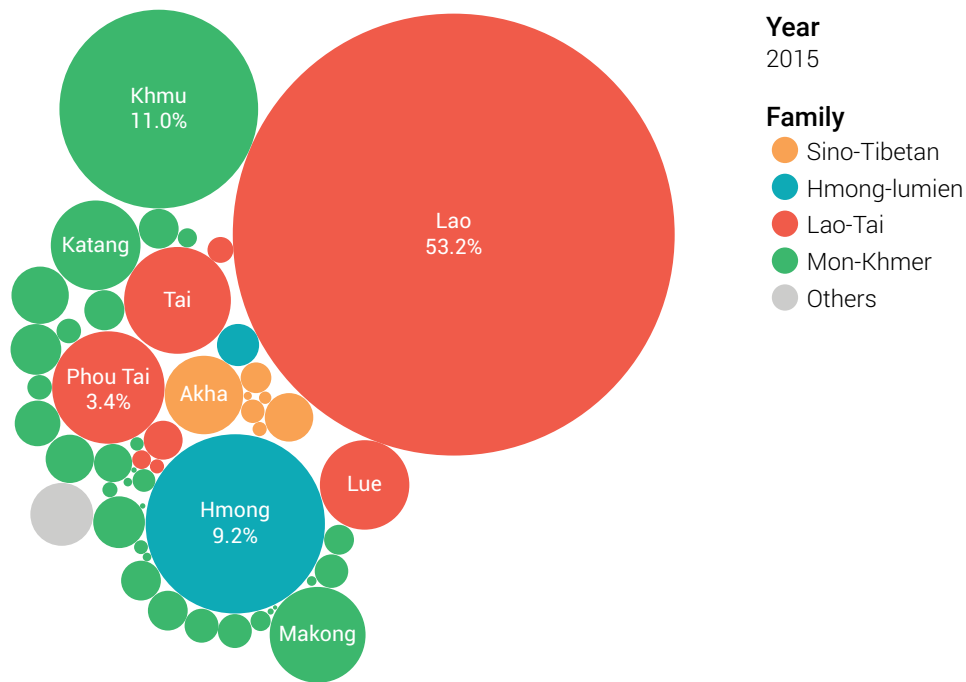


Figure 1: Ethno-linguistic groups and populations

The majority of the population in Laos is composed of the Lao-Tai linguistic family, which includes the ethnic Lao and other culturally similar groups. The second most populous family is the Mon-Khmer, then the Hmong-lumien and lastly, the Sino-Tibetan (Figure 1).¹¹ The most ethnically diverse linguistic family is the Mon-Khmer with at least 33 groups that vary widely in population. Although there are cultural similarities between these groups, there is also wide diversity in customary land practices. The Khmu of northern Laos are the most populous ethnic group in the Mon-Khmer linguistic family with a population of over 600,000 people. The next largest groups, the Katang and Makong of central Laos have nearly 60,000 people each. Within the Hmong-lumien linguistic family, located predominantly in the north and central regions (Figure 2),¹² the Hmong make up the vast majority, with a population of about 500,000 people and the lumien around 30,000 people. In the south of Laos, Tai-Lao populations are located closer to the Mekong River with areas further east occupied by Mon-Khmer groups. The larger ethnic groups may be further subdivided into numerous ancestral lineages, animal totem clans or sub-clans that are often geographically clustered.

¹¹ Lao Statistics Bureau. 2016. "Results of Population and Housing Census 2015."

¹² <https://www.decide.k4d.la/files/en/atlas15/06%20Ethnicity.pdf>

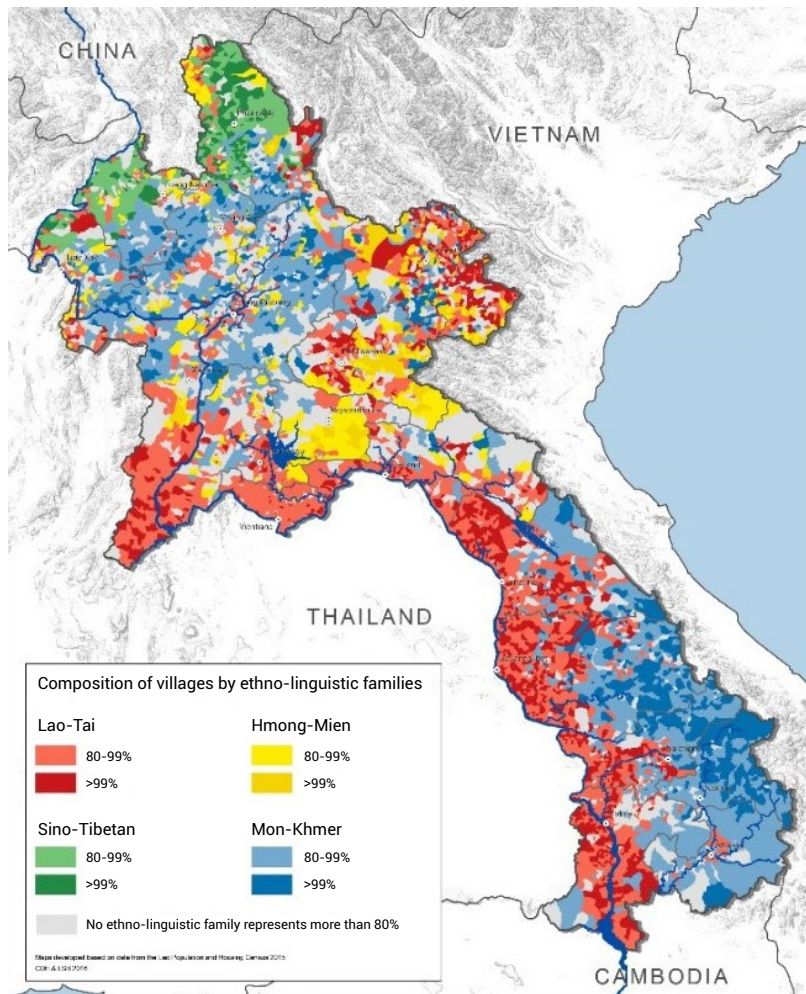


Figure 2: Ethnic composition of villages

Related to ethnicity and customary tenure systems are the terms indigenous and indigenous peoples¹³. As used in western post-colonial contexts, indigenous often refers to first inhabitants that are formally acknowledged (i.e. national policy, treaties and international declarations)¹⁴ and may be granted different land rights compared to non-indigenous peoples. The use of the term indigenous, when discussing land rights in Laos is contentious and counter to the government's approach of national ethnic unity and equality. The Lao words for indigenous, *xon phao pheun meuang* or *xon pao dung deurm* are not commonly used in public and not at all in government land policy¹⁵. However, many ethnic groups refer to their long-term occupation of specific territories¹⁶ and self-identify as indigenous.

As part of their Environment and Social Framework (Environmental and Social Standard – ESS7 Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities), the World Bank recognizes indigenous people under a broad definition and national contexts.¹⁷ Their characteristics and identity are comprised, in varying degrees, by the following:

¹³ In Laos, any ethnic group can rely on customary systems but due to the remote location of many non-Lao Tai villages (i.e. indigenous) and the focus of land registration efforts in urban/peri-urban areas on individual ownership, indigenous people rely more on customary systems.

¹⁴ Laos is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples although they don't recognize indigenous people.

¹⁵ To define the peoples of Laos, previous the government used the ethno-topographic terms: Lao Sung (upland Lao), Lao Theung (midland Lao) and Lao Loum (lowland Lao) based on the generalized elevations ethnic groups resided. These terms also refer to ethnic groups that practice lowland paddy cultivation (Lao Loum) and those that practice upland rice cultivation (Lao Theung and Sung) in mountains areas, the later which are still widely held under individual and collective customary tenure.

¹⁶ For example, Khmu villages in Nalae District, Louang Namtha Province have been in the area for 400+ years and have oral memories of migrating there from the Nam Ou River area. Most Khmu sub-groups identify with specific geographic areas (e.g. Khmu Ou).

¹⁷ "indigenous ethnic minorities," "aboriginals," "hill tribes," "vulnerable and marginalized groups," "minority nationalities," "scheduled tribes," "first nations," or "tribal groups." As the applicability of the term "Indigenous Peoples" varies widely from country to country....."

- (a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others;
- (b) Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas;
- (c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- (d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

In the Laos context, the above criteria allow for some ethnic groups from the demographically dominant Lao-Tai linguistic family to be counted as indigenous. People from ethnic minority groups may be excluded from indigenous status if they don't speak the associated language¹⁸, are no longer culturally distinct, and have no collective attachment to a territory. However, according to the World Bank criteria, essentially all non-Lao-Tai ethnic groups in Laos are considered to meet the characteristics and are covered by the standard. These groups are among the most vulnerable segments of the population. Their marginalized economic, social, and political status limits their capacity to defend their rights to, and interests in, land, territories, and natural resources. Living in remote areas, they are also often affected by land-based investment projects (i.e. mining, industrial tree plantations, hydropower), restricted in their participation and benefits from projects, and face challenges when accessing formal grievance mechanisms and justice to resolve conflicts. More specifically, the roles and status of men and women in indigenous cultures, where women and girls may face additional marginalization within their own communities, are often different from those in the Lao-Tai groups.

6.2 Ethnicity – Customary Tenure Relation

Ethnic identity and classification are place, time, and context-specific, meaning it is socially constructed and can change. Ethnicity alone does not define a group's customary tenure. Plasticity of customs and tenure within an ethnic group is observed when a group living under certain environmental conditions (soils, forests type, topography and climate) and following customary tenure practices, follows a different system in another location (Chamberlain, 2001). However, ethnicity does offer insights into customary tenure system typologies given its relation to kinship, inheritance pattern, customs, and land. Additionally, when the spatial distribution of ethnic group populations (Figure 2) is overlaid with agricultural systems (Figure 4), patterns emerge. Generally speaking, the permanent use of low-land areas for rice cultivation by the Lao-Tai in the densely populated Mekong valley and other rivers has created different land rights and customs than those created by the shifting cultivation systems¹⁹ practiced by non-Lao-Tai in the sparsely populated upland forest areas (Schenk-Sandbergen, 2005).

The ethnic demographic data in Figures 1 and 2, provide insight into the relevance of ethnicity to customary tenure systems. For example, household land inheritance patterns can be estimated

¹⁸ For example, many of the thousands of refugees that fled Laos after the 1975 revolution were non-Lao whose children don't speak their parent's language and have little attachment to territories in Laos.

¹⁹ Shifting cultivation generally falls under one of two types: rotational shifting cultivation where land is repeatedly cultivated after a fallow period and pioneer shifting cultivation that involves repeatedly clearing new areas of mature forest after cultivation.

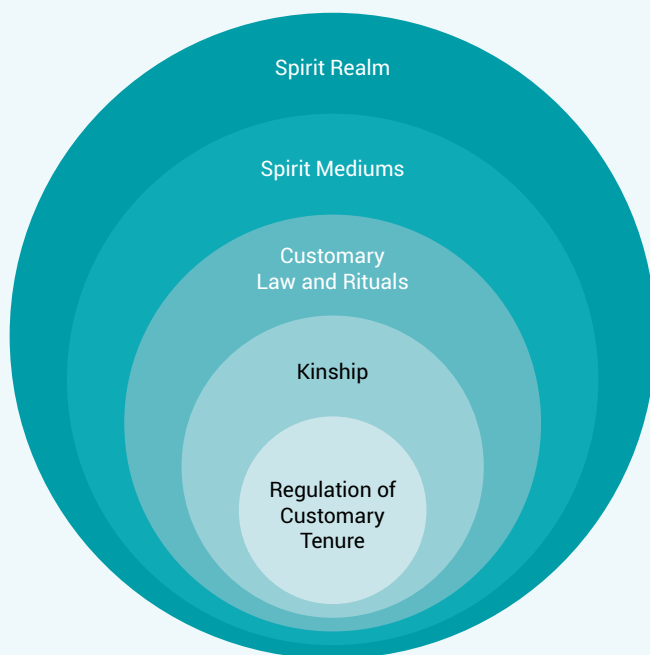
based on the populations of the ethnic groups that practice them. The demographic data shows Lao-Tai groups make up over half of the country's population. These groups are traditionally matrilineal and practice matrilineal inheritance patterns; their customary land practices provide greater support for women's land rights and decision making related to land use (Schenk-Sandbergen, 1997). Whereas with Hmong-lumien, Sino-Tibetan and some Mon-Khmer groups that follow patrilineal inheritance, the recognition of women's land rights is weaker and occurs only via a male family member (i.e. husband or brother). In mountainous areas where many ethnic minority villages are located, shifting cultivation²⁰ is the main agricultural system (Figure 4). The rights over these lands are often held collectively by the village and restricted to village members.

For many people in Laos, ethnicity and customs influence the manifestation of their land rights, which is related to an animistic spiritual realm and natural world: these groups may refer to spiritual guidance for important livelihood related decisions (Chamberlain, 2001). Indeed, much of the population adheres to a form of Buddhism mixed with animistic beliefs (Schlemmer, 2017). Animists weave their cosmology, agriculture practices, and land rights together, resulting in spiritually-based tenure systems that are multifaceted and deeply historical²¹. Ethnicity can also influence how individuals experience their customary tenure rights, as grounded in their relationships and status within social institutions of varying scale: family, clan and village (Chamberlain, 2001). For example, research from northern Laos with a focus on women's land rights in ethnic Khmu Ou and White Tai villages describes the role of biological sex in relation to the functioning of customary law and its influence on access to land for women (Somphongbouthakanh, 2021).

Important to local land governance is that not all people within an ethnic group, village, or kinship group have access to the spiritual realm from which customary rules originate and base their legitimacy. In many ethnic groups that follow animism, the thread between nature-spirit and humans is mediated by specific individuals or groups (Box 2) which can use their power to influence decision making and land rights resulting in unequal access to land. Village-level elite land capture in customary tenure systems has been noted in Laos and can involve spiritual leaders, village founders or their ancestors and local political leadership, often made up of the same individuals. An example from Northern Laos with the Khmu ethnic group (Mekong Watch, 2009), which is the second largest ethnic group in the country, shows that year after year, the founding village clan and shaman kinship line, that also hold political positions and decision-making power, allotted themselves the most fertile shifting cultivation land. More widely, throughout Laos as land has become an economic commodity, cases of local elite land accumulation have increased, but has not yet been systematically researched and documented. Under certain contexts, villagers can even become land grabbers and agents of dispossession to their own neighbors, as has happened in Indonesia (Li, 2014). Box 2 gives a general depiction of how the spiritual realm communicates with and relates to humans and is transformed into tenure systems and their regulation practices.

²⁰ Globally, the term "rotational agroforestry" is being more widely used and adopted as it most accurately describes these cultivation systems.

²¹ From memory, an Akha man is able to recite his patrilineal ancestral lineage back 30 to 50 generations; back to Sumio, the founding lineage of all Akha. The ability to do this legitimizes his acceptance in a village, as Akha, and his right to access land.



Box 2. The human and natural worlds are linked via the spiritual realm; the natural world is infused with spirit that some humans can access. Spiritual mediums regulate communication between the human-nature/spirit-animated world. Rituals and taboos maintain a human-spirit balance important for displaying respect, prosperity and unity. Kinship, grounded in customary law, is an influential factor for power (i.e. decision making and privilege) for all ethnic groups. It legitimizes the regulation of land rights between women and men. Combined, these “layers” of local culture interact and manifest as local land governance systems.

7. The Extent of Customary Tenure Systems

In Laos and wider Southeast Asia, the categorization of villages into the somewhat ambiguous topographical categories of upland and lowland, is commonly done by government, civil society, and academia. Associated with the terms are differences in livelihoods and local land governance practices, which provide a useful landscape lens when considering land tenure. People practicing shifting cultivation on upland sloping land see their surroundings differently than those farming low flat lands (Figure 2). When looking out upon a mountainous forested landscape, upland shifting cultivators perceive potential agriculture areas (i.e. fallows) embedded in the forest-fallow landscape. Other than forest that is not cleared for cultural and ritual reasons, all secondary forest (i.e. fallow) is a potential agricultural field. After harvest is complete and given there is sufficient land, cultivated areas are left fallow and regenerate back into forest-fallow/ secondary forest that have specific local language names depending on the age. During these times (cultivation, young fallow, mature fallow, secondary forest), the holder of land rights over a parcel of land can also shift between individuals, households and collectively. In parallel, the rights (access, extraction, management etc.) and involved land use (e.g. livestock grazing, NTFP collection) can also change. This is a process referred to as ‘landscape plasticity’ that does not align well with lowland perspectives of specific time, users, and spatial boundaries (Sturgeon, 2005). Upland landscape plasticity is nicely captured by Carter (2016) with regards to the Akha, a transboundary ethnic group that has an ancient history of dependence on upland rice cultivation. “In the mind of the Akha, a single space can oscillate between different uses

on a flexible spatial and temporal continuum according to different contexts of subsistence...". Failure to appreciate shifting agriculture's spatial and tenure dynamics is aptly described by Weinstock (2017): "Problems arise when people living outside the forest fail to understand the tenure systems of shifting cultivators living in the forest. They cannot see the ploughed fields or fences of annual-crop farms, or the neat rows of tree-crop, so outsiders wrongly assume that no one owns the forests, or has claim to it". These topographic perspectives are embedded in the languages and customs of upland people. For example, many groups living in steep terrain have specific vocabulary or 'topographical deixis' to describe their vertical perception of their surroundings (Post, 2019). Such characteristics make recognition of shifting agriculture's land tenure systems difficult for policy makers who are more accustomed to easily defined boundaries in space and time found in the lowlands.

Lowland paddy farmers who cultivate the same land parcel year after year, see a clear distinction between agricultural and forest land and between their plots and others. Land rights are held by a household or individual and are fixed over time until they are inherited or sold. In contrast, in a shifting cultivation landscape, there can be a both gradual transition between (i.e. fallow to forest) and abrupt changes in land type and rights over time. Figure 3 below show a mosaic shifting cultivation (left) and permanent paddy (right) agriculture fields.

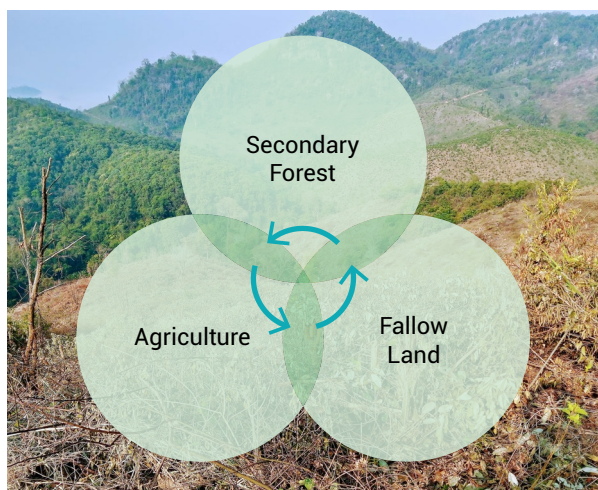


Photo: Richard Hackman

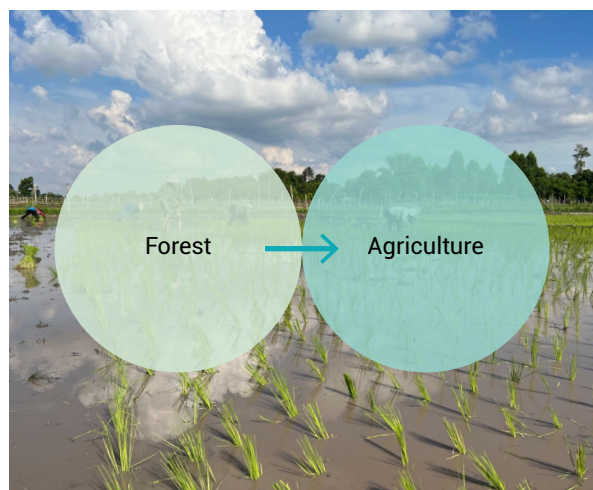


Photo: Phetsakhone Somphongbouthakanh

Figure 3: Upland (left) and Lowland Landscapes

An estimation of the number of people holding land rights under customary tenure systems or the area covered by customary systems poses a challenge since specific data on the topic is not collected. Even defining some areas as customarily managed can be difficult since hybridization with statutory systems has occurred (Boutthavong et al, 2015; Suhardiman and Scurrah, 2021). Such issues pose real challenges for how to recognize these systems and not all cases may be compatible with formal recognition. To estimate the extent of customary tenure systems, by area or population, requires cobbling together different indirect statistics for comparison and interpretation. Examples include:

- Take the area eligible²² for titling, subtract the area titled, thus leaving untitled land which is under various forms of customary land. However, this does not necessarily mean that all such land is under customary systems. Untitled land plots may have other land documents and be adhering to statutory rules in part or whole. There are between 3-3.5 million public and private land parcels in Laos . Approximately 1.5 million parcels, primarily in urban and peri-urban areas, have been registered and titled. Titled land could still follow some level of customary rules and institutions.
- There are 3,000 + villages (34% of total in Laos) with 24% of the nation's population in state forests where titling is not possible; state forests cover 62% of land area;
- Remote areas where the population is mainly non-Lao-Tai ethnicity (See Figure 2);
- Areas and populations practicing shifting cultivation, often communal land under collective rights (See Figure 4);
- The prevalence of forest areas in village boundaries, few of which have been recognized or formalized (i.e. no Village Forest Management Plans) and are managed under some level of customary tenure;
- Topography -- titling has been done mainly in flat urban areas; Laos is 80% mountainous;
- People's access to land administration services is low due to distance and limited ability to pay for services;
- The government has limited staff numbers and finances to provide land registration services to rural populations, who make up over 60% of the population.

²² The term "eligible" is defined by government criteria and excludes many smallholder customary plots. If these 'invisible' plots were acknowledged, the total number of eligible plots would increase substantially.

