



MRLG
MEKONG REGION
LAND GOVERNANCE



Recognition of Customary Tenure in the Mekong Region: An Online Dialogue

Summary Report

Dialogue
co-hosted by:



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The Mekong Region Land Governance (MRLG) project and the Land Portal co-facilitated an online dialogue on "Recognition of Customary Tenure in the Mekong Region" on 13-27 February 2017.

The full dialogue can be read [here](#).

WHY AN ONLINE DIALOGUE?

This dialogue provided a way for the land community to collaboratively explore challenges and opportunities related to the recognition of indigenous, ethnic minority and customary tenure rights in the Mekong region in order to:

- Identify issues of common interest;
- Compare and contrast regional and international contexts and experiences to inform potential strategies and actions at country and regional level; and
- Generate a regional-level synthesis of key challenges and opportunities to contribute to solutions.

An online venue was used to increase information exchange between participants inside and outside the region.

As a pilot for expanding dialogue in the Mekong region and beyond, the online discussion facility proved effective. At the close of the dialogue, 54 comments had been made by 33 individuals, including both nationals and expatriates in the region, as well as experts from abroad, and activists from Africa and other parts of Asia. More than 1100 people had visited the discussion, and there were almost 2100 page views.

[Cover image: "SAPA, Vietnam" by [Chen Shiang Khoo](#) is licensed under [CC BY 2.0](#). The image has been reversed.]



WHY DISCUSS CUSTOMARY TENURE?

In the Mekong region, the majority of people living in poverty depend on land and natural resources for their survival but lack secure rights to it. This insecurity of tenure serves as a disincentive to invest in the land and leaves communities exposed to land expropriation by the state and commercial interests, as well as powerful individual actors. Government grants of land concessions to investors, land speculation, forest exploitation and internal migration all impact rural communities' access to land and resources vital to their livelihoods. As communities often occupy land granted to investors, widespread dispossession can result in violent conflicts.

The lack of formal recognition and safeguards of customary land and tenure arrangements is one of the most contentious and complex issues in the region. Weak tenure governance is especially detrimental to indigenous peoples, ethnic minorities, and rural communities that may have customary and collective land rights but lack formal recognition.

Remedies are also complex. They require adequate policy and legal frameworks that support community-level governance of land and natural resources, together with competent and responsible national and local level institutions. Citizens must be aware of their rights and how to exercise them. The private sector must also be aware of the rights of communities and their responsibilities toward them. The Voluntary Guidelines for the Governance of Tenure (VGGT) are an important international reference when it comes to the recognition of customary tenure by states and by other stakeholders, particularly investors.

[Image: "[Black Hmong women looking over rice fields](#)" by [Prashant Ram](#) is licensed under [CC BY-ND 2.0](#).]

KEY TAKE-AWAY MESSAGES

What constitutes customary tenure and why is it important?

Participants largely agreed that:

- Customary tenure are the local rules, institutions and practices governing land, forests and fisheries that have, over time and use, gained social legitimacy.
- Customary tenure covers a range of land types including agricultural land, as well as forestland, grazing land, and fishing areas and spiritual/burial sites.
- Customary systems include both land that is managed collectively and areas with individual/family claims.
- There is a continuum between communal and private rights, with various intermediate rights. An example is the right to cultivate a plot of land as long as the family is in the village and to sell that land within the village, but not to outsiders.
- In customary tenure systems, people have different rights to different resources, including rights of access, use, manage and transfer.
- Although customary tenure systems are more prominent in upland areas and often associated with the land practices of indigenous and ethnic minority groups, customary tenure is not restricted to indigenous people or particular ethnic groups. Customary tenure is also important for lowland communities and their management of communal forests, grazing land and fisheries, as well as some forms of rotational swidden cultivation practiced by non-indigenous people.

While this list is neither exhaustive nor definitive, it does point to how customary tenure is more narrowly interpreted and given limited recognition in some countries. Addressing various forms of exclusions may require taking a step back and asking: What is it important to recognise under customary tenure, for whom and why?