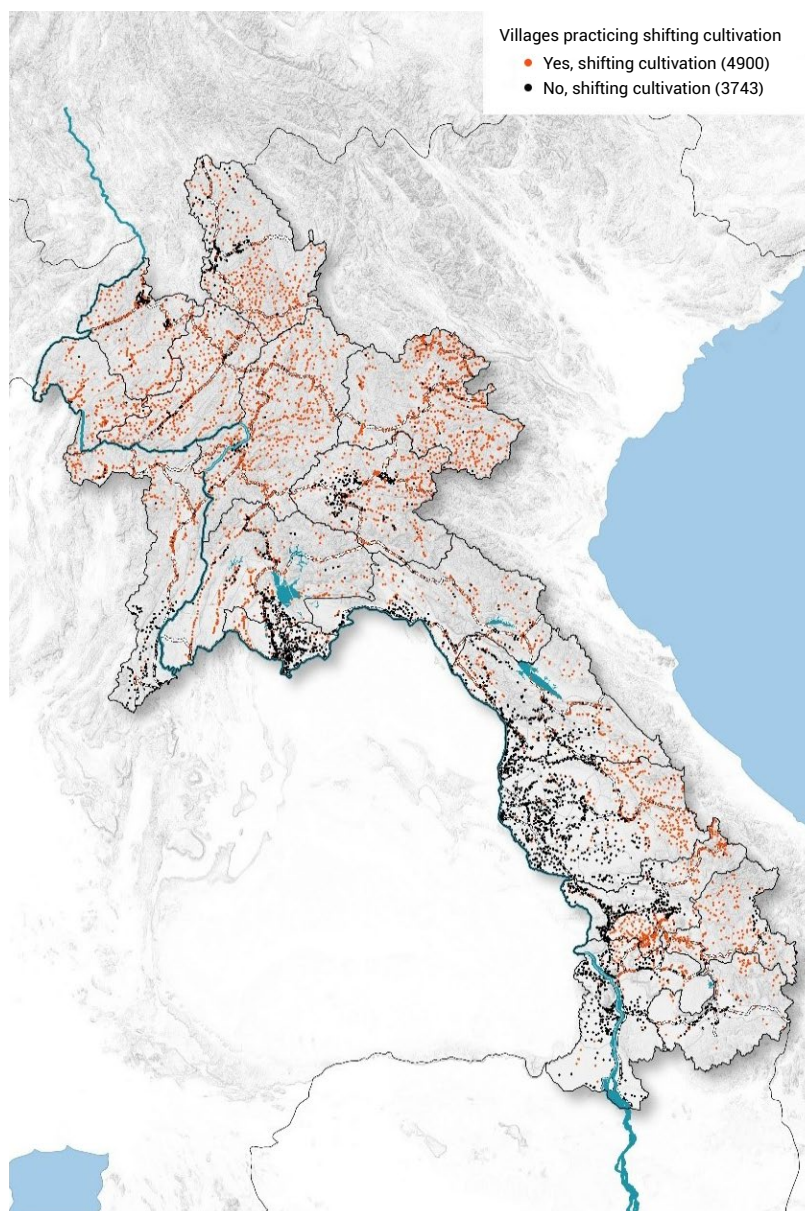


Figure 4: Villages practicing shifting cultivation

Approximately 550,000 people reside in areas where shifting cultivation is practiced and depend on it for their livelihoods. Much of this land is held under customary land rights, thus making it a useful marker. (Heinemann, et al., 2013). Shifting cultivation, although scattered throughout the country (See Figure 4), shows that it is concentrated in the north, northeast and along the Annamite mountain range next to central Vietnam, where non-Lao-Tai ethnic groups reside. More than half (4,900 villages) of the total number of villages in Laos were recorded as practicing shifting cultivation (Epprecht, 2018). Following the fairly low-elevation flat Mekong River corridor, there is much less shifting cultivation in the lower north, central and southern part of the country. Overlaying and comparing Figures 2 and 4, a correlation between ethnicity and shifting cultivation is noticeable. A clear trend is that there are

fewer Lao-Tai villages practicing shifting cultivation than other groups²³. In addition, as most land titling has been confined to flat urban (provincial) and peri-urban (district) areas (World Bank, 2021), it can be assumed that villages in remote mountainous areas practicing shifting cultivation rely on customary tenure systems for their land rights. Further linking land tenure systems and ethnic group, Yokoyama (2004) presents data from Ngoi district, Luang Prabang Province in northern Laos, which shows that Hmong and Khmu villages are consistently located at higher elevations and focus on shifting cultivation that is managed collectively. Ethnic Lao villages are mainly located along roads and waterways and are less reliant on agriculture and more involved in trade. Summarized, the “geography of customary tenure” shows the wide spatial extent of customary tenure systems, areas of concentration, and the large number of Lao citizens dependent on these systems to provide rights to natural resources.

²³ There are complex historical and political conditions and relationships that influence the present distribution of ethnic groups and therefore the types of land available and the agriculture systems they use.

8. Customary Tenure Systems Typologies

To understand customary land tenure systems in Laos, it is useful to identify the main existing tenure categories and sub-categories. To identify these, typologies of existing tenure systems are helpful tools. The general typologies in this section are configured around two frameworks: kinship and rights and resources. A third 'context dependent approach' is included as Annex 3, which provides an additional supporting perspective. It is important to note that these typologies have fixed boundaries, whereas social institutions such as customary tenure systems have dynamic and adaptive boundaries. Typologies, therefore, have limitations and are an oversimplification of actual tenure systems. Noting these challenges, typologies can provide insights into who has which rights over which land type, how secure rights are, and who does not have full rights or is denied all possible rights. This can help inform efforts to design new or amend existing land policies that are more equitable and inclusive. Another important aspect of customary tenure systems is their present transition from customary to more formal types of recognition, as discussed in Section 9. This means land rights in transition can exist on a spectrum between customary and formal systems and that typologies do not easily capture this dynamic.

8.1 Kinship and Land Rights

Kinship is an exceptionally diverse concept, but essentially refers to the relationships between members of the same family, be it direct descent or marriage. Kinship exerts great influence on how land tenure evolves and manifests into actual access and control of land. Schenk-Sandbergen (2012) and others (Mann and Luangkhot, 2008) have shown that kinship linkages are well suited for describing customary land tenure systems in Laos. The main lineages present in Laos align with ethnicity as noted in Box 3 and include: matrilineal, patrilineal and bilineal. These lineages control residence patterns of spouses and land and property inheritance patterns (See Table 2) of family members²⁴.

Box 3: Kinship Lineages Present in Laos

- Matrilineal system: Children are given their mother's or father's surname. Men/husbands reside in the house of the wife's family after marriage (matrilocal) and women/daughters inherit land and homestead. Includes most Mon Khmer and Lao-Tai linguistic families.
- Patrilineal system: Children get only the name of their father's family, clan, or lineage. Wives/women move to the house of the husband after marriage (patrilocal) and men/sons inherit land. Includes Hmong-lumien, Sino-Tibetan and some Mon Khmer linguistic families.
- Bilineal system: Surname of children can be father's or mother's. Residence after marriage depends on sibling status, sex (no. of males and females) and age composition and age or sibling order at marriage. Either women or men inherit land. Includes Lao-Tai and some Mon-Khmer linguistic families.

²⁴ Strict adherence to specific residence and inheritance rules within a society does not occur. There are many versions and contexts that lead to variation, making perfect representation in typologies impossible.

Table 2: Typology - Kinship Patterns and Resource Ownership (Schenk-Sandbergen, 1997)

	Matrilineal system	Patrilineal system	Bilineal system
Private land/ property (sometimes shifting cultivation)	Inheritance of house, agricultural, and residential land is transferred to the daughter (usually the youngest).	A son (often the first depending on the number of brothers and residence) inherits agricultural and residential land.	Either a son or daughter can inherit the agricultural and residential land (bi-lineal) depending on the number of siblings and their residence.
Shifting Cultivation (SC)	Fewer matriarchal groups practice SC. Inheritance pattern related to local customs (communal – individual spectrum).	SC land is passed through male lineage, women gain access via their male family members, but land is not inherited.	SC land could be passed through either female or male lineage depending on local customs.

The Lao-Tai linguistic group, the largest in Laos, traditionally follow bilateral inheritance practices; both sons and daughters can inherit land but the most common pattern is for the husband of the youngest daughter to move in with her family (matrilocal). The land, house, and other assets are all transferred to the youngest daughter who cares for aging parents. However, the specific conditions (age, sex and number of siblings) of each family determine which residence and inheritance pattern is followed. In the Lao-Tai group, daughters make up the majority of children that inherit land from their parents (GRID, 2005), but decision making related to land normally involves spouses.

In Hmong-Mien and Sino-Tibetan linguistic families, patrilineal customary law provides men with a higher status than women that gives the men greater power in political and family leadership and makes them the holder of land rights. Women’s rights to land are through a male family member (family head, brother, son) and the family head is almost always a man. For example, within the Hmong ethnic group, children automatically receive the father’s surname and become a lifetime member of that clan. As an adult, all male members are referred to as brothers and cross-clan relations are established through marriage. After marrying, women from other clans take on the identity of their husband’s clan and neither bring nor receive land rights as part of marriage dynamics; they do not gain direct land rights, rather they are secondary rights holders. If they divorce or are widowed, they normally do not receive any land (Bouapao, 2003).

The Mon-Khmer linguistic family is the most ethnically diverse in Laos and make up a large portion of the non-ethnic Lao population. The Khmu are the largest ethnic group after the Lao. The small amount of research done that includes the Mon-Khmer (Mann and Luangkho, 2008; Schenk-Sandbergen, 2012; Somphongbouthakanh, 2020) shows that they include all kinship patterns, but fall more into bilineal and patrilineal patterns.

Broadly stated, through the lens of kinship and ethnicity, women in the Lao-Tai family generally have more land rights than those of other language families. The land rights of women in the Mon-Khmer family can vary depending on ethnicity, and women in the Hmong-Mien and Sino-Tibetan families have minimal land rights through kinship. Schenk-Sandbergen, (1997) found that some Mon-Khmer, Hmong-Mien and Sino-Tibetan women often had no *individual* land rights at all, thus making access to customary communal land, particularly forestland, very important. A further disadvantage for women is that most marriages in rural areas are not officially registered. Therefore, women do not have the legal status of spouse in the Family or other laws. In the context of land titling, the sensitivities around gender become pronounced and special attention is needed to avoid unintended negative impacts. For example, during the first phase of a previous World Bank land titling project in Laos, some land held by women under customary matrilineal inheritance was titled in the name of men as “household heads” thereby undermining customary women’s land rights (Schenk-Sandbergen, 2005). And in both Phase 1 and 2 of the same project, communal lands that are critical for women, were excluded from registration (World Bank, 2013).

These kinship patterns are not fixed, but are an open system that responds and adapts to internal and external factors such as socioeconomic changes, demographic shifts, migration, land titling, and commercialization. As in many other developing countries, in Laos these factors are influencing kinship patterns and the views women have of their own land rights and the land rights of others. For example, some non-Lao-Tai ethnic villages that are located close to urban centers and interact with matrilineal kinship patterns have adopted these patterns or characteristics of bilineal kinship patterns (Schenk-Sandbergen, personal communications 2021). Policies such as village relocation and merging have also been found to have profound effects on kinship and land rights demonstrated by villages switching from bilineal to matrilineal and/or patrilineal systems; whereas some - Hmong Khao and Tai Dam villages remained patrilocal and patrilineal in traditional, resettled, and merged villages (Mann and Luangkho, 2008). Based on the above kinship and ethno-linguistic relationships, it is clear these exert significant influence on inheritance patterns within customary tenure systems and on inequality in gender-land relations (Ireson-Doolittle, 1999).

8.2 Rights and Resources







As shown above, kinship patterns underlie the rights provided in a customary tenure system over land and property. These patterns can then be included as part of more general resources; rights and rights holders typology summarized in Figures 5a and 5b below (adapted from Payne, 2012).

Figure 5a depicts the different arrangement of rights holders, those people or groups of people that are recognized as holding all or some rights. Figure 5b consists of i) “*Tenure Security*”²⁵ refers to tenure recognition in Laos provided by a combination of customary tenure systems (i.e. *de facto*) and state formal recognition (e.g. certificates, titles, land use plans) related to the potential risk of losing land rights (“security” in the Lao context, as determined through a literature review and expert opinions);²⁶ ii) *Land Type* refers to three common types of land in villages: residential and

²⁵ “Security of tenure is the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction.” (FAO).
























²⁶ A limitation was that the customary land rights holders themselves could not be interviewed to assess their perception of their own tenure.

permanent agriculture, forests, and shifting cultivation; iii) *Bundle of Rights* refers to the rights that individuals, couples, or groups have related to each land type. The rights holders represented by human figures/shapes in Figure 5b indicate which rights they have over which land types; the order of the figures does not indicate preferential rights, only that these individuals or groups hold rights. An “X” indicates no right and a “?” indicates uncertainty regarding the rights holder. It needs to be stressed that kinship exerts extensive control over the rights at the household level and the inclusion of male and female figures may not accurately represent all kinship systems; and iv) *Direction of Transition* briefly describes the direction of change from communal to private and customary to formal.

Figure 5a: Typology Rights Holders	
	Includes more than the host community, anyone from another community/social group
	Members only from the host community
	Anyone belonging to a household
	The wife and husband together
	Only the woman
	Only the man

Due to the general scope of this assessment and lack of available field data, the typology does not show sub-categories of communal ownership such as totem clans (patriclan or matriclan) or phratries. It also does not detail the rights of specific, often marginalized individuals, such as divorced and widowed women, persons with disabilities, emigrants and immigrants, or ethnic minorities.

Figure 5b: General Customary Tenure System Typology

Figure 5b: General Customary Tenure System Typology				
1. Tenure Security				Recognized by Custom and the State
			Recognized by Custom, partially by the State	
	Recognized by Custom, less by the State			
2. Land type	Shifting Cultivation/Rotational Agroforestry Land		Forests	Residential and Permanent Ag.
3. Right to...	Fallow	Cultivate		
Access to Enter an Area				
Withdrawal of Resources				
Manage and Regulate Use				
Exclude Use by Others				
Alienate through Transfer		?	X	
Duration (permanence of allocated rights)				
Due Process & Compensation	X	?	?	
4. Direction of Transition:	Continued communal tenure with increasing private ownership. Increasing state claims of fallow areas.		Maintaining collective management with increasing state formalization	Continued private ownership with expanding state formalization

8.3 Customary Private Ownership

a. Residential Property

The full bundle of rights around private ownership of housing and permanent agriculture land are generally well defined for all ethnic groups. However, ownership itself, as discussed above, can vary widely within a household as can the accompanying power to make decisions. Therefore the distribution of rights around private property takes on another layer of analysis when kinship patterns are included, which makes general typologies less accurate. Referring to private property, inheritance in bilineal groups could include the rights of both women and men and could come down to whether the daughter, or the son provides regular care for aging parents. Another factor controlling decision making power about land rights is the level of influence and status men or women have in a society or village. Within patrilineal groups, as women's roles and status are often subordinate to those of men, decision making power and holding of rights tend to be exclusively male.

b. Forests

There is no legal basis for full ownership of natural forest by individuals and villages in Laos; there are only user and management rights as granted by the government. Within customary forest tenure systems, collective tenure is the norm and the right to exclude is village-based. There are, however, exceptions and nuances to collective forest rights as shown in Figure 5b Manage and Regulate Use. For example, in some villages of Khoun District, Xieng Khouang Province, natural forests have been loosely demarcated into blocks by households that each family manages (Hackman, personal comm). All rights in the "bundle" are held by household members, except for the right of alienation/sale. This unique system was established by the villages on their own after decades of communal ownership during which the forest was degraded. District authorities are aware of this tenure arrangement and informally accepted it with no effort to impose formal regulations. Another example of flexible ownership and management of natural forests is when private resource rights are embedded in communal land, as is the case with Dipterocarpus wood resin trees in natural forests of southern Laos. After an investment of labor to cut large permanent holes for tapping the trees, the extraction and ownership rights become the exclusive inheritable private property of that household (Baird and Bounphasy, n.d).

c. Agriculture

In customary tenure systems, permanent agriculture areas (rice paddy and gardens) are generally held as private property. There are exceptional, but rare and context specific areas that differ²⁷. Private property rights are established when individuals or households invest their labor to establish and maintain agricultural land. Land rights are then transferred through inheritance. Depending on local contexts, inheritance of land rights can occur through various kinship patterns (matrilineal, patrilineal or bilineal) as depicted in Figure 5b by the inclusion of the human figure/shapes.

²⁷ Some paddy areas of Huaphan province are an exception; families cultivate an area for several years and then move to another area. The origins of this systems are in the government's effort to collectivize land immediately after the revolution in 1975 (Bounmyxay, 2015) and not in customary tenure system. Recent research (Suhardiman and Scurrah, 2021) shows that many land users would prefer a full freehold system.

Shifting cultivation land is unique in that rights can be held privately or communally. Therefore, there are two sub-typologies (Weinstein, 2017). Individual rights are established in a similar way as for lowland paddy areas, through labor inputs and as the original forest clearers and first cultivators of the land (i.e. pioneer shifting cultivation). In a community these “pioneer households” are recognized as having complete rights over particular land plots, including inheritance of the land plots by family members. Suhardiman and Scurrah (2021) describe a remote upland village in Laos where individual rights to shifting cultivation land is largely followed. “Pa Khom village was first settled, households established land claims to upland swidden fields by being the first to clear and cultivate patches of primary forest. At present, all households maintain rights over their individual swidden plots, returning after the fallow period to cultivate the same patch of land. Thus, all households have long-term claims over particular swidden fields that have been passed down through generations” (p.8). With the basis for household ownership established, kinship systems then exert influence over the distribution of rights within a household. For example, inheritance could pass to sons or daughters or as time passes, new generations can make claims based on lineage to the original founder. Rights can also shift based on ideas of fairness and unity by considering who last used the land and food needs based on family size. The result can be that several family members have varying degrees of rights over the same plot of land. Holders of private land rights can also allow free use or rent land to other households (e.g. for livestock, sharing harvest, cash). In some cases, if the land is not used over a long period, it may become accessible to others. The full extent -- spatially or by population -- of privately held rights within the various shifting cultivation systems practiced in Laos has not been specifically researched and documented. Based on anecdotal field evidence from INGOs, donor projects, and the government, it appears fairly regularly over most of the country.

8.4 Customary Collective Ownership

a. Shifting Cultivation - Fallow land

Collective rights over shifting agricultural land generally apply on land that has not been claimed under private rights. Land use and extraction rights are held temporarily by households that cultivate a plot of land, after the harvest the land is returned to communal use (e.g. collecting, grazing) and collective rights (i.e. other people/village members can access it and extract from it). Following the fallow period, the next cultivator may be the previous one or a different household. Under these conditions there is a flow of land rights back and forth between collective and individual/household. The distribution of land use rights to individuals and households, from villages’ collective land holding occur through various and diverse local governance systems that are controlled by many local cultural (e.g. kinship) and environmental factors (e.g. which areas have regenerated). In some cases, a household simply needs to independently mark a plot of land they intend to cultivate and it will be respected. In other cases, there are more structured processes for distribution of land rights. For example, in Taoi and Samoui Districts in Salavan Province, entire villages meet to discuss the upcoming agriculture season during which households express their expected land needs and their preferred location to cultivate. If there are no disagreement from village leaders or others, an area is allotted for temporary use. The previous cultivator of a land plot has no standing rights which interfere with the new cultivator (personal communications, Hongthong Sirivath, Village Focus International, 2021; Hackman, 2012). During such processes, local customs, ethnicity, kinship and local power dynamics are always present

influences on the outcome of decision making and rights distribution. The Figure 5b Typology chart above also shows that gender-based rights are continuously present and become more emphasized when moving from collective rights to household and individual rights. In communal land areas, collective rights are distributed more equally (e.g. anyone can access and extract from fallow or forests); within the household, land and property rights come under the influence of kinship and become segregated by gender. Changes in rights and ownership over time can blur the boundaries of collective and private customary land rights²⁸.

A key difference between the above two shifting cultivation sub-typologies, private and collective, is the degree of “privateness”. This is the varying level of autonomy individuals have over property rights, it is the excludability and subtractability of a good from the communal resource (McKean, 1996). For example, if during cultivation a household invests labor in permanent land use activities (e.g. planting trees), rights can change from collective to private. Further affecting shifting cultivation land tenure systems are the perspective and policies of the government. A long-term government goal has been to eliminate or at least stabilize shifting cultivation therefore there has been only weak recognition of land rights by the government (See Box 4 below).

²⁸ The reader is directed to two detailed publications on shifting cultivation. 1) Cairns, Malcolm. 2007. *Voices from the forest: integrating indigenous knowledge into sustainable upland farming*. Washington, DC: Resources for the Future. 2) Cairns, Malcolm. (Ed.). (2015). *Shifting Cultivation and Environmental Change: Indigenous People, Agriculture and Forest Conservation* (1st ed.). Routledge. <https://doi.org/10.4324/9781315796321>

Box 4: The Government's View of Shifting Cultivation in Laos

As early as 1979 forestry legislation had already begun efforts to control shifting cultivation (GoL, 1979) and in 1989 the formal “Shifting Cultivation Stabilization and Permanent Occupation Program” was introduced. In 1994 the government stated that they planned to eliminate shifting cultivation by the year 2000. In 2005, the goal was reset to 2010 and then most recently the goal was not included in government forest management plans at all (MAF, 2005, MAF, 2021). With the focus on elimination, unsurprisingly the Land Use Planning (LUP) processes have offered shifting cultivation areas only a low level of tenure recognition by government and often not enough to protect village land when outside interests (e.g. commercial tree plantations) attempt to acquire land rights. Kenney-Lazar (2013, p.4) provides a detailed overview of the government’s policy evolution over three decades and concludes that:

“The Lao government has consistently maintained a strict policy towards swidden cultivation, seeking to eradicate the practice altogether in favor of modern and sedentary forms of agricultural production.”

Recently, the government has become receptive to accommodating shifting cultivation systems if they are organized and based on a government approved management system. Such has been the case with Participatory Forest and Agriculture Land Use Planning, Allocation and Management (PFALUPAM) that maps out multiple sequential cultivation zones. For acceptance by the government there is a clear preference for shifting cultivation systems that are tidy and legible to the government (Dwyer and Dejvongsa, 2017). Another indicator is the inclusion of the term “restriction of uncontrolled shifting cultivation” in the 2019 Forestry Law, implying that “controlled” shifting cultivation, as done by PFALUPAM and other LUP methods, is more acceptable. Development partners have also put forward the term “rotational agroforestry” as the most appropriate term for these cultivation systems. The rationale being, rotational agroforestry integrates trees with agriculture over a defined and fixed area.

b. Forestland

Communal or village forests under customary tenure systems normally grant rights based only on a person’s recognized membership in a village, regardless of sex. One need only to reside – born or migrate – in a village to be granted rights to forest areas in a village boundary. Men and women have equal rights of access, withdrawal, management and exclusion; transfer or sale of forest areas is not normally a right. This is in part related to the tradition of many ethnic groups in Laos for which there was no political entity higher than the village (Daviau, 2006). Rights to resources in the village territory and the village social group are coupled together. Under the present administrative hierarchy of the government, this territory–rights relation is reinforced as the village is the lowest official administrative level. Non-residents have limited rights (i.e.access). For the withdrawal of forest products, one must normally request permission from the host village, although this is not always respected. In some areas a village forest may be

shared between two or more villages. Another important customary communal aspect of forests is their cultural significance. Forests enclose sacred spaces such as cemeteries, women's child birthing areas, ritual and sacred areas (springs, trees, rocks etc. inhabited by spiritual entities). In these areas, agricultural production, hunting, and collecting of forest food come under some level of restrictions for all village and non-village members (Daviau, 2008).

The above typologies demonstrate that customary tenure systems cannot be understood from a single vantage point. Rather, understanding these systems needs to be done through the lens of local culture and customs, while also considering external factors that influence tenure systems. This is especially relevant in the design and implementation of land titling projects that aim to recognize customary tenure systems; a misunderstanding or oversimplification of customary systems can result in unintended negative impacts.

9. Customary Tenure Systems in Transition

The transition of customary tenure systems to formal tenure systems has been in motion for decades in Laos, but has accelerated in recent decades driven by national (both Laos and other countries), economic, and political goals. These include resource-based growth related to demand from regional and global economies, and the expansion of state influence into remote areas. In turn, local socioeconomic conditions have been altered and customary tenure systems have transitioned to a mixed customary-statutory tenure mosaic for both individual and communal land holdings. The government has different processes and legislation in place that transition land towards formalization as shown in Table 3 (Flint, 2018). The occurrence of these types of recognition vary throughout the country and nearly all apply to permanent use of private/household land, with the exception of Land Use Planning and Land Allocation, and State Land Titles for Collective Land. The primary government agency responsible for land rights recognition is MONRE and its provincial and district line agencies. The below sub-sections consider some of the main factors involved in the transition of customary tenure systems.

Table 3: Government Options for Recognition of Customary Land Rights (ordering, first to last, represents the general hierarchical recognition of land rights)

<i>Type of recognition</i>	<i>Details of recognition</i>
Land Titles	Full land rights as included in the Land Law, issued outside of state forestland.
State Land Titles for Collective Land	Village-level communal land.
Land Use Certificates	Issued inside state forestland, full land rights except to transfer or mortgage.
Land Declaration Forms	Household land plot details and Land Plot Map, a required step for certificates or titles.
Land Survey Certificates	Issued following surveying and adjudication, no longer issued but still in circulation.
Family/Household Land Registry Book	Issued to head of each household.
Family/Household Land Tax Receipts	States amount of tax paid. Required for registration.
Village List of Household Plots and Tax Paid	Held by the Village Tax Officer.
Land Use Planning and Land Allocation	Does not provide full legal recognition of land rights, only a plan for villages to follow.

9.1 Land Use Planning and Allocation

An informative piece of research related to customary tenure systems transition was carried out by Boutthavong et al (2015) that documents the transition of tenure typologies over time as state policies influence tenure (See Figure 6). The research showed that over a period of 20 years all land types under customary management were fully or partially replaced with individual statutory formalization, including areas of forests under communal ownership. They conclude that “Land-titling programs, land and forest allocation programs, and projects on state-allocated land for development and investment in Laos have been key drivers of change in land tenure. These have triggered major shifts in land use rights, from customary, to temporary, and then to permanent land use rights.”

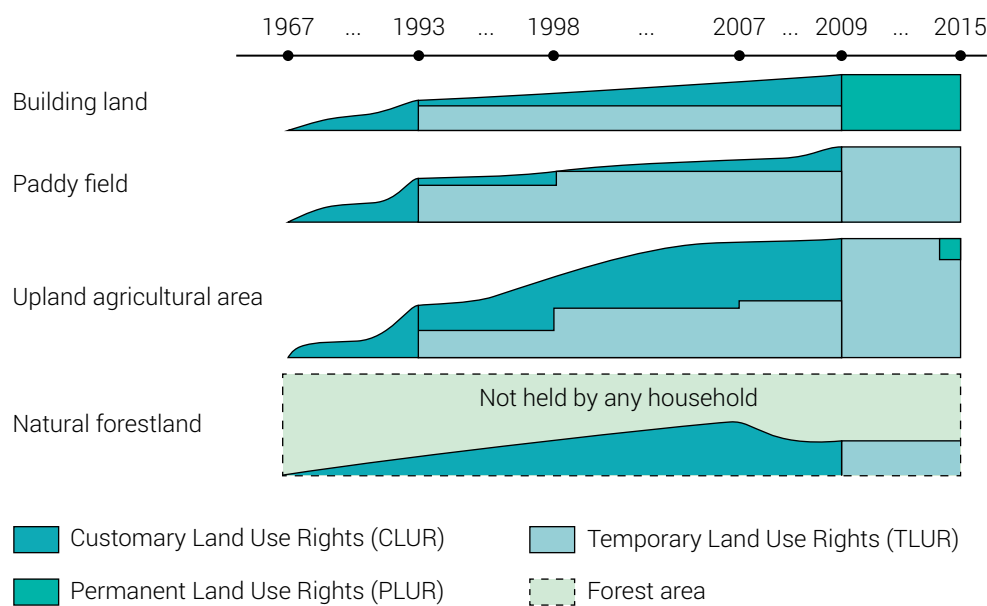


Figure 6: Land Tenure Transition (Boutthavong et al, 2015)

The above research found that in semi-urban areas, permanent titling had the greatest effect on reducing customary practices; whereas in rural areas, Land Use Planning and Land Allocation (LUPLA)²⁹ had the greatest influence on reduction of customary tenure practices. This research and others (Ducourtieux et al, 2005) also found that the induced transition away from customary systems decreased access to communal land and exasperated inequalities, since poorer households relied more regularly on these resources.

State supported LUPLA has caused changes to customary tenure systems dating back to the 1980s when efforts were made to delineate village boundaries into clear administrative units, to zone and separate areas of farmland from forest, and to enforce state rules and regulations (Fujita and Phanvilay, 2008). It is difficult to say exactly how many villages have been through LUPLA in Laos since, until recently³⁰, there has been no centralized repository to maintain

²⁹ The terms used to refer to government village-level land management were originally part of the government’s Land and Forest Allocation Program (LFA). LUPLA is used to refer to LFA and the many planning approaches to implementing it.

³⁰ The Land Use Information Systems (LUIS) is a donor support repository that allows for uploading of approved LUP and access to these. Presently the site functions sporadically.

approved plans. Estimates of the number of LUPLA villages stands at around 5,400 (Soulivanh et al. 2004.) of a total of 8,507 villages (Lao Statistics Bureau, 2015) in the country; more recent data from 2011 shows about 4,300 villages³¹. Repetition is also common with many villages having gone through several LUPLA processes with different names³² funded by donor projects with different objectives (e.g. biodiversity or carbon conservation; reduce, manage or eliminate shifting cultivation; increase agriculture production).

LUPLA has been an important approach for implementing many different government plans and strategies³³ aimed at greater government control in local land governance and efficient use of land for economic growth (Suhardiman et al., 2019). The Ministry of Agriculture and Forestry (MAF) Decree No. 169 was a key piece of legislation³⁴ aimed at altering customary land use, particularly related to the elimination of shifting cultivation. Although a stated goal of LUPLA was to strengthen rural land rights, generally, this has not been achieved. There are many cases of district level approved LUP being ignored when village land is needed for government or private sector land concessions and projects (Hunt, 2006; Kenney-Lazar, 2010; Yongnou, et al., 2019). LUPLA is better known for changing land use practices which can influence local customary land tenure practices, such as reducing the area available for shifting cultivation rotations which in turn decreases food security (Broegaard et al., 2017; Soulivanh, 2004; Ducourtieux, 2005; Bourgoin and Pullar, 2011; Bouahom, 2011).

The degree to which LUPLA alters customary practices depends on how it is implemented and follow up enforcement of the land use plan and regulations. The key actions causing changes to customary tenure systems include (Bourgoin et al. 2012):

- Establishment of a formal and district approved Village Land Management Committee and positions (e.g. Village Forester and Land Representative), replacing traditional land management institutions;
- Separation and delineation of forests and agricultural land;
- Introduction of new scientific forestry, land types, terminology, and zones;
- Village land and forest use regulations based largely on statutory law;
- Creation and approval of “improved future land use plans” that alter customary practices.

The response of customary tenure systems to LUPLA can vary depending on the quality of participation of communities, the level of merging of customary and formal management systems, the distribution of benefits and disadvantages in a village, and the overall legitimacy of the plan in the eyes of the community. Plans can also be ignored if not to the liking of a community or if they are not monitored or enforced by government (Hackman, 2010; Thaophialuang, 2019; Somphongbouathakanh, 2019). If LUPLA plans are closely monitored³⁵ and enforced by local

³¹ <https://en.data.k4d.la/maps/cba90f0ac43340e3915180cf9f18c275/about>

³² (e.g. land use planning and land allocation; land and forest allocation; participatory land use planning; forest and land use zoning; participatory agriculture and land management and participatory forest and agriculture land use planning, allocation and management)

³³ National Master Plan on Land Allocation, MAF Strategic Visions for the Agricultural and Forestry Sectors; 2004 National Growth and Poverty Eradication Strategy, MAF's 2010 Strategy for Agricultural Development from 2000 to 2010 National Socioeconomic Development Plans.

³⁴ MAF Decree 169 (1994) on the Management and Use of Forests and Forest Land (No. 169 from 1994).

³⁵ Increased monitoring of shifting cultivation continues as remoting sensing technologies advance, access to imagery opens. Example: The Forest and Land Use Planning Tool - Operational Logging and Degradation Monitoring Initiative (OLDMI). <https://mangomap.com/jeffrey/maps/114171?preview=true#>

government, it can profoundly alter the communal-private land balance, access and equity to land, and create ambiguity over customary and statutory regulations. An emphasis of LUPLA has been village-level forest management (e.g. conservation, use, protection) that mirrors national forest categories, but which does not align with local perspectives and actual livelihood uses. Box 5 below provides focus on Village Forest Management Planning and Conservation Contracts (VFMC) which are normally done after LUPLA and provide user rights to villages.

Box 5: Village Forest Management Planning and Conservation Contracts and Customary Tenure. [DOF Guidelines No. 1476: Village Forestry Management Plan Writing \(dated 13 July 2016\)](#) and [Guidelines No. 1477: Manual on Village Forestry Management Planning \(dated 13 July 2016\)](#).

Village Forest Management Planning/Village Forest Management Conservation Contracts (VFMP/VFMCC) are included in the 2019 Forestry Law (Article 39) as a community-level management approach and have been completed in about 1,100 villages. As part of village LUPLA, VFMP specifies the rights and roles of villagers in village forest management. *“Village forestry management planning is the management of forest and forestland within the management area of the village, which is operated both within and outside Protection, Conservation and Production Forest areas in which the village shall take leadership in the management and protection of the forests”*. VFMCC (Forestry Law, Article. 120) detail the agreement between a village and government regarding the government’s formal recognition of villages’ rights related to forest use (timber and NTFPs) and responsibilities. It does not provide full land ownership rights and land cannot be transferred. As a legally binding contract, VFMCC are governed by the Lao Civil Code and any customary forest tenure rights included in the contract mean legal recognition. However, the Forestry Law is limited on the recognition of forest tenure rights, unless local governments are receptive to including customary practices and villages can negotiate these into the VFMCC.

Additionally, VFMP/VFMCC may fail to capture customary forest tenure systems in a culturally appropriate manner for several reasons. VFMP delineate and demarcate areas of agriculture and forest; this is not how many customary tenure systems classify land-forest nor how farmers view their surroundings. VFMP also apply numerous technical forest types (e.g. General Protection, Use, Watershed Protection, Riparian Protections, Conservation, Restoration, Sacred, areas related to Controlled Use, and Fully Prohibited Zones for villages located in Conservation Forests) that do not match well with local language and customs. If not done with extensive village participation and consent of the villages, the VFMP new forest types and regulations could block access to forest areas under customary management and negatively impact livelihoods*. For VFMP to include customary tenure systems, forestry authorities must first agree to recognize and accept them and provide them protection with enshrinement in VFMCC. Additionally, the meaning of “contract” as a legally binding agreement between two parties (district and villages) that enshrines the rights and duties of both parties needs to be fully understood. Donor – government cooperation to clarify these issues is ongoing.

*“29% of the total areas under VFMP was demarcated as closed for customary NTFP collection.” Government of Laos Ministry of Agriculture and Forestry (MAF) and United Nations Development Programme (UNDP). (2020) Mid-Term Review – Laos SAFE Ecosystems Sustainable Forest and Land Management in the Dry Dipterocarp Forest Ecosystems of Southern Lao PDR. Global Environment Facility (GEF).

9.2 Establishment and Expansion of State Forests

In Laos, forests have played a central role in national security and economic development. During decades of civil war, forests provided refuge for conflict-displaced people and also to hide enemy combatants. Presently, many of the country's international borders are designated as 'protected forests' and are managed by the military (Dywer, Ingalls and Baird, 2016). In post-war Laos, forest provided much needed government income through logging operations controlled by State Forest Enterprises (Dywer, 2015). In the 1980s two key forest policy goals began to emerge: i) to restore and maintain forest cover to 70 percent of the country and ii) to allocate 70 percent of the country's land area as "State Forestland". The origins of these goals are related to comments made by the first President of Laos, Kaysone Phomvihane; these goals are now deeply engrained in the government's environmental goals (e.g. National Biodiversity Strategy and Action Plan 2016–2025, Forest Strategy 2030 and Vision to 2050, National Strategy on Climate Change) and development discourse and linked to economic policies³⁶. Forestland is widely defined as "Forestlands are all land plots with or without forest cover, which are determined by the state as forestlands" (Forestry Law, 2019). From a management perspective, the rationale for the system is functionality, with each forest category — Conservation, Protection and Production — meant to provide a different set of services. The establishment of each forest category is supported by a government decree, but the boundaries of the many forest category areas throughout the country have only been roughly delineated using remote imaging; few have been demarcated on the ground. However, as land rights granted by the government to villages and people located inside or outside of the three forest categories (3FC) differ (See Table 4), achieving full and accurate demarcation (outer boundaries and inner zoning) has tangible effects on people land rights. This includes customary tenure systems that exist in villages in all three forest categories and outside of the forest estate.

The three forest categories are:

Conservation Forestland

Decree 164 promulgated in 1993, designated the first National Biodiversity Conservation Areas (NBCAs) Initially 18 NBCAs were declared and six more National Conservation Forest areas were declared between 1996 to 2012. The most common term used in English is "National Protected Areas" (NPA) thus causing some confusion with the Protection Forest category. Two "National Parks", Nakai-Nam Theun Park (Prime Minister's Decree 036, 15/02/2019) and Nam-Et Phouloury National Park (Prime Minister Decree 035, 15/02/2019) have also been declared. The general boundaries of both NPAs and National Parks have been gazetted and in some cases on the ground demarcation done.

Production Forestland

In 2006, eight National Production Forest Areas (PFAs) were established and in 2007 and 2008 another 14 were designated (Prime Minister's Decree No. 59/2002, 22/5/2002). In total there are now 51 gazetted PFAs, with approved pre-harvest inventory and sustainable forest management plans in place.

³⁶ The sustainability of the hydropower sector, and generating revenue, is often cited by government as dependent on maintaining and increasing forest cover.

Protection Forestland

Declared in 2010 by Prime Minister's Decree 333, 19/7/2010 there are four levels of Protection Forest (PF): national level; provincial or city levels; district or municipality levels and the village level. Approximately 51 National PFs in total³⁷. No formal gazette of these forests is evident.

Table 4: Summary of 3 forestland categories/FC (Adapted from Flint³⁸)

State FC	Area ha	% of Laos	No. villages inside
Conservation Forest - National	3,878,684	17%	340
Protection Forest - National	7,482,109	32%	1,896
Production Forest - National	3,113,336	14%	662
Conservation/Protection - Provincial	667,123	2.9%	54
Conservation/Protection - District	735,970	3.2%	41
Total inside 3 FC	15,877,22	69%	2,993 (35% total)
Total outside 3 FC	7,177,625	31%	5,650
Total area of Laos	23,054,848	100%	8,643

9.3 Customary Rights within the Three Forestland Categories

Formalization of customary tenure systems inside state forestland has mainly been done through LUPLA and more recently with VFMP. Under these approaches, village boundaries and various types of agriculture and forest zones are established. Customary regulations may be combined with statutory regulations or be restricted by them. The level of acceptance of customary land use practices is often correlated with the quality of the processes including village participation and the willingness of government teams to take the time to understand and accommodate these practices. Customary shifting cultivation and hunting practices have commonly been singled out for tighter control and law enforcement. Formalization of village land rights is done through district level approval of land and forest use plans. The issuance of individual land titles in the 3FC has not been legally possible, but given their incomplete demarcation on the ground and the fact that urban areas lie within forestland, sporadic titling has been done unknowingly or knowingly, especially in the large Protection Forests category³⁹. Wide-scale systematic land registration in the 3FC continues to be restricted by the present legislation.

³⁷ https://en.data.k4d.la/datasets/56a4e785a2834284ae4dbb17adb86974_0/explore?location=18.280148%2C104.016352%2C6.84

³⁸ Unpacking the Policy: The practical implications for rural land tenure within the 70% Forestland policy. Mekong Regional Land Governance Project. <https://www.slideshare.net/mrlgregion/unpacking-the-policy-the-practical-implications-for-rural-land-tenure-within-the-70-percent-forestland-policy>

Both the forestry and land laws provide recognition of the rights of villages to derive their livelihood in forestland, but statutory recognition of customary land rights in forestland are not mentioned in the Forestry Law. The Land Law (Article 44) provides only general recognition of villages' presence in forestland. Villages established "before the area is classified as forestland" can receive certificates (permanent or temporary not specified) for permanent land use: collective rights are provided by LUPLA and VFMP. The 3FC are also zoned such that allocation of land rights and recognition of customary use vary depending on the location of a village in a forest category⁴⁰. Table 5 summarizes and compares the present legal context of customary land rights inside and outside of state forestland.

Table 5: Comparison of Land Rights Inside and Outside of State Forestland

<i>Land Inside State Forestland</i>	<i>Land Outside of State Forestland</i>
<ul style="list-style-type: none"> • Rights recognized if village establishment came before designation of forestland (compare years). • Individual land not eligible for land titles. • Individual land is eligible for Land Use Certificates (limited rights, not specified). • Collective rights by allocation of land via Land Use Planning and Village Forest Management Planning and Contracts. • Village collective rights recognized by issuance of state land titles with village user rights (inclusion of shifting cultivation uncertain). 	<ul style="list-style-type: none"> • Individual customary tenure can be formalized conditional on length of use (+20 years). • Collective rights by allocation of land via Land Use Planning and Village Forest Management Planning and Contracts. • Village collective rights recognized by issuance of state land titles with village user rights (inclusion of shifting cultivation uncertain).

Recently the government has come to recognize that persistently weak tenure in the 3FC is not a tenable situation for people and for economic development. To address this, options to formalize rights and provide stronger tenure security are being considered⁴¹. However, this is mainly focused on residential and permanent agricultural land; the tenure status of non-permanent agricultural land (i.e. shifting cultivation) and its eligibility for formalization via titles or certificates remains uncertain. Possible legal arrangements, some of which would require amendments, for formalization include:

- Eligibility for land titles if permanent land was used/occupied before the declaration of the forestland and eligibility for land use certificate if permanent land was used/occupied after the declaration of the forestland. Non-permanent land use under LUPLA and VFMC;

³⁹ In some cases, entire districts (e.g. Kham District, Xiang Khouang Province) overlap with 3FC which legally, and impractically means, land is not eligible for titling.

⁴⁰ In Buffer Zones and Controlled Use Zones Land Use Certificates are permitted; in Total Protection Zones no land rights are allowed.

⁴¹ Meeting Minutes: Consultation between the Ministry of Agriculture and Forestry and the Ministry of Natural Resource and the Environment on People's Land Use in the Three Forest Categories.

- Eligibility for land titles for permanent land uses; eligibility for land use certificates for non-permanent land uses (i.e. shifting cultivation) regardless of whether land was used/occupied before or after the declaration of the state forestland.
- Village Forests recognized under VFMC with possible state titles for collective land;
- Equal treatment of land rights inside and outside of state forestland (i.e. abolish Article 44).

It is also very likely that LUPLA and VFMP will continue as approaches to allocate communal land and provide, albeit weak, collective rights⁴². Moving forward, the rights of villages in the 3FC require government institutions to formulate appropriate sub-legislation, regulations, and guidelines that provide the tenure rights of villages in state forestland⁴³; further cross-ministerial coordination is planned to address this issue⁴⁴.

9.4 Forest Categories and Administrative Dualism in Granting Land Use

As the 3FC, forestland, and accompanying legislation were established, a divide was created related to the eligibility of formalization of land located inside and outside these forestland areas. This difference began decades ago with the 1996 Land Decree and other statutes⁴⁵ (e.g. MAF 169 and 186) that teased apart and established definitions for ‘forest’, ‘forestland’ and ‘permanent agriculture’ and introduced resource-specific ownership, utilization, and transfer rights. With this, the legal framework for regulating access to and use of agricultural land and forests was formed. The first Land Law (2003) did not exclude titling of forestland, but first required the issuance of ‘temporary land use certificates’ that after three years could be converted to land titles, of which, very few were⁴⁶. Dualism in land administration and jurisdiction further increased when the National Land Management Authority was established in 2006 and when it was replaced by the Department of Land Administration – in the MONRE – created in 2011. During these changes, customary land in and out of forestland was not given a high priority and institutional overlap for recognition by MONRE and MAF occurred and created challenges. These challenges were most noticeable in state forestlands under MAF, where titling under MONRE was legally not allowed. To smooth out administrative dualism, in 2021 MAF and MONRE, the main government bodies involved in customary land rights, coordinated and agreed in principle that permanent residential and agricultural land in the 3FC can be titled if in use prior to the establishment of the forest category. However, before this can proceed, new sub-legislation is required to clarify how this will be done and to bring the 2019 Land Law and Forestry Law into alignment⁴⁷. To assist in doing this, a donor-supported piloting project to title village land in National Protected Areas, Production Forest Areas and National Parks is being undertaken⁴⁸.

⁴² As of 2022, LUPLA remains a key component in many donor-supported forestry projects.