What are the challenges in achieving recognition of customary tenure in the Mekong Region?

Participants noted that:

- Recognition of customary tenure by Mekong states remains limited.
- However, recent policy and legal developments suggest that Mekong governments are prepared to embrace some form of community-based recognition.
- The development of legislation, in most Mekong countries, recognising communal land as a category of tenure makes communal titling an important (yet also problematic) element of customary tenure recognition. The exception to this is Vietnam where policy reforms for ethnic minority land rights are centred on the devolution of state-owned forests to local communities and households.
- Legal developments do not translate into adequate protection and security of customary land for indigenous and local communities. There is dissatisfaction with the limited scale and scope of change, as well as its slow pace.

- Sometimes the laws themselves are problematic. Many continue to restrict who can lay claim to customary land and the size and type of land that can be claimed and managed by indigenous and local communities. One example of this is Cambodia where the statutory recognition of customary tenure is only possible for communities classified by the state as “indigenous” and where land under communal titles is limited to agricultural land, thus excluding important aspects of communities’ livelihood base such as forests. Proving “indigenous” identity is itself a lengthy and difficult process, excluding communities who have lost use of their native language or whose population has been diluted with migrants of other ethnicities.
- Differing interpretations of laws and inconsistent implementation at the local level complicates the recognition and management of customary tenure.
- There are obstacles to communities exercising their rights, such as cumbersome procedures for obtaining communal titles, and limited access to legal redress in cases of disputes and infringements.
- The extension of state land classifications into communal titles leads to a fracturing of customary systems whose separate components fall under the jurisdiction of multiple ministries.
- The formalisation of customary tenure through communal titling often results in incomplete coverage compared to the land that people actually use, thus reducing the amount of land available to villagers. There is the risk that current communal titling efforts could result in a patchwork of “islands”, whereby surrounding land (some of which was previously used by villagers) becomes “available” for other purposes. Communal titling can thus be a “double edged sword”: on the one hand, it can provide a means for formalising tenure, thereby increasing security for smallholder farmers, but, on the other hand, it can reduce the amount land available to communities through restrictions that limit the land included in the titled areas, while exposing surrounding land as “available” for the taking.
- This clear demarcation of boundaries may also ‘enclose’ communities to a restricted area, possibly converting communities into “encroachers” if they access resources outside of demarcated areas. In extreme circumstances, it can lead to a significant reduction in communities’ resource base with impoverishing effects. Examples of this can be seen with the Forest and Land Allocation program in Laos, which severely limited communities’ access to shifting cultivation land.

A key question continues to be:
How much land are states willing
to give under communal titles?

Opportunities to strengthen customary tenure recognition and protection

Ideas for how to increase and strengthen customary tenure recognition and protection focused on two broad areas described below.

1. Technical aspects of customary tenure recognition

Many discussants pointed to the complicated, multi-step procedures that make communal land registration and titling a long and costly process allowing time for encroachments to occur and even accelerate. Reflecting on lessons on communal land titling from Cambodia and Laos is important, particularly in the light of Myanmar's critical juncture with customary tenure recognition.

Alternative modalities for customary tenure recognition using simplified procedures that are affordable, accessible and transparent were also discussed. The discussion reflected a variety of perspectives on what approaches would be most effective. Suggestions included working with what already exists (e.g. village territories) and taking an "area-based" approach to tenure recognition (such as "ancestral domains" as is the case of the Philippines.)

It was noted that achieving simplified procedures may require a trade-off with technical accuracy. It may be more feasible to start with the preliminary participatory mapping of village boundaries that can cover larger areas with fewer resources. Local authorities may approve these maps without the need to go through final and authoritative determinations of existing rights and claims. In this sense, Myanmar has lessons to share with the other countries, as various local groups have already started working with communities to collaboratively document their customary systems and produce their own maps, and entering into dialogue with village track administrators for government approval.