⁴³ https://laolandinfo.org/wp-content/uploads/2022/01/Briefing-Note-1_Tenure-in-Forestland-Laos.pdf

⁴⁴ Further coordination will proceed via a MAF (DoF)–MoNRE (DoL) Committee to explore how to improve tenure security in the 3FC.

⁴⁵ Decree on the Management and Use of Forests and Forest Land and Decree regarding the Allocation of Land and Forest Lands for Tree Plantation and Forest Protection

⁴⁶ In forestland, the more common forms of tenure recognition were LUP, tax receipts and family land books.

⁴⁷ Article 44 of the Land Law related to land right in forestland is not reflected in the Forestry Law.

⁴⁸ Swiss Development Cooperation, GIZ and LuxDev through the Mekong Regional Land Governance Project for “Recognition of customary tenure in 3 Forest categories” implemented by government partners (DoL, DOF and DALAM).

9.5 Land as Capital and Land Concessions

To attract investment into the agriculture and forestry plantation sectors, starting in the late 1990s/early 2000s, the government began approving investments that used “state land leases and concessions”. However, the concession approval process involved several different ministries and levels of government (e.g. National Assembly, provincial, district, military) and existing legislation was often not followed⁴⁹ (Hett, 2018). Concession holders are a mix of foreign, domestic, and joint ventures, and include a wide range of commodities: forestry (mainly rubber, eucalyptus), agriculture (mainly coffee, livestock and jatropa), and mineral extraction (tin, copper iron, etc.). The communities’ involvement has been configured based on inputs from the community and the investor. Two common designs are 2+3 models (village provides land and labor and investor provides materials, markets, and technologies) and 4+1 (village provides only land and investor provides all other inputs) (Schoenweger and Üllenberg, 2009). Land concession arrangements such as these have had impacts internationally and in Laos and include escalating land disputes; these are most severe in countries that are rural and where land rights are mainly customary (Liu, 2014).

An initiating factor for concessions was an influential land-related policy of the government termed ‘Turning Land into Capital’ (TLIC) promulgated in 2006. TLIC was never an actual codified policy, but it provided a concept that could help manifest the perceived latent financial potential of land for economic development and revenue generation. Overall, it has been difficult for researchers to assess the impact of the policy since it was not official; activities and impacts were not recorded and made public. The approach to implementing the policy, although vague, can be narrowed down to four main methods: i.) trading land for development; ii.) land-based financing of infrastructure; iii.) land titling and the creation of land markets; and iv.) state land leases and concessions (Kenney-Lazar, et al., 2018c).

The state land leases and concession model looked to generate government revenue based on the perception that there were vast areas of available rural land that could be provided to investors -- domestic, foreign and joint -- under concession agreements. In many cases the land given over to concessionaires were part of village territories that villagers viewed as under their customary ownership and management (Dwyer, 2007). This caused an exponential increase in land-related conflicts (LIWG, 2012; Kenney Lazar, 2015). The negative impacts on customary land and village livelihoods quickly began to manifest (Barney, 2007; Baird and Fox, 2015), such that the government issued different types of concessions moratoriums in 2007, 2009, and 2012 (Kenney-Lazar et al, 2018) as well as legislation to govern concessions⁵⁰.

⁴⁹ For example, only 2% of concessions in the National Land Concession Inventory fully complied with environmental legislation.

⁵⁰ Prime Minister’s Decree No. 135 on State Land Leases or Concessions.

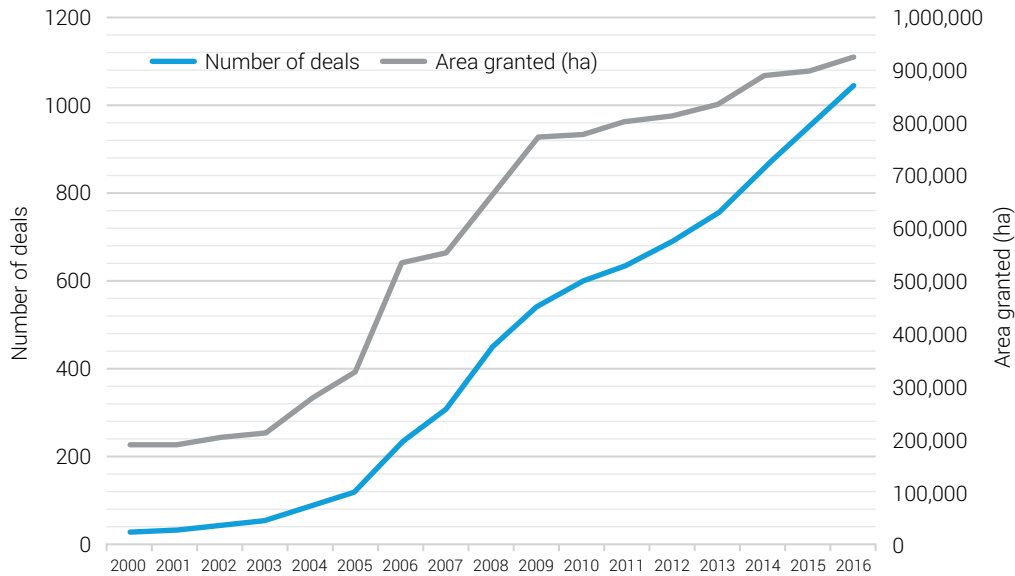


Figure 7: Expansion of Land concessions

It is estimated there was a fifty-fold increase in demand for land over a ten-year period (Schönweger, Heinemann, Epprecht, Lu, & Thalongsengchanh, 2012). Figure 7 shows the increase in number and area of land concessions granted over a 16-year period. Research has shown that 45 percent of the areas under investment were once part of smallholder agricultural systems (Heinemann et al., 2014), most of which would have been held as customary land.

The impacts of concessions on customary land is elucidated by two national land concession inventories done in 2012 (Schönweger et al. 2012) and 2018 (Hett, et al. 2018) that provide details on how concessions were acquired, where they are located, and their quality and impacts. The impacts included reduced access to non-timber forest products and various other natural products (wildlife, traditional medicines, timber etc.) for both consumption and sale. The points below further show the extent of the impacts of concessions. Using a subset of the concession inventory data, Figure 8 displays the land types, most notably forests⁵¹, that were converted to concessions, many of which would have been part of customary systems (Hackman, 2022).

⁵¹ According to the National Land Classification System, "Potential forest" includes shifting agriculture fallows older than two years. Many of these fallows are managed by customary tenure systems. After reclassification, these areas are meant to remain undisturbed.

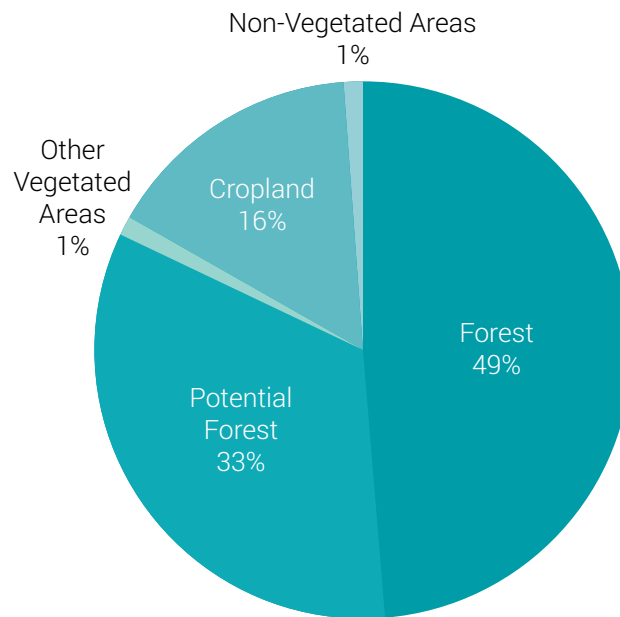


Figure 8: Land Type Change Caused by Land Concessions (%)

- The spatial analysis indicates that 23% of all villages (1,977 villages and approximately 2 million people) in Laos had a land concession developed⁵² in their village boundaries; this affects more than one-quarter of the nation's population;
- The majority of concessions (73%) were done in villages that had paddy rice as their main livelihood; the second highest number of concessions (13%) affected villages that cultivate with upland rice;
- The most common land types converted to concession were: mature secondary forest (26%), primary forest (18%), agriculture fallows (15%), garden (9%), paddy (4%), grazing land (4%), and upland fields (3%).
- Many concessions (240) are inside areas categorized as forestland (55 in conservation forest, 131 in protection forest, and 54 in production forest);
- Approximately 30% of concessions in forest areas have been developed (137,332 ha);
- Land concessions were more common closer to economic hubs than they were in remote areas, but larger concessions (100–10,000 ha) were more remote and greater than a two-hour travel time from administrative centers.

Illegal land claims (*chap chong* in Lao language) are a countrywide issue and related to commercialization of land and land concessions. This is carried out by both village residents and non-village actors mainly in areas of village communal land. Research indicates this is done for several reasons: to expand household commercial agriculture and holdings, for speculation and sale of the land, and to protect against external threats for future generations. (Kenney-Lazar, 2018b). As these claims are done in communal areas, they negatively affect those most dependent on resources held collectively. When done at a small scale, this enclosure of the commons and the impacts may be small, but when many households participate the cumulative impacts can

⁵² Developed refers to the area that has already been developed for a given concession with the purpose of producing the intended product.

multiply. Larger area claims (tens to hundreds of hectares) or purchases made by often powerful non-village actors have even greater negative impacts. In some cases, such transfer of land to outsiders has involved the illegal sale of communal land by village authorities. Countrywide, the extent of the communal land claimed by villagers and non-village actors has not been quantified, but hearsay evidence from government and project staff, villagers, and direct field observations indicate it is substantial and eroding communal customary land tenure systems.

10. Efforts to Formalize Customary Land Tenure

Efforts to strengthen customary land tenure often refer to formalization and recognition. Formalization can simply be defined as codification of any informal or customary rule or practice (Pacheco et al. 2008). Most commonly this is done by the state (i.e. statutory) and comes with replacement of informal ownership, and processes for identifying and adjudicating rights and registering these. However, some types of formalization (mapping, inventories, etc.) do not imply recognition of rights. Recognition granted depends on the type of formalization (e.g. mapping versus titling) and how widely it is accepted (self/village-recognition, co/village-recognition, state local-central recognition, private sector/corporate) as legitimate in a specific social-tenure context.

This section presents attempts by donor-funded projects, implemented by government, civil society and consulting firms, to promote customary tenure systems in Laos through formalization. The examples summarized below (See Table 6) are not the only efforts, but were selected as the most representative of what has been done and that capture the diverse conditions of customary tenure. Piloting these examples followed central legislation existing at the time and applied them in new contexts (e.g. adjudication in mountainous sloping areas) and introduced new legislation approved at district and provincial levels (e.g. communal land titles). Annex 4 provides additional details about each recognition effort.



Photo: Village Focus International

Table 6: Summary of Efforts to Recognize Customary Land Tenure

<i>Organisation</i>	<i>Background</i>	<i>Outputs</i>	<i>Recommendations</i>
<p>Department of Land, Global Land Tool Network (GLTN), Village Focus International and RECOFTC 2020</p>	<p>Coalition work to formalize remote villages customary land tenure, applying the “Social Tenure Domain Model”. Adapted to meet local tenure conditions (communal grazing and individual upland agriculture land). Highly participatory Free Prior and Informed Consent adjudication process applied to ensure local support. Cost effective and scalable upon donor or government budget support.</p>	<p>Issued a total of 162 State Collective⁵³ Land Survey Certificates⁵⁴, covering 2,631 hectares; 978 households received individual Land Survey Certificates⁵⁵ for 1,039 plots of customarily owned land covering 2,902 hectares; All data imported into Department of Land’s Lao LandReg. system and the Social Tenure Domain Model database.</p>	<p>FPIC process is a required step to learn how customary land tenure systems function before formalization. Customary communal tenure systems can include levels of individual ownership, formalization must be adapted. Formalization of communal land must include disclosure of claims and rights.</p>
<p>The Agro-Biodiversity Initiative (SDC), Ministry of Agriculture and Forestry 2009-2018</p>	<p>Participatory Forest and Agriculture Land Use Planning Allocation and Management (PFALUPAM), supported by the Swiss Development Cooperation (SDC) in three phases between 2009 to 2017.</p>	<p>PFALUPAM was completed in approximately 350 villages covering a combined area of 700,000 hectares. Rebrand shifting cultivation as managed “rotational shifting agriculture system”</p>	<p>LUPs created locally need higher levels of government approval for better tenure. PFALUPAM/LUP can satisfy multiple government goals simultaneously (enhanced tenure, stabilization of shifting cultivation, forest conservation and livelihoods improvement).</p>

⁵³ Land Law Article 81: Use of State Land for Collective Purposes

⁵⁴ Land Law Article 4(17): Land survey certificate refers to the document certifying the lawful land use rights. It is issued by the District Office of Natural Resources and Environment following the proper processes of surveying and adjudication of the land.

⁵⁵ Land Law Article 4.17 Land Survey Certificate

<i>Organisation</i>	<i>Background</i>	<i>Outputs</i>	<i>Recommendations</i>
<p>Gender Development Group (local CSO) and SNV (Netherlands government/donor agency) 2011</p>	<p>First issuance of collective land through formal document. No tax applied.</p> <p>Guided by National Land Management Authority regulation 564/2007.</p> <p>Aimed at management of bamboo forests to secure a sustainable source of raw materials.</p> <p>Bamboo Handicraft Producer Groups in 17 villages, four pilot Communal Land Titles (CLT) villages selected.</p> <p>No clear instruction existed on how to transform the legal definition into CLT.</p> <p>PLUP management plan and regulations completed.</p> <p>Donor funding to finance the full project cost.</p>	<p>August 2011, temporary land use certificates for a period of three years for collective land for village production forests. 2,189 ha.</p> <p>Rights include access, withdrawal, management, exclusion, and no alienation.</p> <p>Decision-making body: Village Committee.</p> <p>No clear definition of membership/access.</p> <p>Approval: District Governor and Land Management Authority.</p> <p>Temporary 3-year titles expired, legally null.</p> <p>Interest in CLT among local and provincial government partners varied.</p>	<p>Extensive consultation with all village members for proposed boundaries, benefits, and creating regulations.</p> <p>Not scalable due to high costs.</p> <p>A central-level legal framework for CLT is needed, but guidelines/instruction must be adaptive to local conditions.</p> <p>Women's participation is absolutely essential as they rely heavily on communal resources.</p> <p>Differentiate between economic and conservation use and apply appropriate tax system.</p>

<i>Organisation</i>	<i>Background</i>	<i>Outputs</i>	<i>Recommendations</i>
CIDSE-Laos (INGO) 2016	Talaknathin Village, Nyommalath District, Khammouane Province	October 2016, permanent CLT issued.	Cost of CLT was expensive at \$102 USD/hectare, land area too small, not scalable, alternative process needed.
	Total 33 households , paddy rice and cattle, no swidden agriculture, Ethnolinguistic: Lao-Tai.	Approval: Provincial Natural Resource Office. Managed by Village Committee of eight people, mainly men.	The government refused to issue CLTs for 447 ha of village forest land.
	2011: PLUP completed, 41.6 hectares under customary communal management.	Approx. 0.25 ha/ household in communal area, no long-term crops allowed.	As an interim protection measure adopt a village rights or territory approach to formalizing village tenure recognition.
	Only 1/3 of area is arable.	Rights: access, withdrawal, management, exclusion, and no alienation.	Needs to be quick to establish, provide broad recognition and, not be too complex or costly.
	Donor funding to finance the full project cost.		Remove the requirement for complete LUP before communal/collective land registration.

<i>Organisation</i>	<i>Background</i>	<i>Outputs</i>	<i>Recommendations</i>
<p>World Bank (International Financial Institution) 2012-13</p>	<p>Initiated in indigenous villages relocated as a result of the Nam Theun II Hydropower dam.</p> <p>Done to increase tenure security and offset insufficient agriculture land provided in the relocation sites.</p> <p>Unique case as it involved relocated villages, part of a high-profile energy project funded by a consortium on government and international funders.</p> <p>Areas issued titles were not previously under customary village ownership.</p> <p>Donor funding to finance the full project cost.</p>	<p>Participatory land use planning (PLUP), 2009- 2012</p> <p>Permanent collective land titles issued for 14 villages, covering more than 20,000 ha of relocation area.</p> <p>Land types: i. agricultural (2,780 ha) ii. forest land (17,428 ha); iii. community infrastructure</p> <p>Management by Land Management Committees (LMC) voted in by eligible families. Others that move into the area have no use rights.</p> <p>Rights include: access, management, withdrawal, and exclusion rights. No collateral or sale.</p>	<p>Village relocation presents a challenge for formalization of collective land because of the disrupted social context.</p> <p>Household rights to communal land need clear criteria.</p> <p>PLUP process provides outputs and consensus that CLT requires.</p> <p>State titles issued for infrastructure, not natural resources.</p> <p>Debate as to land titled as a parcel or as a land use zone.</p> <p>Average cost of a CLT by land use zone at \$30/ title (one/village), by parcel average of \$220 per title. As many as 20 parcels/village.</p>

Organisation	Background	Outputs	Recommendations
Mekong Regional Land Governance Project ⁵⁶ , DoL, DoF, DALAM.	<p>The forestry sector is responsible for issue of land documents in the 3FC.</p> <p>Efforts are being made to pilot recognition of land rights.</p> <p>Conduct land use planning (review); cadastral land survey, adjudication and VFMP (under the lead of DoL, support by DoF, DALAM, LWU, LFND);</p>	<p>Review/update LUP.</p> <p>Synthesizing and developing land allocation/use plan, in consultation with the village authority.</p> <p>Creation of cadastral maps and entry into the database</p> <p>Issue land survey certificates.</p> <p>MAF and MONRE are presently coordinating on drafting legislation and procedures for issuance of land certificates and titles in forestlands.</p>	<p>Procedures must be clearly defined and solutions aimed for that can be broadly implemented.</p> <p>The pilots must avoid 'grey area solutions' if they are to gain nationwide validity and include a methodology applicable everywhere.</p> <p>Higher quality village-level consultations are essential for people to understand what is being done.</p>

To summarize, formalization of customary land rights has begun in Laos and needs further legal strengthening and expansion, but it may not be a panacea for protecting land rights and supporting households living in poverty. Questions regarding the appropriateness and potential risk of formalization in local contexts need to be considered. By creating fungibility of land, formalization can create the circumstances for distress land sales by poor households that contributes to future poverty (Diepart and Sem, 2018). Formalization such as titling can also lock-in existing village economic and social inequalities or facilitate the transfer of land to non-village actors. Alternatively, formalization may empower customary land holders so they can more fairly negotiate with investor and buyers and receive proper compensation in the case of expropriation. Ultimately, the formalization of communal land has many pro and cons. The former being recognition of village forests or shifting cultivation land and potential empowerment, the latter being possible loss of flexibility in the transferability of rights between private and collective (Murray Li, 2010).

⁵⁶ Note: As the piloting is ongoing, there is no additional information included in Annex 4.

11. Recommendations and Options for Strengthening Customary Tenure Systems

This section presents: i) cross-sector recommendations for strengthening and protecting customary tenure systems and ii) specific options for recognition of land tenure. Cross-sector recommendations aim to address indirect causes of tenure insecurity and should be done regardless of recognition efforts. The options include specific ways to recognize tenure rights, including formalization, and can be used in different village-level tenure contexts. The recommendations are aimed at government agencies involved in land governance, especially those involved with customary tenure (MONRE, MAF, Ministry of Justice), as well as, civil society organizations, development partners, academics, and any others working to advance customary land tenure. An excellent platform for discussion about the recommendations is the government - development partners “Land Sub-Sector Working Group” (LSSWG) that has a focal group⁵⁷ specifically for “Customary Land Tenure in Forests” (chaired by DoL and MRLG).

Before efforts to recognize customary tenure systems are made, several important factors need to be considered. The need for recognition should have some correlation to the level of tenure insecurity and rights holders’ interest in recognition. If customary systems are functioning well, with no outside threats and people are satisfied with them, then formalization (i.e. titling) may not be needed or less complicated and costly options for recognition may be better, such as village boundary recognition. In contrast, in areas where land markets and conflicts are emerging and customary systems are in transition, formalization of property rights may be appropriate, although not inevitable. If formalization is done, stringent social safeguard frameworks are essential to ensure that formalization does not result in distressed land sales or capture by elite insiders or outsiders. Even with safeguards, there are risks related to formalization; the outcomes are not entirely predictable, especially in areas of transition between collective and individual rights (Deininger and Feder, 2009). Cost is also an issue with some options providing protection at a lower cost, especially for collective systems (World Bank, 2003). Lastly, before launching systematic titling projects or campaigns, it is imperative to have an inclusive (i.e. all land types) regulatory framework for recognition and formalization of customary tenure systems in place. Excluding customary tenure systems, would further marginalize the people and their livelihoods which are dependent on customary tenure.

⁵⁷ The other focal groups are “Land Information Systems” and “Legislative Drafting”. The LSSWG comes under the “Natural Resource and Environment Sector Working Group” that holds a seat at the annual “Government of Laos– Development Partner National Round Table Process”

11.1 Recommendations for Supporting Customary Tenure Systems

1. Expand Law Dissemination and Legal Training on Land Rights, Safeguards, Community Mobilization, and Conflict Resolution.

The goal of this recommendation is to protect customary land through legal education and community mobilization. On the topic of land rights, people in rural villages often live with a lack of information. To better negotiate and engage with outside organizations, other villages, and within a village, and to receive justice and make effective land rights claims, people need legal information. Even for customary land that is not legally recognized (i.e. *de facto* rights), it is useful for people to learn about and consider options for protection. Thus far, village-level legal training and dissemination, provided by civil society organizations (CSOs) and government, has been focused on natural resource laws, how to prepare and present legal petitions, contracting farming and negotiation skills, and improving the skills of village-level grievance resolution committees. However, to increase the effectiveness and scale of legal education, new approaches and topics are needed and more government and donor financial support required.

- “Community mobilization is the process of engaging communities to identify community priorities, resources, needs and solutions in such a way as to promote representative participation, good governance, accountability and peaceful change”⁵⁸. With this approach communities use their legal knowledge as a group rather than individually. It informs people about finding and building common interests, how and where to educate themselves, recording and organizing information, and how to present and communicate it into formal (e.g. complaints and petitions mechanisms) or informal (e.g. engagement with private sector) channels. When people are informed about how duty bearers/civil servants (village authorities, grievance committee, and district government staff) are meant to act and serve on behalf of citizens and villages, they can then call to have these duties fulfilled when seeking justice. The outcomes can be citizens who organize to collectively call for the recognition of their legal land rights and hold government staff accountable for performing their duties.
- The responsibility for citizens’ legal education is both a personal responsibility and a function of government, but budget and staffing constraints has limited outreach to rural villages. To fill this gap many more non-government groups (local CSOs, INGOs, Lao Bar Association, private sector, universities/academia) are needed to support village-level legal awareness-raising and community mobilization. One example of a legal awareness-raising initiative is the World Bank’s, via the Japanese Fund for Social Development, new “Public Information and Awareness Services for Vulnerable Communities Project”. The project will support civil society and government efforts to improve people’s legal awareness and provide village-level legal counseling. Another well-established legal awareness project that has included training government and CSO staff is the Land learning Initiative for Food security Enhancement (LIFE) Project⁵⁹. LIFE training has provided government staff with land-related legal knowledge including

⁵⁸ <https://www.mercycorps.org/research-resources/community-mobilization-sector-approach>

⁵⁹ <https://laolandinfo.org/en/life/what-is-the-life-project/>

customary tenure legislation and how to transfer this knowledge to rural Lao citizens. To scale up legal awareness-raising and reach the thousands of villages that are customary land rights holders, much greater government and donor financial support is needed.

- In addition to customary land that is legally recognized, villages also need to be aware of their *de facto* lands rights that do not provide full legal recognition, but that villages believe they are entitled to and that they informally hold via possession and use of customary land. To help legitimize these rights, villages need to be able to create and display their knowledge and use of the land. Activities such as documentation of customary practices and rights, participatory mapping, resource (NTFPs, wildlife, soils quality and crop suitability) inventories, informal land zone demarcation (e.g. collective agriculture areas), and tree planting all serve as ways of legitimizing land rights. Donors and CSOs need to look beyond supporting only *de jure* rights via legal awareness and integrate creative activities that support *de facto* customary rights to help avoid exclusion of critically important land.

2. Enhance Public Awareness and Land Registration Process

The goal of this recommendation is to provide a land adjudication process that includes customary land claims. Public awareness-raising, part of the adjudication process, falls under the responsibility of the District Office of Natural Resource and Environment (DONRE). For villages to fully benefit from awareness-raising about land registration it needs to be the highest quality possible. MONRE Ministerial Instruction (MI) on Land Title Registration 0500, Part II, provides the general structure and steps for public awareness-raising and consultation. Public awareness-raising is also critical for creating local interest in recognition of customary land and in land registration, in general. The points below suggest how to make recognition and registration more inclusive and effective at reaching customary land holders.

- As part of the adjudication process, all steps of Ministerial Instruction on Land Title Registration 0500, “Chapter II, Section 2 “Preparation for land title registration” need to be highly gender and ethnically sensitive. These steps include: i) Notification to the General Public; ii.) Public Communication/Awareness; iii.) Village Public Awareness Meeting; iv.) Public Communication on Gender: and v.) Specific Communication Meeting. Implementing this approach must follow gender and ethnicity manuals designed specifically for public awareness-raising⁶⁰. The practical approach for achieving this is to provide training by the district Lao Women’s Union (LWU) and Lao Front for National Development (LFND) Offices to DONRE registration teams ‘*gender, ethnicity and land*’, specific to each district’s context. Conducted before the start of adjudication, the training can include how gender and land rights interact in the local ethnic group culture and context (i.e. matrilineal, patrilineal or bilineal systems). Along with the relevant World Bank’s Environmental and Social Standards and guidelines, government-issued guidelines can support this training (e.g. Guideline on Ethnic Group Consultation, 2012). Prior to the “Preparation for land title registration” portion of adjudication, if there are knowledge gaps, the LFND and LWU at the district-level should be provided with training

⁶⁰ The World Bank “Enhancing Systematic Land Registration Project” will cooperate with the government’s land department in creating and operationalizing these manuals.

on local customary tenure systems, the benefits and risks of formalization, and how to raise awareness on these topics at the village level;

- It is a necessity that all village-level consultations in all of the above adjudication public awareness-raising steps be done in local ethnic group languages and at a pace that suits local familiarity about land administration. Government staff able to speak the local language should be included on adjudication teams or immediate translation by translators provided. Specific attention needs to be given to assessing women's language skills before starting, and ensuring they understand the content of the consultations and awareness-raising. The LFND has knowledge of village ethnicity and language ability and should be consulted;
- There are very few women working as full-time government staff in the land sector, especially from ethnic minority groups. Village women feel more comfortable engaging with female government staff than male staff. Land adjudication teams should include more female staff that can facilitate discussion about land rights with women in villages. A female staff quota should be set for adjudication teams, aiming for 50 percent female members and a required minimum of at least one woman per team;
- The overall content of the public awareness campaigns in Ministerial Instruction 0500 should be designed to address the gendered social norms which create barriers to the meaningful participation of women in titling efforts. Experts in gender and social inclusion need to be included in guideline writing, training of government staff, and monitoring campaign effectiveness;
- Depending on village history, ethnic composition and language, there may be a need for DONRE to hold more than one "Village Public Awareness Meeting" and other consultation meetings with different ethno-linguistic groups in the same village. In patrilineal villages, the topic of women's land must be a focus of discussion with men in order to build their acceptance of women's land rights. The LFND has the expertise to assess each village's context and make suggestions for consultation structure and local translators;
- For thorough and full recording of individual customary land rights, the registration teams (MI 0500, Section 2.2.3) must allow for sufficient time for land holders to prepare the required documents (Land Law, Article 130). Without previous documentation, customary land claims could be contentious and create conflict thereby slowing adjudication. This requirement should be announced as early as possible during the "Notification to the General Public" and "Village Public Awareness Meeting". Village administrators require guidance by DONRE on how they are meant to fulfill the requirement of providing certification for customary land as required by Article 130.

3. Exclusion to Inclusion – Addressing Women's Land Rights

The goal of this recommendation is to improve women's land rights. As indicated earlier in the assessment, women's land rights cannot be separated from culture; they are closely linked to customary gender-based power and kinship systems. Addressing practices that discriminate against women can be daunting for government and development partners, particularly when trying to recognize customary tenure systems, the very systems that discriminate against women. In addition to non-customary land, specific attention needs to be given to gender

and the recognition of customary land as included in Article 130 of the Land Law. If not done inclusively this process presents a risk to women's existing customary land rights, but also presents an opportunity to legitimize their rights. Another important topic is options (e.g. LUP, VFMC, community mapping, village patrolling) to protect communal land. Before the start of the adjudication there are a number of ways to address these issues that include interventions at the local and other levels. The recommendations below draw on the work of Somphongbouthakanh and Sandbergen (2020) and Schenk-Sandbergen (1997).

- Women's access to land is not enough; secure ownership or co-ownership should be the aim. The present Land Law no longer includes the previous protection clause for married women⁶¹. However, as part of the registration process for non-customary land included in Ministerial Instruction on Land Title Registration 0500, the name of the spouse is required on the survey form based on land ownership prior to marriage (i.e. wife's, husband's or conjugal property). For recognition of customary land, the village authority's certification is required. The above '*gender, ethnicity and land*' training will prepare registration teams to implement both of these processes in a gender-sensitive way. However, to avoid the exclusion of existing women's land rights and to help promote the recognition of new rights (especially in villages with patrilineal kinship), the LWU needs to be included and have the funding to provide monitoring of how the registration teams are performing and to give feedback to senior DONRE staff and related provincial and national committees;
- In addition to the above land-specific legislation, the land adjudication process should draw from the civil code and Family Law to provide joint titling of marital land/spousal land titles, noting Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women⁶² which has been ratified by Laos;
- With guidance from topic specialists, MONRE should create a "Ministerial Gender Strategy" that includes gender-specific goals and targets for the Department of Land to achieve. This should aim for better equality in female - male government staff numbers at different levels (e.g. Heads, Deputies) and types of positions (e.g. technical, administration, legal), gender-sensitive land adjudication, acknowledgment of the status of women's land rights, and other areas that enhance women's participation and equality with men. An action plan is needed to implement such changes, as well as, annual monitoring with an upward accountability mechanism. The National Commission for the Advancement of Women (NCAW) serves as the country's national mechanism for change in women's status in society. The NCAW committee within MONRE needs to be better informed about and engage in women's land rights. In addition to the Lao Women's Union, donor projects should include representation from MONRE's NCAW Committee and support their capacity building and participation;
- Land-related education campaigns need to be designed specifically for and provided to women. Mandating participation or representation of women is not enough; women need to be knowledgeable and confident to discuss land issues and their land rights. To reach rural women, donors should provide gender-focused programming, support

⁶¹ <https://laolandinfo.org/wp-content/uploads/2019/08/BN-No-4-Gender-in-land-rights-Eng-Final-NA.pdf>

⁶² Specifically point "g": To have access to agricultural credit and loans, marketing facilities, appropriate technology, and equal treatment in land and agrarian reform, as well as in land resettlement schemes;

projects and campaigns on women's land rights, and land projects should include educational campaign activities. The 'ethnic-kinship-land rights' relationship needs to be a built-in aspect of the campaigns and also consider villages' relocation history and involvement with land concessions.

- Local civil society organizations can play a crucial role in translating nationally and internationally defined agenda on women's land rights to local contexts and by bringing local realities to national and international agenda⁶³. Prior to adjudication, these organizations can cooperate with and coach the LWU, DONRE and the LFND to provide gender, ethnicity, and land rights awareness-raising training for land officials at district and provincial levels. If properly funded and organized, CSOs could also carry out broad awareness-raising campaigns about women's land rights at village level before adjudication;
- Communal land for women from some ethnic groups, is the only land for which they are rights holders. Therefore, strengthening and safeguarding communal land and collective rights directly supports women's land rights. Work on this topic is urgently required through the promotion of women's participation in existing collective rights recognition options (LUP and VFMP) that need to be implemented with gender safeguards in place. Other than the LUP and VFMP processes, creative legal options such as legally registered 'women's non-timber forest products and producer groups' as holders of collective rights need to be explored. These can be linked to mapping of collective areas (e.g. village-managed forest) used by women and participatory action research led by women;
- As supported by Women's Union Law (No. 31 NA), leadership roles of women at the village level need to increase. Currently, few women are in positions of authority and decision making. This means men are responsible for expressing and representing women's interest in most formal political settings, which results in women's interests being sidelined. With women in roles as village head, vice head, and land officers, they will be in a better position to understand the plight of marginalized women and bring women's land rights into discussions. The government should set annual quotas for women to fill these positions and make them a high-level priority. To support this, civil society organizations should work with government and village women's groups to build interest and capacity in joining village committees.
- In Laos there have been few studies focused on understanding women's land rights, especially in customary tenure systems. To avoid past mistakes, government and donor titling efforts need to: i) invest in research to learn how women's customary tenure interacts with and responds to land registration including the potential impacts and benefits of registration; and ii) ensure women's land rights are enhanced to the greatest extent possible. Research can be done by local and international civil society organizations and academia (i.e. professors and students) and may include government. Research reports need to be distilled into succinct presentations and policy briefs presented to policy makers, and followed by frank discussions on how to support women's land rights. Funding for research could come from gender-focused donor programming and projects that include gender-sensitive budgeting.

⁶³ <https://www.frontiersin.org/articles/10.3389/fsufs.2021.697314/full>

4. National Tenure Assessment and Nationwide Research Program on Customary Tenure

The goal of this recommendation is to educate policy makers and development partners and support informed policy design for recognition of customary tenure. For a country that has much of its land governed through customary tenure systems, there is surprisingly little known about these systems by government and development partners. There is a general understanding of the main types of customary tenure systems, but the details (social inclusion and exclusion aspects, seasonality, resource specificity, spatial aspects, gender, power and tradition institutions, status and dynamics etc.) of these remain largely unknown. Below are two approaches for addressing this shortcoming in knowledge that can involve multiple groups to develop a policy framework that responds to identified concerns and issues on customary tenure. Linked to the above recommendation, both approaches should include gender-sensitive design that include research into topics related to women's land rights.

First, a national tenure assessment would reveal the complex tenure realities (noting Article 7.3 of the VGGT).⁶⁴ This one-off assessment would broadly assess tenure security and identify problem areas where intervention for strengthening customary tenure systems are needed. The assessment will identify areas where customary tenure systems are working well and where it is under pressure and no longer able to defend local property rights. Another option is "rapid assessment studies" that focus on a small number of strategically-selected key issues (e.g. patrilineal inheritance rights), and explore these in greater depth. Various approaches for this assessment exist such as: the World Bank's *"Forest Tenure Assessment Tool"* and *"Land Governance Assessment Framework"*⁶⁵, *"USAID Land Tenure and Property Rights Assessment Tools"*, the FAO *"Governance of Tenure Technical Guidelines"*, *"UN Habitat Tenure Responsive Land Use Planning"*, *Women's Land Rights Framework*⁶⁶ and many others.

Second, a two to three year "Land Tenure Research Project" conducted under the auspices of a high-level political authority (e.g. National Assembly Committee on Ethnic Affairs) and led by expert researchers from government, local CSOs, INGOs and academia would be incredibly valuable for education and bringing field-level data into the policy arena. This research would intensify the documentation and mapping of customary tenure systems and women's customary rights, and promote options for recognition and allocation of agricultural and forest land to villages. A particular useful approach would be Collective Action Research, a process designed to support collective village action built on a shared experience. Springate-Baginski and Kamoon (2021) have noted "meaningful recognition of customary systems is a focal issue in a wider political process of building a common movement". As village relocation and/or consolidation has a long and ongoing history in Laos⁶⁷, specific research on how these activities impact customary tenure systems would be useful for adapting or changing policy on these topics. Other areas of research could include: the role of customary and formal institutions in customary land tenure

⁶⁴ "Where States intend to recognize or allocate tenure rights, they should first identify all existing tenure rights and right holders, whether recorded or not. Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected should be included in the consultation process..."

⁶⁵ <https://www.worldbank.org/en/programs/land-governance-assessment-framework>

⁶⁶ <https://resourceequity.org/record/2739-improving-land-tenure-security-for-women-a-starting-with-women-approach/>

⁶⁷ Village relocation is done for different reasons such as infrastructure (roads, railway), hydropower, mining, security issues and provision of essential services (schools, medical services, access to urban areas). The degree of involuntary - voluntary relocation varies widely depending on the reasons and village-specific context.

(opportunities, constraints, good examples, ways of strengthening), quantifying the extent and change of communal land to private, understanding the shifting cultivation ‘forest – agriculture interface’ and tenure dynamics, and creating ‘district area-ethnic-based tenure profiles’ for INGOs, government and investors to use.

A useful strategy for building support, understanding, and respect for customary tenure systems is to include national policy makers (e.g. National and/or Provincial People’s Assembly, Lao Academy of Social Sciences, Lao Front for National Construction, Lao Women’s Union, Lao Youth Union, Department of Forestry, Department of Land, Department of Agricultural Land Management, university professors) in field research teams.

Research reports need to be distilled into succinct presentations and policy briefs, translated into Lao language, and presented to policy makers in research forums. The results would be communicated via multiple media channels such as: district, provincial, and central level workshop and research seminars; academic publications; hosting and participation in international conferences; and science – policy dialogues. Ultimately, the results would inform government decision making on issues of land governance and customary tenure.

5. Better Governance of Commercial Investments in Land

The goal of this recommendation is to protect customary tenure systems through improved governance of commercial investments in land. Foremost, the government needs to enforce existing concession-related legislation (e.g.. Environmental Impact Assessment, controlled and legal land and forest conversion, compensation) and next, reinforce this with two additional key legal requirements (See items 1 and 2 below) for commercial investments in land. Supporting this, government and investors both need to follow well-known government-recognized principles and guidelines that explain how commercial investments in land could be better governed (See Annex 5).

Additional suggested national legal requirements to help transform investments:

1. Legally requiring transparency related to commercial investments in land would have the single largest effect on reducing the negative impacts on customarily held land⁶⁸. Prior to investment planning and approval, initial submission of investment proposals need to be publicized (verbally in local language, and in written Lao) at the village level and include general concession information (e.g. investment sector, ownership, how much and of what type of land, location, planned community involvement, time frame, how the investment process would proceed). This would give villages the information they need to organize and engage with government and investors.
2. As part of legally required social and environmental laws, all investments should be required to carry out a detailed ‘*pre-investment village land tenure analysis*’ that is submitted as part of the investment application and is reviewed by government land experts. The analysis, done with the participation of villagers, would be required to present: areas (ha) of village forest; agriculture land including fallow land; tree

⁶⁸ Most likely issued under the Ministry of Planning and Investment or Natural Resources and the Environment.

plantations; water sources; and ownership (statutory, customary, private, collective and state) of land. It would include both *de facto* and *de jure* land rights. Ultimately it would identify whether there are areas available for investment and if it is eligible for investment. The best practice would be to have the analysis done by a neutral third party (i.e. someone not in a position to benefit from the investment), such as a consulting firm or non-governmental organization. Areas of high-risk such as customary shifting cultivation fallow land should be highlighted for protection⁶⁹. Importantly, the decision of what is customary land cannot be made by a single group (village or non-village) and should involve village perspectives.

11.2 Options for Recognition and Formalization

1. Full Systematic Registration and Recording of All Land in Villages

The goal of this option is to ensure all types and tenure of village lands are included and recognized in adjudication processes. An overarching recommendation for all efforts to formalize customary land tenure is to conduct full systematic registration of all eligible land. Past land registration efforts, although meant to be systematic, often did not include all eligible land plots in a village, including communal land areas (World Bank, 2013). Failure to systematically register all eligible plots of land – individual and communal – poses a risk to customary land. An evaluation of earlier World Bank land registration projects in Laos noted that:

“Where systematic registration is attempted, ignoring certain types of tenure may make excluded land more vulnerable to invasion by the subset of land users that have received title. In the present case, leaving out upland and forest areas significantly reduced the scope for strengthening land tenure.” (World Bank, 2013, paragraph 2.19, p.8).

To safeguard against these risks, whichever option used to recognize customary tenure, complete systematic registration of the defined jurisdiction (village, land type, village cluster, district) and all the rights holders (collectives, individual, state, private sector) should be a goal. To further help ensure systematic registration, there needs to be a sufficient numbers of adjudication teams (World Bank, 2013, paragraph 4.7, p.16) to cover the targeted areas/villages and their performance incentives (e.g. systematic village land registration rather than plots) linked to systematic recognition. Crucially, systematic registration should also include the mapping and recording of village customary land parcels and zones presently ineligible (i.e. *de facto*) for registration, these should be entered into the cadaster as possessions to be registered or certified in case of legal changes.

2. Village Jurisdictional Approach

The goal of this option is to expedite provision of full tenure coverage of all land within village boundaries. Customary tenure systems often consist of a combination of communal land (e.g. shifting cultivation, grazing and forest areas) and plots owned by individual families (e.g. shifting cultivation, paddy land, gardens, housing). Individually owned plots are often embedded

⁶⁹ In Laos some of these lands are classified as “degraded forest” and allotted for investment, especially industrial tree plantations.

in communal plots located in remote and sloping areas. Formalization of these can be very expensive and require land teams that are culturally and linguistically capable to interact with local communities. To overcome these challenges a 'village jurisdictional approach', sometimes called a "tenure shell", has been proposed (Tanner et al. 2009) as a means for recognition of customary tenure. The state's role in this approach is recognition and enforcement of an external boundary around a defined territory; within this area customary systems (local institutional, structures, and authorities) remain intact and functioning. This approach works best when traditional institutions are intact, there is low population density, and the government is committed to protect territory boundaries from incursion. Statutory laws are still relevant and some form of resource management plans are required, as well as monitoring for sustainable management (Freudenberger, 2013). In 2002 this approach was suggested for Laos to overcome the financial restraints of the government to provide systematic titling.

"Village boundaries should be used as a starting point for recognizing and establishing villager forest [and] land use rights. ... Land use rights held and registered in the name of the village would secure and protect customary rights. A thorough assessment of the potential for this approach should be facilitated during LTP Phase 2. ... [This] approach may be an alternative to individual field allocation." (Lao Consulting Group 2002, p. 8)

"In all areas except the urban areas and semi-urban areas, where LUP/LA has been undertaken, Inter-Village Boundary Agreements and Village Boundary Maps normally exist. With respect to these documents, the Lao PDR probably has a unique situation that offers an opportunity to rationalize the registration of customary land rights based on village boundaries and self-contained management areas." (Lao Consulting Group 2002, p. 79).

This approach meshes well with local tenure systems that generally adhere to village boundaries. A participatory boundary demarcation (i.e. a first step in LUPLA) process with surrounding villages and the integration and recording of local and statutory regulations would be needed. Tenure coverage would include recognition of both private and communal land. As this approach relies on an existing official government administrative body, it can easily be understood by both local land authorities and villagers.

The area-based jurisdictional approach comes with potential challenges and questions to be answered including:

- How to overcome a long-term government and donor approach on plot-based approach to land registration and rights that includes titling goals;
- For villages located in the three national forest categories (state land), how will these boundaries and rights be recognized and impact forest conservation and function;
- How to address the issues of village-level land inequalities and elite capture; and
- Countering the belief that this approach is anti-poverty reduction.

3. Legal Recognition of Land Use Planning

The goal of this option is to provide full tenure coverage of all land use planning to formalize customary tenure. In 1997 the government adopted the LUPLA process. Presently a quasi-legal recognition process, the government has not used LUPLA as a means to formalize customary tenure systems and provide stronger collective rights. New sub-legislation could change LUP approval from a district-village agreement (kho toklong) that is often disregarded by investors and government, to higher level legislation (e.g. Ministerial Decree) that can enforce tenure recognition. The below quotes provide support for LUP as a means to recognize land rights.

“It is concluded that the current village boundary and management area delineation of the LUPLA program provides an excellent framework to replicate customary land rights registration experiences in other countries. There are examples of customary management systems based on village management areas in the Lao PDR which indicates that villagers would probably welcome this approach. The registration of self-contained village management areas within village boundaries are therefore proposed as a registration approach in rural areas.” (Lao Consulting Group, 2002, p.75)

“Participatory Land Use Planning procedures clearly follow the stipulations of the VGGT that states should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community’ (VGGT, para. 9.8). Finally, during the process of village PLUP, an elected land and natural resources management committee (taking into account existing customary authorities) could be established under the village administration, which is an important step for the enforcement of village regulations.” (FAO, 2019 p.9).

“Consequently, the recognition of customary tenure rights and communal land registration in rural areas of the Lao People’s Democratic Republic could be based on a comprehensive PLUP process.” (FAO, 2019 p.9).”