2. Building political will and shifting the balance of power

Participants offered a variety of observations and suggestions on how to expand the "constituency" for customary tenure recognition.

- Identifying government allies who are willing to collaborate and promote customary tenure recognition within the system is important.
- Harmonised strategies between donors could strengthen efforts to influence more progressive policies and institutions.
- Strengthening tenure recognition through formalisation must be combined with a number of other strategies, including addressing key threats to community land, especially large land concessions. More broadly, there is space to further question current models of large-scale agricultural development, given that many are not delivering expected economic returns and are generating greater levels of inequality.
- Communities must be prepared to both secure and manage their community land titles. Building the capacity of communities to lead the development of maps and management plans, as opposed to waiting for the government to grant recognition, can be an effective measure against encroachment by the state and companies.
- The private sector also has an obligation to recognising customary land rights. There should be more attention on the benefits that those companies, with actual intentions to invest for long-term business, gain via a transparent process for customary tenure recognition that also increases the security of their investments, avoid conflicts and reduce reputational, financial and political risk. A "carrot and stick" approach may be needed, involving both collaborative approaches to work with companies to improve practices as well as approaches that expose the actual 'risk' of non-compliance.



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MOVING FORWARD

This online dialogue was organised two weeks ahead of a regional multi-stakeholder workshop on customary tenure, held on 7-9 March in Nay Pyi Taw, Myanmar. The issues that emerged online helped frame the questions for discussion at the workshop, and orient participants towards a common understanding of customary tenure, including the strengths and weaknesses of different legal frameworks and approaches to recognising customary tenure. The key outcomes of the regional workshop are summarised in a document available [here](#).

Workshop participants identified ideas for regional collaborations and exchanges, which will serve as a basis to explore potential future actions. These may include, for example, a study visit to the Philippines

to learn about their approach to formal recognition of communal land, customary institutions and communal management of forests; training and capacity building for government actors on customary tenure, including case studies of effective policies and practices; and collaborative research engagement. Workshop outcomes will also inform the production of policy briefs with recommendations that can serve as a basis for future policy dialogues on customary tenure recognition at both country and regional level.

Through its Learning & Alliance and project funded activities, MRLG will continue to work with a diversity of partners in Cambodia, Laos, Myanmar and Viet Nam to find entry points to strengthen the recognition of customary tenure in both policy and practice.

ADDITIONAL READING

[Community Land and Natural Resource Tenure Recognition: Review of Country Experiences](#)

[Recognition of Indigenous Peoples' Customary Land Rights in Asia](#)

[Governing Tenure Rights to Commons](#)

[Gender-equitable Governance of Tenure of Land, Fisheries and Forests: a Right to Food Perspective](#)

[The Recognition and Security of Customary Tenure of Indigenous Peoples in Cambodia: a Legal Perspective \(Eng\) \(Khmer\)](#)

[The Recognition of Customary Tenure in Myanmar](#)

[Promise & Performance: Ten years of Forest Rights Act in India](#)

[The Political Economy of Land Governance in the Mekong Region](#)

[Common Ground: Securing Land Rights and Safeguarding the Earth](#)

[Overview of the Voluntary Guidelines on the Responsible Governance of Tenure \(VGGT\) \(Eng\)](#)

[Voluntary Guidelines on the Responsible Governance of Tenure \(VGGT\) \(Khmer\)](#)

[Voluntary Guidelines on the Responsible Governance of Tenure \(VGGT\) \(Lao\)](#)

You can find more resources on customary tenure at these websites:

[Land Portal's library](#), the leading online destination for land-related information worldwide

[Mekong Land Research Forum](#), aggregating land-related research

[Open Development Mekong](#), an online platform aggregating information and data on development issues in the Mekong region.

To stay abreast of new developments and land-related news and publications, to access resources, and learn from and discuss issues with a wide range of people engaged in land issues in the Mekong region, please "like" and follow the [MLIKE Facebook page](#).

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