LUPLA is an important land governance tool for the government and has a significant role in the National Assembly approved ‘National Land Master Plan to 2030’. Building on this, the government and donors can create new opportunities for LUPLA. To advance this option the Global Land Tool Network (GLTN) tools package provides an excellent LUPLA guideline⁷⁰ for “tenure responsive land use planning” that could be adapted to the Lao context and incorporated into existing LUPLA manuals. To expedite recognition of village rights and to manage costs, new sub-legislation could retroactively recognize thousands of existing LUPLA agreements after LUP plans are included in a land registry. There are, however, constraints to LUP as a form of recognition; many of the previously approved LUP have not been of high quality and are outdated. As well, the participation of all potential land rights holders would be reduced compared to systematic registration.

⁷⁰ <https://glt.net/2021/10/12/tenure-responsive-land-use-planning-a-practical-guide-for-country-level-intervention/>

4. Formalization of Collective Land

The goal of this option is to secure village collective lands. The basis for this option is to protect collective rights in Article 81 of the Land Law “Use of State Land for Collective Purposes” and the Forestry Law Article 39 on “Village Forestry Management Planning” and Article 120 “Allocation of Right to Use Forest and Forestland of the State”. This option rests on two main issues: i.) the village as an official state administrative level and a legitimate land rights holder; and ii.) the village-level processes used to understand and record collective rights.

Realization of this option will require sub-legislation that expands on Article 81 and specifically includes new Collective Land Use Certificates (CLUC) issued in the names of villages for controlled rotation shifting agriculture and village forests, as well as, guidelines, procedures, and formats for issuing CLUC. Sub-legislation must include issuance of permanent CLUC both inside and outside of forestland and follow acquisition of collective land rights following Articles 127 (by the state) and 130⁷¹ (customary). It also must state the role and recognition of CLUC within the LUPLA and VFMP processes. It is critical that the areas eligible for CLUC are defined by specific criteria and in consultation with local people so as to avoid selective application by local land authorities. Another possible option is for the government to formally acknowledge and approve that the present list of limited land types included in the Land Law (Article 81) and eligible for collective registration is non-exhaustive (e.g. can include shifting agriculture).

Field methodology for issuance of CLUC should be informed by past experiences of communal land titling. The participatory mapping methods used need to be affordable and quick and not excessively focused on accuracy. Customary and statutory regulations and membership need to be compared and adjudication of claims and rights holders done to address the specific tenure context (Freudenberger et al, 2013). The CLUC would be issued in the name of the village or villages or groups (e.g. ethnic group, producer group) for one or more parcels of collective land and/or water. The CLUC would include all user rights except the right to sell the land. It is important that the resource is truly collective as expressed by the village, if the level of “privateness” is too high, collective rights may not be suitable. However, if small areas of private land are embedded in collective land they would not be altered in any way and only be recorded as an easement or servitude. A critical step in issuing CLUC is that village rights to traditional shifting cultivation lands, including fallows, are recognized and protected and determined through a village-level participatory zoning process that also identifies and protects primary mature forests. Government approved regulations for CLUC areas should state that villages are able to exert their own customary decision making and land use practices.

Issuance of CLUC could follow the below general steps adapted from Ewers-Andersen (2016):

- a. Apply the FPIC principles to reach consent on the intervention and to identify which areas will be classified as collective;
- b. Use participatory mapping to delineate collective areas followed by efficient survey of the areas to demarcate them⁷² and record existing collective internal management rules.

⁷¹ ‘continuous land occupation and use’ need to include fallow land as part of ‘controlled rotational shifting agriculture’.

⁷² The methods for demarcation of larger communal plot areas already exists in Laos. “DRAFT GUIDELINES FOR TITLING OF COMMUNAL OR COLLECTIVE LAND IN LAO PDR.” GIZ Laos.

- c. Use adjudication to identify the legitimate rights holders such as insiders and outsiders, collective, group/clan-based, and individuals. Identify local institutions and management bodies and clearly define rights (who, when, what, where, etc.).
- d. Acknowledge statutes based on the village as a legal entity that include clear membership criteria (e.g. residence in the village) and governance and decision-making structures.
- e. Issue Collective Land Use Certificates to a village or villages and enter this into the government land registration system.

For collective village rights in village forests, the Village Forest Management and Conservation Contracts (VFMCC) issued after VFMP can provide and should be able to protect villages' rights. As presented in Box 5 (See Section 9.1), the rights included in the VFMCC appear to include all rights presented in Figure 5b (See Section 8.2) except the right to transfer. According to the Lao Civil Code which oversees contracts, the VFMCC are legally binding contracts that differ from the present administrative "agreements" used in LUP approval. However, the legal strength of the VFMCC has yet to be fully determined. An ongoing piloting project (RECOFTC-MRLG-DoF-DALaM) is working to develop guidelines, the rights included, and define the legal coverage of VFMCC. As with the above steps for CLUC, VFMP and VFMCC require steps based on FPIC, mapping, and adjudication to identify rights holders.

5. Titling Upland Agriculture Land

The goal of this option is formalization of customary tenure systems in areas of upland shifting cultivation. Upland agriculture lands were left out of previous titling projects, but as the piloting example (MRLG, DoL, DOF, DaLaM GLTN, VFI and RECOFTC) above shows, under the right conditions, villages support and want individual titles for shifting cultivation land. These conditions may be where shifting agricultural land has been customarily held by households or in areas transitioning from collective to private land rights. Many of these tenure insecure villages are located inside forestland for which the legal framework is currently being worked out. For villages outside forestland there are no legal obstacles for titling individual shifting cultivation land that can follow existing adjudication legislation (Ministerial Instruction on Land Title Registration 0500). A government--donor effort to systematically formalize controlled rotation shifting cultivation land aimed at *providing and protecting land rights* would have positive effects.

This option would require extensive research and planning and could be guided by an '*Upland Area Land Formalization Strategy and Guideline*' created prior to starting adjudication. The *Strategy* would lay out the expected outcomes and long-term goals specific to upland land registration. Importantly, the *Strategy* would include village selection criteria and stringent safeguards (See FPIC piloting effort) that would be needed to avoid the potential negative outcomes of formalization. The *Guideline* should include village consultations, socioeconomic data, anthropological/ethnic contexts, pre-land registration rapid land tenure, and gender-kinship assessments that carefully take into account the inclusion of women's land rights. If individual titling is done, the adjudication process could follow existing legislation (Ministerial Instruction 0500), but may require modification in upland fields. A major issue is to ensure households are provided with enough agricultural land (cultivated and fallow)⁷³ to maintain a sufficient rotational

⁷³ The 2019 Land Law does not limit individual land holding as did earlier versions of the Law.

period and meet their food security needs. A related challenge is land taxes. Land rights holders may be expected to pay annual taxes based on the total number of plots, including fallow land, even though only one or two plots are cultivated each year. This would be an untenable burden for many households and deter them from titling their land. To encourage titling, a fair and realistic land tax scheme is needed, perhaps one that has different tax rates for cultivated and fallow land or a scaled tax for fallow land based on age.

Ultimately, for shifting cultivation, it may be that no single approach to recognition will be the most suitable. The approaches available need to be diverse enough to fit with the local conditions (e.g. private or collective) and context and ensure shifting cultivation is ecologically viable; recognition needs to be based on FPIC and local ecological knowledge.

Table 7 (below) summarizes the strengths and weaknesses of the above options.

Table 7: Summary of Options for Formalization or Recognition of Customary Tenure Systems				
	Options for recognition of Customary Land Tenure	Strengths	Weaknesses	Comments
1	Full systematic registration and recording of all land in villages	All land is recognized leaving no “tenure gaps”. Reduces land conflicts. Prepares for future change in land rights.	Time-consuming and more expensive.	Adjudication teams will need to be efficient and have the skills to record areas of tenure uncertainty. Cadaster storage capability and compatibility is needed.
2	Area-based jurisdictional approach	Comprehensive recognition. Includes collective and individual land. Quick to implement. Technically simple, uses existing boundaries. Minimal interference in customary systems.	New legislation needed. Complications of overlap with 3FC. Existing land inequity not addressed.	The number of issues blocking this approach would require solutions involving several ministries and organizations. Government acceptance may be difficult and approval time consuming.

	Options for recognition of Customary Land Tenure	Strengths	Weaknesses	Comments
3	Legal recognition of land use planning	Skills and processes exist. Bottom-up and participatory. Supports adjudication. Possibly retroactive recognition (?). Access to land improved	New legislation needed. New LUP for all villages (?). Expensive and slow recognition.	No single LUPLA method accepted. Multi-ministerial coordination required.
4	Collective Land Use Certificates (CLUC) and VFMCC	Clear area-specific formalization. Issued to villages. Bottom-up and participatory. Costs less than full LUP. Quicker than full LUP. Includes shifting cultivation. Guidelines already drafted (GIZ).	Countrywide slow recognition. Expensive. Only collective land included. Status of forests uncertain. Permanency of rights uncertain.	Issued for natural resources (land and forests). Can be issued with or without LUP. amended to existing high quality LUPLA or part of new LUPLA. Village-level investigations to determine levels of 'privateness' is essential. Unclear legal status of contracts in VFMCC.

	Options for recognition of Customary Land Tenure	Strengths	Weaknesses	Comments
5	Titling upland agricultural land	Recognition for normally excluded people (often ethnic minorities). Matches well where there is land scarcity and transition from customary to statutory tenure.	Identification of suitable areas is time consuming. Risks that titling could result in the ability to transfer land, increase land sales and cause landlessness. May “lock in” tenure inequalities.	Robust social safeguards needed (FPIC as part of the adjudication process). Village consultations and assessments to determine acceptance by land holders. Must provide sufficient land for household food security that is context specific. Excessive land tax may be problematic.

12. Conclusion

This assessment presents a general overview of customary tenure systems in Laos and includes the history, ethnic and cultural settings, extent, typologies, security/insecurity status, and efforts to formalize customary tenure systems. It also provides comprehensive options and recommendations for how to provide stronger tenure for customary systems in support of the people, whose livelihoods depend on these.

For most of Lao history, customary land tenure systems have been the main path through which land rights were recognized. This has continued with the establishment of the Lao PDR until the present day. Challenges and threats to customary tenure systems began to arise with the expansion of the international neo-liberal economic system and changes to regional and national economic conditions. These changes influenced the government’s approach to land governance and perspectives of land as a national asset. At the village and household levels, customary land tenure systems began to feel the impacts as changes in access to land and forests occurred caused by land concessions, construction of infrastructure, various scales of land use planning (national to village), land registration, emerging and expanding land markets and new market opportunities for farmers. Customary land tenure systems have responded differently to these forces. Although some systems have remained isolated and viable, none have

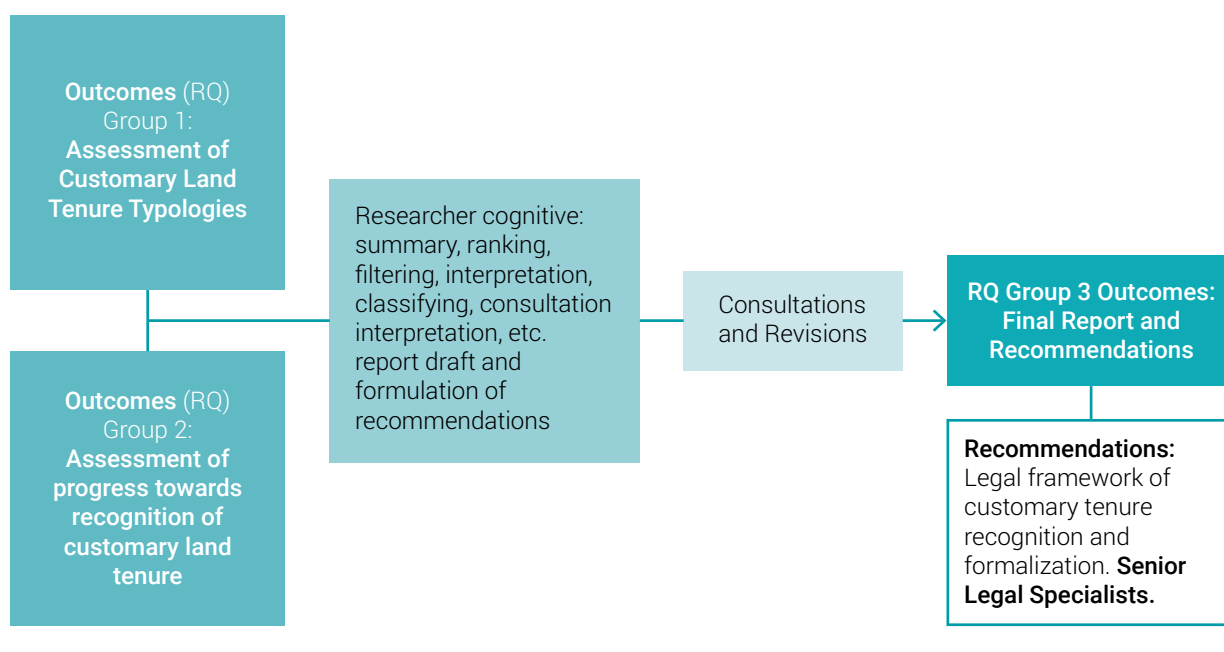
remained untouched. In some places customary land tenure systems have been largely replaced by formal statutory systems, or they have integrated some formal aspects and are in a state of transition. As spatial social and cultural arrangements, these changes to tenure are felt, lived, and experienced by people differently, positively, negatively or a combination.

Currently, severe economic stress on the government puts additional focus on land and resources as sources of revenue, thus exacerbating the already weak security tenure status of customary land. These conditions have affected customary systems mainly because there were no measures in place to protect them; there was some recognition of customary systems, but these were not sufficient. To better protect and recognize customary systems, recent efforts have been made by government and donors at formalizing them. Although, new legislation has gradually increased content on customary systems, general recognition, focused on overall protection, has been lacking. The preferred government perspective of customary rights has been in favor of individual ownership; progress towards ensuring collective rights has been slow.

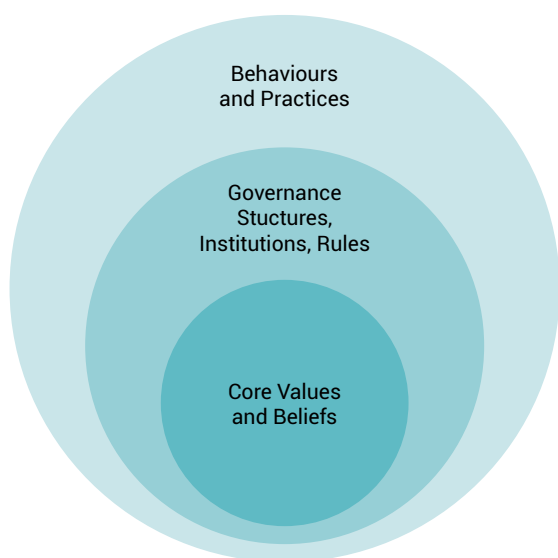
The future of customary tenure systems in Laos remain uncertain, but is closely related to changes and opportunities occurring in people’s lives as well as the government’s social and political goals. Options for formalization exist and need to be thoroughly considered for benefits, practicality, and risks. Moves towards formalization, especially privatization, should not be forced on people, but, if formalization does occur, local conditions must be assessed and overseen by robust screening (i.e. FPIC, Voluntary Guidelines on the Responsible Governance of Tenure) and by safeguards that preclude potential negative impacts. Most importantly, the value of customary tenure system needs to be recognized and respected by government while finding creative ways to harness customary tenure so that it contributes to social, economic and political goals.

13. Annexes

Annex 1: Research framework



Annex 2: Layers of customary law and tenure



How people interact with land and natural resources on a daily basis, the actual activities they carry out in their use of resources. Such behaviours are monitored and governed by the outer levels but in turn influence them as people learn and adjust their core values as a result of environmental and social perturbations.

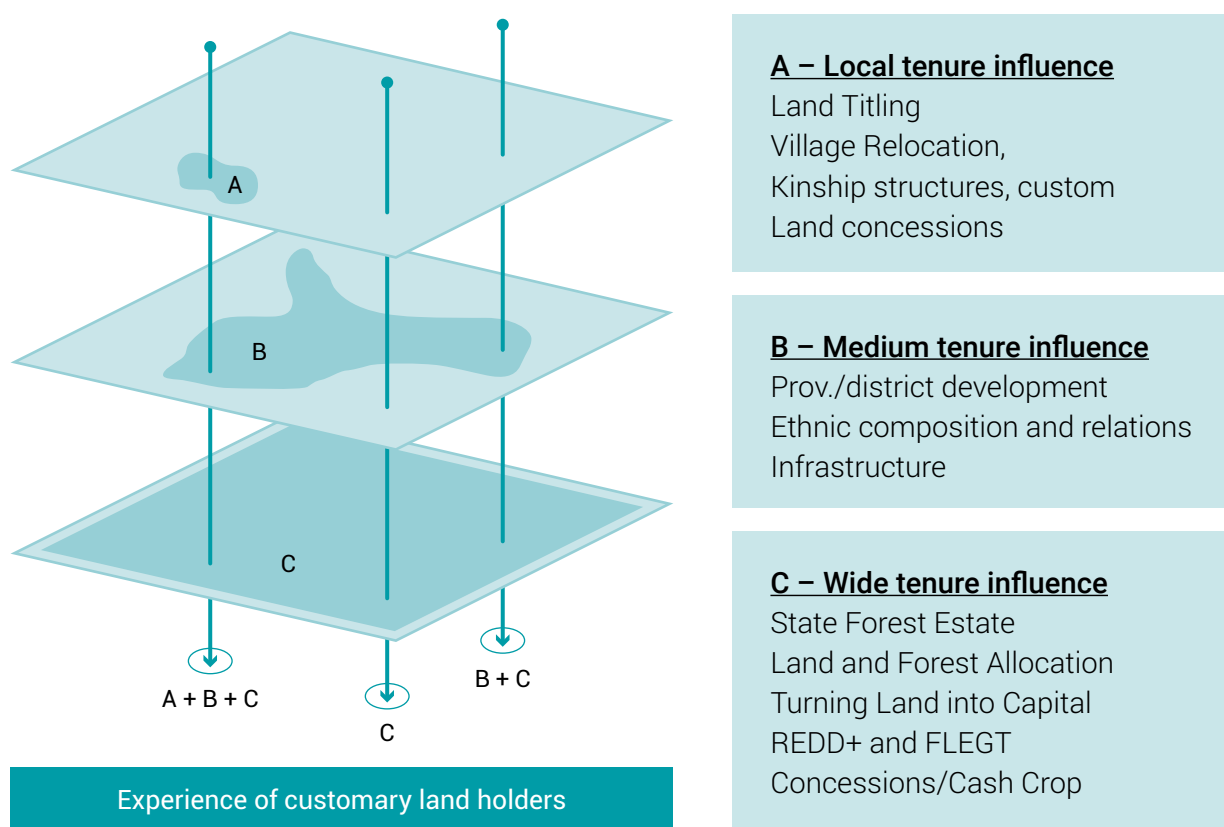
Social structures determine access and ownership of natural resources, these are also decided through social relations and the institutions which are the perceived legitimate power to enforce it. In societies living under customary law and tenure the main institutions determining ownership include marriage, inheritance and sub-groups/clans (i.e. kinship). The customary rules decided upon and attached to these institutions decide the distribution, ownership and who can benefit. In the control and management of land and the relations between women and men are crucial phenomenon.

People's acceptance of who should own, benefit, control and maintain resources is controlled by their core values and beliefs. Their outlook onto the world, their place in society/social group and how their lives are organised.

Adapted from CIRUM, 2012

Annex 3: Context dependent tenure

This section draws explicitly on work done by Dwyer (2015) to construct a “context dependent tenure sub-typology”. It is not applied to specific customary tenure systems in Laos but rather to demonstrate how localized customary tenure systems can be. Although grounded in local environments and social institutions, customary tenure systems are subject to wider political and economic influences and the development and governance context of the countries they are located in. Figure 5 shows localized tenure. On the right- side A, B and C represent “circumstances” that are distributed throughout space and have different coverage⁷⁴. The widest, represented as being C, could include a national policy such as “turning land into capital”, the establishment of national forest boundaries or the promotion of investment in commercial crop production. Level B would be including sub-national factors such as a district socioeconomic development plan and related infrastructure projects or even clusters of villages that follow certain customary practices. Finally, at the most local level is A, where specific activities such as village Land and Forest Allocation and Land Use Planning or village relocation have occurred. When combined, these factors create various typologies that cover and cross administrative boundaries and groups of actors and their social and economic relationships resulting in a lived tenure experience in practice that is shared but also context specific.



⁷⁴ In the Lao context, the positioning of these as above and below does represent the general political structure with state central power exerted on lower levels but it doesn't imply that successful avoidance and resistance to state power or private sector power, doesn't occur (McAllister, 2015; Kenney-Lazar et al., 2018).

Annex 4: Efforts to recognize customary tenure systems

1. Global Land Network Tenure Network and Village Focus International – Land certificates in upland areas

Introduction

The Global Land Tool Network (GLTN) is a multisectoral alliance made up of international civil society organizations, bilateral and multilateral organizations, research and training institutions, international professional bodies and other international partners⁷⁵. The general vision is to increase access to land and tenure security for all, with a particular focus on the poor, women and youth. The approach used by the GLTN is based on people's local circumstances (social, cultural and economic), a country's development context and designed for purpose land tools meant for fit-for-purpose land administration. Of particular interest is that GLTN does not view formalization of tenure through formal documentation as the end all be all for land rights. Rather they acknowledge that these are not always successful at reaching the most disadvantaged and socially excluded groups.

In Laos GLTN partnered with the international INGO Village Focus International (VFI), UN-Habitat and the RECOFTC Laos Country Office in cooperation with the Department of Land and local land authorities for this piloting activity. This was part of the "Secure Access to Land and Resources (SALaR)" (2018-2020) project also implemented in Uganda and the Philippines. The project's main objective was to improve land and natural resources tenure security for rural smallholder farmers; the main achievement of the project has "resulted in increased communities' tenurial security on customary lands" (ANGOC, et al., 2021, p.5). Project design is aligned to support the Sustainable Development Goals (SDGs) and FAO Voluntary Guidelines on the Responsible Governance of Tenure Land, Fisheries and Forests in the Context of National Food Security (VGGT). The SALaR project applied previously designed GLTN land tools that are pro-poor and inclusive. The land tools included the 'Continuum of Land Rights', 'Participatory Enumeration' and the 'Social Tenure Domain Model'. The involved villages had previously participated in Participatory Forest and Agriculture Land Use Planning Allocation and Management (PFALUPAM) as part of the "The Agro-biodiversity Initiative Project" and had district approved LUP. The SALaR Project include recognition of: village collective land (i.e. livestock grazing and agriculture) and private lands (i.e. agriculture and residential). Collective village forests areas were not included.

Following village level FPIC processes and resident's consent, the survey and demarcation of individual agricultural plots and collective grazing land was done. These plots were issuance 'Certificates of Demarcation' by the District Office of Natural Resources and Environment (DONRE). The Certificates of Demarcation provide only use rights' but serve as a basis for titling when available.

⁷⁵ <https://glttn.net/#>

Process of recognizing/formalizing customary tenure

<i>Main approaches</i>	<i>Approach details and application</i>
Collective Agriculture Land Management (CALM)	The CALM guideline was developed for the collective land registration process and management system (not yet finalized).
Land Use Planning	PFALUPAM (see The Agro-Biodiversity Initiative example below)
Land registration process	<p>In negotiation with the Department of Land, the project has adopted GLTN fit-for purpose tools:</p> <ul style="list-style-type: none"> • Free, Prior and Informed Consent of villages • Continuum of Land Rights Approach • Fit-For-Purpose Land Administration • Customary land use assessment and collective land areas identification • Participatory Enumeration • Social Tenure Domain Model • Youth and Land Responsiveness Criteria • Gender Evaluation Criteria • Land Conflict Mediation • Land survey and measurement • Land Registration and Land Management Plan

*Outputs*⁷⁶:

- Through the use of the STDM tool and other GLTN land tools, the project was able to deliver a low-cost solution for recording land tenure along the continuum of land rights approaches;
- Identified and issued a total of 162 State Collective Land Survey Certificates, covering 2,631 hectares;
- 978 households receive individual Land Survey Certificates for 1039 plots of customarily owned land covering 2,902 hectares;
- The data of land plots, household information, population were imported into the STDM database system; the Land Survey Certificates were included in the Department of Land's Laoland Reg. system.

A final project evaluation states that "For wide-scale adoption of the fit-for-purpose approaches, there is a need to move beyond the pilot implementation towards developing a robust system that can support large-scale registration of customary land" (ANGOC, et al., 2021, p.64).

⁷⁶ <https://www.youtube.com/watch?v=547beMOvhGI>

Lessons learned and limitations:

- Village consultation via a FPIC process is an important step to learn how customary land tenure systems function and for deciding how or if formalization is the best option for the village. This must include full disclosure of the pros (stronger tenure) and cons (changes to taxes) or steps taken towards formalization (land certificates or titles);
- Under some shifting cultivation customary tenure systems that include individual ownership, the formalization of individual rights and issuance of land documents is an appropriate method;
- Customary land identified as collective (e.g. grazing) may be suitable for surveying and formalization. There must be full disclosure of how the land rights will be recognized and formalized (e.g. as state land titles or other option).

2. The Agro-Biodiversity Initiative – Land Use Planning

Introduction

The Agro-Biodiversity Initiative (TABI) Project and its land using planning activity, Participatory Forest and Agriculture Land Use Planning Allocation and Management (PFALUPAM), were supported by the Swiss Development Cooperation in three phases between 2009 to 2017. PFALUPAM was completed in approximately 350 villages covering a combined area of 700,000 hectares⁷⁷. The objective was to support sustainable and equitable use of agriculture and forest land by and for local land users through the development of forest and agricultural land zonation and management plans at village level. The visions of PFALUPAM is to (TABI, 2018):

- i. Reflect the realities and possibilities of local level agricultural and forest land use and management;
- ii. Acknowledge the central role that these local use and management strategies play in rural development policy, strategies and plans;
- iii. The PFALUPAM maps, developed with villagers, are understood by, appreciated by and used by villagers; and
- iv. The plans, being realistic, are implementable and doable by villagers.

Process of recognizing/formalizing customary tenure

PFALUPAM has improved on past LFA/LUPLA at recognizing local land tenure arrangements and providing better protection of these. PFALUPAM did this in a number of ways that included: detailed land based socioeconomic livelihood data, repeated visits to villages and increased time spent in villages, a greater commitment to working with farmers to understand present land use practices, mapping of land use and extensive iterative consultations with farm household aimed at designing new land use plans. The result is a village territory that clearly separates between agriculture, forest, grazing lands and others land types.

⁷⁷ <https://www.niras.com/projects/the-agro-biodiversity-initiative-laos/>

Outputs

The PFALUPAM field teams worked closely with farmers to rebrand shifting cultivation as “rotational shifting agriculture system” that accommodated the land needs of farmers and made the new system mappable and clear to government land authorities (Dywer and Dejevongsa, 2017). Achieving sustainable fallow periods were a key aim of PFALUPAM. The outcomes are an organized alternative to the long-held government view that shifting cultivation needed to be halted. Through PFALUPAM, shifting cultivation gained legitimacy not only in the eyes of local land authorities, but also the farmers themselves. Forest conservation was addressed by a distinct delineation between agriculture and permanent forests land. In order to reach its goal of recognition of customary tenure systems PFALUPAM need to altered these but by doing so was able to increase government recognition of customary land in several ways:

Lessons learned and limitations:

- With a lack of strong central level policy for upland villages’ land tenure (i.e. no collective/communal land titling available) the PFALPAM process sought to enhance tenure from the bottom up, based on peoples (villagers and land authorities) participation;
- The signing and approval of widely understood and accepted LUPs created a social tenure contract acknowledge locally and at higher levels of government;
- PFALUPAM was able to satisfying multiple government goals simultaneously and shows these: stabilization of shifting cultivation, forest conservation and livelihoods improvement can co-exist with enhance tenure;
- The PFALPAM agreements were not formally approved by higher level land authorities thus leaving continued land tenure insecurity;
- PFALUPAM plans in some villages are not being followed by villagers as a result of: power attached to original village founders, local land rental market and villager’s preference for customary practices (Suhardiman, 2019).

3. Gender Development Group (local CSO) and SNV (Netherlands government/donor agency) - Communal land titling initiatives

Communal resources are an important part of rural livelihoods in Laos as the benefits from these are accessible to many people and include materials and food for subsistence and products that area sold for income. Many types of resources can be held communally such as agriculture land, water bodies, forests and livestock grazing land (Bounmixay, 2015). They can be spiritually important focal points for communities where rituals (burials) and events (births) are performed that bring and bond households together into communities; they are a critical component of customary tenure systems. In the late 2000s, communal land gained donor and aid agency attention as the land concession boom quickened and infringed on village communal land areas causing hardship for villagers. As a response there was a surge in efforts to recognize communal land by development partners working with government, but with a lack of policy guidance, these initiatives need to be creative and improvise as needed. This momentum was not sustained due to missing government policies and stalled in the mid-2010s.

Introduction

SNV provided financial support the Land and Natural Resources Research and Information Centre (LNRRIC) of the National Land Management Authority (NLMA) to implement CLT in collaboration with the District Offices of Land Management and Agriculture and Forestry. The objectives were to develop the steps needed issue a CLT, build the capacity of the staff of the LNRRIC and of district land and agriculture offices to develop and administer communal land titles and to raise awareness at village level on the potential and options of communal land titles for sustainable participatory management of natural resources in communal land by village communities (Sayalath et al. 2011).

Process of recognizing/formalizing customary tenure:

- Desk review of existing laws and regulations concerned with land in Outputs;
- Develop a common agreement, meetings were held with central level and local government agencies;
- Village Meetings at the village cluster level with village representatives from the four villages followed by initial consultations with village authorities of all 4 villages. Topics included: types of rights and responsibilities to be described in the land title deeds, types of land that could be need to be managed communally and rules and regulations and alignment with customary laws;
- Meetings with all residents from the villages to introduce and discuss CLT;
- Data collected from previously done land allocation and maps at the district offices. Survey team to (re)measure and permanently mark CLT area borders;
- All data sent to DLMA for review and then to Vientiane Capital Provincial Land Management Authority for comments and approval;
- Publics announcement at village level and wait for 90 days to receive comments of involved local stakeholders;
- Issue permanent CLT and official handover ceremony.

Lessons learned and limitations:

- Strong village interest in CLT is needed for them to be useful and accepted;
- The pre-existence well-organized bamboo user groups with clear forest; management plans, sustainable bamboo harvesting plans and maps delineating common pool bamboo forests are all good pre-conditions for CLT;
- The “group” with rights must clearly defined and community rights of access, use, management and exclusion must be well defined and understood to ensure conflicts within and between village are minimized;
- Process of government approval of CLT still not fully worked out;
- The taxation regime that would apply to communal land is still being debated;
- Forest sub-sector like Sangthong district, suitable areas in production forest need to be identified and a NTFP (bamboo) inventory and forest management plan is required for CLT.

4. CIDSE Laos INGO (home office based in Brussels)

Introduction

Village is located 15 km from the Vietnamese border in Khammouane province along the busy main road linking the provincial capital of Thakhek on the Thai border and Vietnam. The CLT process was initiated by the INGO. It was done in one small village for a single plot of agriculture land. Extensive consultation and participation of local government and villages resulted in high costs.

Process of recognizing/formalizing customary tenure:

- 2011: PLUP completed, identified suitable land of 41.6 hectares under customary and communal management in Talak hamlet;
- 2012-2015: Delay while awaiting legal precedent for CLT – came with NT2 CLT;
- During the village visits, the goals of communal titling were explained and agreement reached on the land to be selected for CLT. Separate meetings with men and women. Villagers identified one area close by which had been customarily used to grow crops for household consumption, such as banana, chilies and vegetables.
- 2016 (March to May): Communal land measured by Provincial Office Natural Resources and the Environment, and management plan accepted;
- 2016 (July): CLT issued for 3 months public consultation;
- 2016 (October): CLT confirmed.

Outputs:

- Committee of 8 people established to provide guidance and management;
- One CLT for 33 households on 41.6 hectares of agricultural land to the name of the village;
- Villagers believe that the formal recognition that communal title provided will be able to protect the land for future generations.

Lessons learned and limitations:

- The cost of the obtaining the communal land title was expensive, and estimated at \$102 USD per hectare. High costs are due to: the non-systematic titling approach, the inability to use remote sensing equipment for land measurement and the time-consuming process required to ensure full participation and equitable management. High costs meant that the area titled was only small, and excluded for example, the 447 ha village use forest;
- Local government was willing to approve CLT because the area was relatively small, there were clear pre-existing collective tenure rights and the area titled was not considered to be contested by future developments;
- Development of a management plan, with clear rules and regulations for land- use and management, gave extra credibility to the CLT as it was designed to ensure land and resources are sustainably and equitably managed over the long term. In particular,

regulations mandate that it be available for all villagers in perpetuity, thus providing a social safety net for poorer households.

5. World Bank (International Financial Institution)

Introduction

Fourteen villages⁷⁸ were relocated as part of the Nam Theun 2 (NT2) project in Nakai district, Khammouane Province. Initially, only individual titling was included as part of the relocation package. However, based on the needed to improve the villages' sense of awareness about, and responsibility towards, management of their village's land and to reduce and manage their focus on illegal timber extraction, communal land titling was done.

Process of recognizing/formalizing customary tenure

No.	Task	Responsibility
1	Train PAFO/PONRE, DAFO/DONRE staff in updated PLUP methodologies	NAFES and PLUP consultant team
2	Agree on the unit of entitlement for a CLT (this means, who is eligible to use CLT land and to decide upon its R&R)	a) villagers doing PLUP b) district authorities
3	Undertake PLUP, map and mark each eligible land use zone for a CLT	a) men and women in a village b) PLUP teams drawn from PONRE/ PAFO/ DONRE/DAFO
4	Negotiate and sign inter-village boundary agreements	PLUP team with relevant village authorities
5	Obtain district and provincial endorsement of PLUP outputs	PLUP team with district and provincial authorities
6	Place physical boundary markers between villages, and around CLT use zones, particularly demarcating agricultural land from forest land, and incise GPS points on each marker	DONRE / DAFO members of PLUP team
7	Conduct stakeholder discussions to draw up Community Rules and Regulations for each land use zone	a) PLUP team with villagers b) District authorities (in the NT2 case, Provincial authorities and NTPC were also involved)

⁷⁸ These are: Khon Kaen, Ban Done, Sop On, Phonsavanh (merged with Sop On to make Phonsaon), Bouama, Nongboua (merged with Phonpanpaek to make village Hoymalai), Nakai Neua, Nakai Tai (merged with Nakai Neua to make Nakai), Nam Nian, Sop Ma (merged with Nam Nian to make Nongbouam village), Sop Hia, Nongbouakham (merged with Sop Hia to make Sopkham village), Sop Phene and Thalang (both merged to make Don Chaleun village).

No.	Task	Responsibility
8	Obtain village and district endorsement of final Rules and Regulations	Village and district authorities
9	Agree budgets for PONRE/DONRE validation of PLUP mapping, and issuance of CLTs	PONRE and financing source
10	Issue CLTs to communities	DONRE (in the NT2 case, as these were the first in Laos, Provincial and Central authorities were invited)
11	Issue copies of agreed and endorsed Rules & Regulations to CLT holders	District authorities
12	Arrange for CLT eligible persons to vote in their Land Management Committee members for different CLT use zones	<i>Khoum authorities</i> (initially with project and District support)
13	Draw up land management plans for each CLT zone	a) Land Management Committees b) voted on by eligible CLT households c) endorsed by village and district authorities

Outputs:

- In January and March 2013, permanent land titles for collective land were awarded for different types of land, including: village forest land, agriculture land, and “public benefit land” for village buildings such as market, school buildings, rice mills, and warehouses. The titles were issued in official “gold frame” format following the new title format issued by Article 5 on format of communal titles of the NLMA Instruction No. 1668/2008 on the Use of New Formats of Land Titles. The titles were issued in the name of each of the 14 resettled hamlets, and signed by the director of Khammouane PONRE and the deputy director of the provincial land management section. The communal land is tax exempt;
- The area of land covered under the CLTs amounts to more than 20,000 ha.;
- Rights to use the communal areas included the original 1,310 relocated families and their immediate descendants remaining in the village. Families that leave would not be eligible to use CLT land, nor would newcomers unless they are second generation or direct descendants of original relocated families.

Lessons learned and limitations:

- The average cost of a CLT by land use zone worked out at about \$30 per title, but by parcel, it increased to an average of \$220 per title, even though the physical size of

parcels is substantially larger than those awarded under individual land title. Some villages had as many as 20 separate community parcels within village boundaries.

- Without the PLUP process and its mapped and agreed outputs, it would be difficult for community titling to arrive at the sort of statutory, community, and consensus-based agreement that CLT must be grounded in.
- There can be no land reservation/claiming with the expectation of subsequent tenure and inheritance on CLT land.

CLT Lessons Summarized:

- Recognition of collective land is expensive so efficient approaches are needed to reduce costs and support expansion, otherwise donor financial support is necessary. Titling communal land as a single village tenure type lowers the cost;
- Complete high quality LUP supports CLT but may not be needed especially if time and costs are to be reduced, but full survey/mapping of all communal areas is still required;
- Formalization of customary collective land requires detailed data on social dynamics (ethnicity, village relocation or merging, people's support for formalization, exclusion and inclusion issues, etc.). Such as process should uphold the FPIC principles;
- A lack of detailed government legislation has impeded wide spread recognition of customary collective tenure. The successful recognition and protection of customary collective land requires central level government legislation and supporting sub-legislation to detail processes and procedures;
- Collective land used for livelihoods is best formalized with the village (sub-group/ethnic) as the rights holder. Collective village infrastructure should be titled to the state;
- Based on the collective decision of a village, there should be a distinction between collective land that is perpetual and collective land that allows for allocation to households or individuals and recognized as private land. Such case could include scared forest (perpetual) and shifting cultivation (changeable);
- Collective land titles should not be temporally bound but be permanent, the same as individual titles.

Annex 5: Guidelines for governance of land-based investment

Guideline	Specific guidance on investments
<p><i>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.</i></p>	<p>Chapter 4 “Transfers and other changes to tenure rights and duties”. 4.12 “Investments” (12.1 -12.15).</p> <p>Significant sections include but are not limited to:</p> <p>“Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights.”</p> <p>“States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights.”</p> <p>“When investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights”</p> <p>“All forms of transactions in tenure rights as a result of investments in land, fisheries and forests should be done transparently....”</p> <p>The VGGT also provide specific guidance on how to recognize customary tenure rights: Articles 4.4, 5.3, 7.1, 9.5, 9.8 and 9.11.</p>

Guideline	Specific guidance on investments
<p>ASEAN Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry: Especially</p>	<p><i>Guideline 8: Respect the rule of law and incorporate inclusive and transparent governance structures, processes and grievance mechanisms.</i> “Proactively sharing information relevant to an investment, in an inclusive, accessible, and transparent manner at all stages of the investment cycle....”,</p> <p>“Consulting meaningfully and responsively with groups and individuals affected by investment decisions, with due regard to power asymmetries, to ensure their active, free, effective, genuine and informed participation in those”</p> <p><i>Guideline 9: Assess and address impacts and promote accountability.</i> Requiring and conducting independent and transparent impact assessments involving all relevant stakeholder groups, in particular the most vulnerable and marginalized.</p> <p>Defining baseline data and indicators for monitoring and impact measurement, with input from the local community and indigenous peoples.</p> <p>Effectively screening investors and investment projects to ensure that the investor and the project align with national development priorities and the needs of communities, and accord with ASEAN FAF responsible investment principles.</p>
<p>Presently under discussion (draft zero) is the “ASEAN Guidelines for Customary Tenure Recognition” which is supported by ASEAN Member States (ASEAN Secretariat) to support national policies and legislations</p>	<p>Most relevant for investments include:</p> <p>PRINCIPLE 1. Right to Customary Tenure: Recognize the rights of local communities and Indigenous Peoples to continue to practice their unique, diverse, and life-giving relationships to lands, forests, and natural resources through customary tenure systems.</p> <p>PRINCIPLE 5. <i>Right to Free Prior and Informed Consent.</i> Recognize the local communities and Indigenous Peoples’ right to determine and decide activities within their customary tenure systems.</p>

14. References

Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Global Land Tool Network (GLTN), United Nations Human Settlements Programme (UN-Habitat), Makerere University- School of the Built Environment (MAK-SBE), Uganda Community Based Association for Women and Children's Welfare (UCOBAC), Village Focus International (VFI), and Xavier Science Foundation, Inc. "Securing Land Rights of Smallholder Farmers: The Secure Access to Land and Resources (SALaR) Project Experience in Laos, the Philippines, and Uganda." (2021). <https://gltn.net/2021/08/20/securing-land-rights-of-smallholder-farmers-the-secure-access-to-land-and-resources-salar-project-experience-in-laos-the-philippines-and-uganda/>

Aswani S.; A. Lemahieu and W. Sauer. Global trends of local ecological knowledge and future implications. *PLoS ONE*. 13(4) (2018): e0195440. <https://doi.org/10.1371/journal.pone.0195440>

Baird, Ian and Somphong Bounphasy. "Non-Timber Forest Product Use, Management and Tenure in Pathoumphone District, Champasak Province, Southern Laos." Global Association for People and the Environment. n.d.

Baird, I and J Fox, J. "How land concessions affect places elsewhere: Telecoupling, political ecology, and large-scale plantations in Southern Laos and Northeastern Cambodia." *Land*, 4, (2015) 436–453: <https://www.mdpi.com/2073-445X/4/2/436/pdf>

Barney, Keith and Alex van der Meer Simo. "Land Commons in Laos in the Twenty-First Century: Agrarian Capitalism and the 'Non-Commodified Subsistence Guarantee'." *Kyoto Review of Southeast Asia* n.d.: https://kyotoreview.org/issue-25/laos-forest-land-commons-in-laos-in-the-twenty-first-century-agrarian-capitalism-and-the-non-commodified-subsistence-guarantee-2/?fbclid=IwAR1ux2Fk7-ihYZ8lh113PcQLiD6WJOI9RrnC1HyaiXhiPXJgzm_DE8z_jEs

Barney, K. "Power, Progress and Impoverishment: Plantations, Hydropower, Ecological Change and Community Transformation in Hinboun District, Lao PDR." York Centre for Asian Research, York University: Toronto, ON, Canada, (2007): https://www.cifor.org/publications/pdf_files/books/bbarney0701.pdf

Bouapao, Lilao, Conference Paper. "Politics of the Commons: Articulating Development and Strengthening Local Practices." Chiang Mai, Thailand. (2003): <https://dlc.dlib.indiana.edu/dlc/handle/10535/719>

Bouahom, B.; Bourgoin, J.; Lestrelin, G.; Castella, J.C. "Monitoring participatory land use planning for better impact on landscapes and livelihoods: Case studies in Nambor, Sobchia and Pakhok villages, Phonxay district, Luang Prabang Province." *The Lao Journal of Agriculture and Forestry* (23): (2011)145-160: <https://www.researchgate.net/publication/235951841>

Bounmixay, Luck. "Communal Land Tenure: A Social Anthropological Study of Laos" (master's thesis, 2015) University of Murcia, Spain. 1-8: <https://dlc.dlib.indiana.edu/dlc/handle/10535/10046>

Bourgoin, J. and D. Pullar. "From blurred to sharp: setting the standards for more pragmatic land use planning at the local level in Lao PDR." 19th International Congress on Modelling and Simulation. (2011): <http://mssanz.org.au/modsim2011>

Bourgoin, J., Castella, J.C., Pullar, D., Lestrelin, G., Bouahom, B. "Toward a land zoning negotiation support platform: 'Tips and tricks' for participatory land use planning in Laos." *Landscape and Urban Planning* 104 (2): (2012) 270-278. <https://doi.org/10.1016/j.landurbplan.2011.11.008>

Broegaard Rikke Brandt, Thoumthone Vongvisouk and Ole Mertz. "Contradictory Land Use Plans and Policies in Laos: Tenure Security and the Threat of Exclusion." *World Development*, Volume 89, (2017) Pages 170-183. <https://doi.org/10.1016/j.worlddev.2016.08.008>

Carter, Kim. "Plastic landscapes, plastic identities: Akha identity on the threshold of definition." ANU Undergraduate Research Journal, Volume Eight, edited by Daniel McKay. (2016): <https://studentjournals.anu.edu.au/index.php/aurj/article/view/21>

Chamberlain, J. "Participatory Poverty Assessment, Lao PDR. Vientiane". ADB/SPC/National Statistics Centre. (2001): <http://lad.nafri.org.la/fulltext/372-0.pdf>

CIRUM. "Culture Identity and Resources Use Management. Customary Law in Forest Resources Use and Management A Case Study among the Dzao and hai People in North-West Vietnam." (2012): https://www.iwgia.org/images/publications/0571_Customary_laforest_management_Vietnam.pdf

Daviau, Steeve. "*Customary Law and Practice in Lao PDR*." Ministry of Justice Law Research and International Cooperation Institute, supported by the UNDP. (2011): https://www.undp.org/content/dam/laopdr/docs/Reports%20and%20publications/Customary_Law_Laos2011_english_master1.pdf

Diepart J.-C., Sem T. "*Cambodian peasantry and formalisation of land right: Historical perspectives and current issues. 2nd Edition*" Research series. Paris, French Technical Committee on Land Tenure and Development. 2018.

Deininger Klaus and Gershon Feder. *The World Bank Research Observer*, vol. 24, no. 2.: (2009) 233-266. <https://elibrary.worldbank.org/toc/wbro/24/2>

Ducourtieux, Olivier, Jean-Richard Laffort and Silinthone Sacklokham. "Land Policy and Farming Practices in Laos" *Development and Change*." 36(3): (2005) 499–526. <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.0012-155X.2005.00421.x>

Dwyer, M. "Turning Land into Capital: A review of recent research on land concessions for investment in Lao PDR." Part 1 of 2 Vientiane: Land Issues Working Group. (2007): <https://landportal.org/node/30831>

Dwyer, M. The formalization fix? Land titling, land concessions and the politics of spatial transparency in Cambodia, *Journal of Peasant Studies*, 42:5, (2015) 903-928, DOI: [10.1080/03066150.2014.994510](https://doi.org/10.1080/03066150.2014.994510)

Dwyer Michael B., Micah L. Ingalls, Ian G. Baird. "The security exception: Development and militarization in Laos's protected areas". *Geoforum*, Volume 69, (2016). Pages 207-217, ISSN 0016-7185, <https://www.sciencedirect.com/science/article/abs/pii/S0016718515002961>

Dwyer, Michael and Vimala Dejvongsa. "Forest and Agricultural Land Use Planning: A Strategic Analysis of the TABI Approach in Lao PDR. A review of The Agro-Biodiversity Initiative (TABI)" commissioned by the Swiss Agency for Development and Cooperation. (2017): <http://laofab.org/document/download/3164>

Epprecht Michael, Weber Anne-Kathrin, Bernhard Rasso, Keoka Khamlouang, Saphangthong Thatheva, Manivong Vongpaphane, Ingxay Phanxay, Vongsamphanh Phanthavong, Bosoni Nicholas, Hanephom Savanh, Vanmeexai Phonesavan, Kaungbounhieng Aengsone, Sisouvan Hairkham, Khounthikoumman Sengphachan, Xaichounorxa Porha, Ingalls Micah, Nanhthavong Vong, Lu Juliet, Norasingh Inthaneth, Wiesmann Urs, Breu Thomas. "Atlas of agriculture in the Lao PDR: Patterns and trends between 1999 & 2011." 2018. Bern, Switzerland and Vientiane, Lao PDR: Centre for Development and Environment, University of Bern, and Ministry of Agriculture, Lao PDR, with Bern Open Publishing. <https://boris.unibe.ch/116598/>

Evans, Grant. "Rich Peasants and Cooperatives in Socialist Laos." *Journal of Anthropological Research*, Vol. 44, No. 3 pp. (1988) 229-250, URL: <http://www.jstor.com/stable/3630258>

Ewers Andersen, Kirsten. "Study of Upland Customary Communal Tenure in Chin and Shan States: Outline of a Pilot Approach towards Cadastral Registration of Customary Communal Land Tenure in Myanmar." Land Core Group. (2016): <http://mekonglandforum.org/node/2033>

FAO and MRLG. "Challenges and opportunities of recognizing and protecting customary tenure systems in the Lao People's Democratic Republic." Bangkok, License: CC BY-NC-SA 3.0 IGO. (2019): <https://www.fao.org/publications/card/en/c/CA1035EN/>

Flint, Chris. (draft) "Report of Investigations into Village Land Governance and Land Tenure". GIZ LMDP and ELTeS Programs. (2018).

Freudenberger, Mark, John Bruce, Beatrice Mawalma, Paul De Wit and Karol Boudreaux. USAID Property Rights and Resource Governing Paper #8: "The Future of Customary Tenure: Option for Policymakers" (2013): <https://land-links.org/issue-brief/the-future-of-customary-tenure/>

Fujita, Y.; Phanvilay, K. "Land and forest allocation in Lao People's Democratic Republic: Comparison of case studies from community-based natural resource management research". *Soc. Nat. Resource*. 21, (2008): 120-133. <https://agris.fao.org/agris-search/search.do?recordID=US201300869795>

Gender Resource Information & Development Center (GRID) of the Lao Women's Union & The World Bank. Lao PDR Gender Profile. (2005): <http://siteresources.worldbank.org/INTLAOPRD/Resources/Lao-Gender-Report-2005.pdf>

GoL Council of Ministers. 1979. Instruction N° 74 on Forest Protection, dated on July 17.

GoL PM's Decree 117/1989.

GoL. Ministry of Planning and Investment Lao Statistics Bureau. Lao Population and Housing Census. 2015.

GoL. Ministry of Planning and Investment Department of Statistics. 2005. Lao PDR. Population Census. 2005.

Hackman, Richard. "Land Use and Land Cover Change Caused by Commercial Investments in Land in the Lao PDR: Opportunities for Improved Governance". Center for Development and Environment Laos Office, University of Bern. (2022): <https://www.k4d.la/publications/>

Hackman, Richard. "Improving Access to Natural Resources for Poor Men and Women Research and case study on communal land titling in Lao PDR." Oxfam Australia. Unpublished Report. (2012).

Hackman, Richard. "The Community-Based Watershed Management Project in Pak Beng District, Oudomxay Province." Mekong Watch Final External Evaluation. (2010).

Heinimann, A., Hett, C., Hurni, K., Messerli, P., Epprecht, M., Jørgensen, L., & Brey, T. "Socio-Economic Perspectives on Shifting Cultivation Landscapes in Northern Laos". *Human Ecology*, 41(1),(2013): 51–62. <http://www.jstor.org/stable/23353201>

Heinimann A, Schönweger O, Epprecht M, Nanhthavong V, Hett C. "On the Right Path? Land Concessions in Laos" CDE Policy Brief, No. 3. Bern, Switzerland: CDE. (2014): https://issuu.com/cde.unibe.ch/docs/cde_policybrief_2014_3/1

Hett, Cornelia, Vong Nanhthavong, Savanh Hanephom, Anongsone Phommachanh, Bounngong Sidavong, Ketkeo Phouangphet, Juliet Lu, Annie Shattuck, Micah Ingalls, Rasso Bernhard, Souphaphone Phathitmixay, Chanthavone Phomphakdy, Andreas Heinimann and Michael Epprecht. 2020. "Land Leases and Concessions in the Lao PDR: A characterization of investments in land and their impacts." Bern: Centre for Development and Environment (CDE), University of Bern, Switzerland, with Bern Open Publishing, 150 pp.: https://issuu.com/cde.unibe.ch/docs/land_deals_in_the_lao_pdr_eng_4sep2020_lq

Hunt, G. "Large Scale Plantations in Pakkading District: Report from a Visit to Pakkading Integrated Rural Development Project." Unpublished report (2006).

Ireson-Doolittle, Carol. "Gender and Changing Property Rights in Laos." In *Women's Rights to House and Land: China, Laos, Vietnam*, edited by Irene Tinker and Gale Summerfield, Boulder, CO: Lynne Rienner Publishers. (1999): 145-52.

Ironside, J. "The Recognition of Customary Tenure in Lao PDR." MRLG Thematic Study Series #8. Vientiane: MRLG. (2017): <https://www.mrlg.org/publications/the-recognition-of-customary-tenure-in-lao-pdr/>

Kirk, Michael. "Land Tenure Development and Divestiture in Lao P.D.R." Deutsche Gesellschaft für Technical Zusammenarbeit (GTZ). Sector Project: The Importance of Land Tenure in Development Cooperation. (1996).

Miles Kenney-Lazar. "Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos." Fulbright Scholar & Visiting Research Affiliate Faculty of Forestry, National University of Laos. (2010): https://data.opendevlopmentmyanmar.net/en/library_record/land-concessions-land-tenure-and-livelihood-change-plantation-development-in-attapeu-province-south/resource/d88bf574-1493-44fa-8907-be8b4b665bbe

Kenney-Lazar, Miles. "Shifting Cultivation in Laos: Transitions in Policy and Perspective". Commissioned by the Secretariat of the Donor Sector Working Group for Agriculture and Rural Development. (2013): <https://www.ohchr.org/sites/default/files/Documents/Issues/EPoverty/Lao/MilesKenneyLazarAnnex5.pdf>

Kenney-Lazar, Miles. "Authoritarian Resource Governance and Emerging Peasant Resistance in the Context of Sino-Vietnamese Tree Plantations, Southeastern Laos" BRICS Initiative for Critical Agrarian Studies. (2015): <https://landportal.org/node/52452>

Kenney-Lazar, Miles. Governing Communal Land in the Lao PDR: A review of literature on communal land in the Lao PDR, Ministry of Agriculture and Forestry Department of Agricultural Land Management. (2017): <https://www.ohchr.org/Documents/Issues/EPoverty/Lao/MilesKenneyLazarAnnex4.pdf>

Kenney-Lazar, Miles "Governing Dispossession: Relational Land Grabbing in Laos", *Annals of the American Association of Geographers*, 108:3, (2018a): 679-694, DOI:10.1080/24694452.2017.1373627. <https://doi.org/10.1080/24694452.2017.1373627>

Kenney-Lazar, Miles, Diana Suhardiman and Michael B. Dwyer. "State Spaces of Resistance: Industrial Tree Plantations and the Struggle for Land in Laos". *Antipode*: Volume 50, Issue 5 November. (2018b): 1290-1310. <https://doi.org/10.1111/anti.12391>

Kenney-Lazar, Miles, Michael Dwyer and Cornelia Hett. 2018c. "Turning Land into Capital: Assessing A Decade of Policy in Practice" A Report Commissioned by the Land Information Working Group (LIWG) Vientiane, Laos. https://www.researchgate.net/publication/326410212_Turning_Land_into_Capital_Assessing_A_Decade_of_Policy_in_Practice

Kenney-Lazar, Miles. Land Concessions. Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos. Faculty of Forestry, National University of Laos. (n.d): <http://18.136.146.123/node/2829>

Lao Consulting Group. Existing land tenure and forest lands study, final report, Land Titling Project IDA Loan CR 2832 LA. Vientiane: Lao Ministry of Finance, Department of Lands. (2002).

Lao Front for National Construction. *"The ethnic groups of Lao PDR"*. Vientiane, Laos: Ethnic Department, LFNC. (2005)

Land Information Working Group. Introduction to Lao Land Issues: Managing Land Forest and Natural Resources. (2012): <https://laolandinfo.org/wp-content/uploads/2019/09/NEW-Introduction-to-Lao-Land-Issues-2012-ENG-updated-05-2013.pdf>

Larson, Anne and Springer, Jenny. Recognition and respect for tenure rights. Working paper. IUCN. (2016): <https://www.iucn.org/resources/grey-literature/nrgf-recognition-and-respect-tenure-rights-working-paper>

Li, Tania Murray. "Land's end: Capitalist relations on an indigenous frontier": Duke University Press. (2014). 178-186.

Liu, Pascal. "Impacts of foreign agricultural investment on developing countries: evidence from case studies." FAO Commodity and Trade Policy Research Working Papers 47. (2014). <https://www.fao.org/documents/card/en/c/63ea9358-26d5-43dc-a760-0fd2f487b21d/>

MAF. Forest Strategy to the year 2020 for the Lao PDR. (2005). <https://ali-sea.org/aliseaonlinelibrary/forestry-strategy-to-the-year-2020-of-the-lao-pdr/>

MAF. Forest Strategy (Draft) to 2035 and Vision to 2050 of the Lao PDR. (2021).

McAllister, Karen E. "Rubber, rights and resistance: the evolution of local struggles against a Chinese rubber concession in Northern Laos." *The Journal of Peasant Studies*, 42:3-4, (2015): 817-837, DOI: [10.1080/03066150.2015.1036418](https://doi.org/10.1080/03066150.2015.1036418)

Mann, Elizabeth and Ny Luangkhot. "Women's Land and Property Rights under Customary or Traditional Tenure Systems in Five Ethnic Groups in Lao PDR." Land Policy Study No. 13 under LLTP II Lao-German Land Policy Development Project. (2008): <http://mekonglandforum.org/node/2527>

MRLG. Discussion Note: "Land Tenure Security in the 70 Percent Forestland Policy of the Lao PDR". (2019): <https://mrlg.org/wp-content/uploads/2019/09/Laos-70-Forest-Coverage-17-September.pdf>

McKean, Margaret A. "Common Property: What Is It, What Is It Good For, and What Makes It Work?" IFRI Research Program Studies, FAO. (1996): https://www.researchgate.net/publication/42766108_Common_Property_What_Is_It_What_Is_It_Good_For_and_What_Makes_It_Work

Murray Li, Tania. 2010. "Indigeneity, Capitalism, and the Management of Dispossession" *Current Anthropology*, Vol. 51, No. 3. (2010): 385-414. <http://www.jstor.org/stable/10.1086/651942>

Oliver Springate-Baginski & Mi Kamoon. "Defending Shan State's customary tenure systems from below through collective action research." *The Journal of Peasant Studies*, 48:3, (2021): 541-559, DOI: [10.1080/03066150.2021.1887145](https://doi.org/10.1080/03066150.2021.1887145)

Pacheco, P., D. Barry, P. Cronkleton, and A. M. Larson. "The role of informal institutions in the use of forest resources in Latin America" Bogor, Indonesia: Center for International Forestry Research. (2008): <https://www.cifor.org/knowledge/publication/2651>

Payne, Geoffrey and Alain Durand-Lasserve. "Holding On: Security of Tenure - Types, Policies, Practices and Challenges" Research Paper prepared for the Special Rapporteur on adequate housing. Office of the UN High Commissioner for Human. (2012): <https://data.landportal.info/library/resources/holding-security-tenure-types-policies-practices-and-challenges>

Post, M.W. 2019. "Topographical Deixis in Trans-Himalayan (Sino-Tibetan) Languages." *Trans Philologic Soc*, 117: (2019): 234-255. <https://doi.org/10.1111/1467-968X.12155>

Rights and Resource Initiative. "Urgency and Opportunity: Addressing Global Health, Climate, and Biodiversity Crisis by Scaling-up the Recognition and Protection of Indigenous and Community Land Rights and Livelihoods". (2020) <https://doi.org/10.53892/POGE1890>

Sayalath, E., Photilack, V., Mabounkhoun, K., Thavien Boulou, K., Sengkannaly, S., Chantavongsa, M., Soupidi S., Foppes, J., Bounmany, L., Phommasane, S., and Greijmans, M. "Towards communal land titling in Sangthong district. "Participatory development of a format for communal land titles in four villages in Sangthong District" Greater Vientiane Capital City Area. SNV and GDG, Vientiane, Lao PDR. (2011): <https://www.landportal.org/library/resources/toward-communal-land-titles-sangthong-district>

Schenk-Sandbergen, Loes, Hermien Rodenburg and Chansamone Phengkhay. "Land, Gender, and Social Issues in the Lao PDR: Towards Gender Sensitive Land Titling. A Study in District, Villages and Households". (1997).

Schenk-Sandbergen, Loes. "GENDER, LAND RIGHTS AND CULTURE IN LAOS: A STUDY IN VIENTIANE, DISTRICTS, VILLAGES AND HOUSEHOLDS". PAPER: FIRST INTERNATIONAL CONFERENCE ON LAO STUDIES. May 20-22, Northern Illinois University (2005).

Schenk-Sandbergen, Loes. 2021. Personal communications.

Schenk-Sandbergen, "The Lao Matri-System, Empowerment, and Globalisation" *Journal of Lao Studies*, Volume 3, Issue 1. (2012): 65-90. ISSN: 2159-2152. Published by the Center for Lao Studies. <http://www.laostudies.org/system/files/subscription/JLS-v3-i1-Oct2012-schenk-sandbergen.pdf>

Schlemmer, Grégoire. "Ethnic Belonging in Laos: A Politico-Historical Perspective." *Changing Lives: New Perspectives on Society, Politics, and Culture in Laos*. (2017): 251-277. <https://hal.archives-ouvertes.fr/hal-01853834>

Schoenweger Oliver and Alfons Üllenberg. Foreign Direct Investment (FDI) in Land in the Lao PDR. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. (2011). <https://europa.eu/capacity4dev/file/6622/download?token=6Di35ae1>

Schönweger, O., Heinemann, A., Epprecht, M., Lu, J., & Thalongsechanh. "Concessions and Leases in the Lao PDR: Taking stock of land investments". Centre for Development and Environment, GIZ (German Cooperation), and the Ministry for Natural Resources and Environment. (2012): <http://doc.rero.ch/record/31701/files/07-Concessions-Leases-LaoPDR.pdf>

Soulivanh, Bouakham; Anothai Chantalasy; Phounsavat Suphida; Florian Lintzmeyer. "Study on Land Allocation to Individual Households in Rural Areas of Lao PDR". German Technical Cooperation Sector Project Land Management. (2004): <http://www.mekonginfo.org/assets/midocs/0003300-environment-study-on-land-allocation-to-individual-households-in-rural-areas-of-lao-pdr.pdf>

Somphongbouthakanh, Phetsakhone. "A Glimpse into Women's Customary Forest Tenure Practices in Lao PDR: Access, Use and Management Rights of Women in Customary Tenure Systems in Mai District, Phongsali Province". MRLG Case Study Series # 5. Vientiane: LIWG, MRLG. (2022): https://www.mrlg.org/wp-content/uploads/2019/06/The-Recognition-of-Customary-Tenure-in-Lao-PDR_FINAL.pdf

Somphongbouthakanh, Phetsakhone and Dr. Loes Schenk-Sandbergen. "Women and Land Rights in Lao PDR: Rural Transformation and a dream of secure tenure". A report commissioned by Land Information Working Group. (2020): <https://laolandinfo.org/wp-content/uploads/2020/10/WLR-Eng-version-2020-by-LIWG.pdf>

Somphongbouthakanh, Phetsakhone. "Review of past Participatory Land Use Planning". World Renew Laos. (2019).

Sprenger, Guido. "Dimensions of Animism in Southeast Asia". *Animism in Southeast Asia*: 31-51. Publisher: Routledge 10.4324/9781315660288-2. (2016): https://www.researchgate.net/publication/327052738_Dimensions_of_Animism_in_Southeast_Asia

Sturgeon, J.C. "Landscape Plasticity versus Landscapes of Productivity and Rule: Akha Livelihoods under Nation-States", In D. Peña & K. Sivaramakrishnan (eds), *Border Landscapes* 142–200. Washington: University of Washington Press. 2005.

Suhardiman, Diana and Natalia Scurrah. "Institutional bricolage and the (Re)shaping of communal land tenure arrangements: Two contrasting cases in upland and lowland Northeastern Laos." *World Development* (2021): 147-105630. <https://www.sciencedirect.com/science/article/abs/pii/S0305750X2100245X>

Suhardiman, Diana & Keovilignavong, Oulavanh & Kenney-Lazar, Miles. "The Territorial Politics of Land Use Planning in Laos." *Land Use Policy*. 83. (2019): 346-356. 10.1016/j.landusepol.2019.02.017.

TABI. "Putting Upland Agriculture and Biodiversity on the Map: Why Is a New Approach to Land Use Planning Needed?" (2018): <https://cabidigitallibrary.org/doi/abs/10.1079/9781786391797.0819>

Taillard, C. 'Les berges de la Nam Ngum et du Me'kong: Systemes economiques villageois et organisation de l'espace dans la plaine de Vientiane', *Etudes Rurales* 1(53-54): (1974): 119-68. https://www.persee.fr/doc/rural_0014-2182_1974_num_53_1_4851

Tanner, C., P. DeWitt, S. Norfolk. "Participatory Land Delimitation: An Innovative Development Model based upon Securing Rights Acquired through Customary and other Forms of Occupation". Rome: FAO. (2009): https://www.academia.edu/48555644/Participatory_Land_Delimitation_An_Innovative_Development_Model_Based_Upon_Securing_Rights_Acquired_Through_Customary_and_other_Forms_of_Occupation

Thaophialuang, Sengmoua; Somvang Phimmavong and Kaisone Phengsopha. "Effectiveness, of Policy Implementation on Land Allocation and Land Planning in Lao PDR". *International Journal of Science, Environment and Technology*, Vol. 8, No 6, (2019): 1135 – 1147: <https://www.ijset.net/journal/2440.pdf>

Weinstock, Joseph. "Tenure and shifting cultivation." In *Shifting cultivation policies: Balancing environmental and social sustainability*. 90-96, (2017):

World Intellectual Property Organization. "Customary Law, Traditional Knowledge and Intellectual Property: An Outline of the Issues" (2013): https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf

World Bank. "*Land Policies for Growth and Poverty Reduction*". Washington, DC: The World Bank. (2003): <https://arellanolaw.edu/alpr/v5n1b.pdf>

World Bank. Independent Evaluation Group Public Sector Evaluation, "Project Performance Assessment Report Lao PDR Second Land Titling Project" (CREDIT NO. 3801). (2013): <https://documents1.worldbank.org/curated/en/316281468091768962/pdf/822750PPAR0P0750060LA0Box382077B000UO090.pdf>

World Bank. "Project Appraisal Document for and Enhancing Systematic Land Registration Project". INTERNATIONAL DEVELOPMENT ASSOCIATION, Report No: PAD3431. (2021): <https://projects.worldbank.org/en/projects-operations/project-detail/P169669>

Yokoyama, Satoshi. "Forestry, Ethnicity and Settlement in the Mountainous Area of Northern Laos" *Southeast Asian Studies*, Vol. 42, No. 2. (2004): <https://kyoto-seas.org/pdf/42/2/420202.pdf>

Yongnou, Xonglao, Sithong Thongmanivong, Thoumthone Vongvisouk and Kaisone Phengsopha. IMPACTS OF LAND CONCESSION ON RURAL LIVELIHOODS IN CENTRAL LAOS. *International Journal of Science, Environment and Technology*, Vol. 8, No 4, (2019): 735 – 746: https://data.opendevlopmentmekong.net/library_record/impacts-of-land-concession-on-rural-livelihoods-in-central-laos