



## Mekong Region Customary Tenure Workshop

7-9 March 2017 Grand Amara Hotel, Nay Pyi Taw, Myanmar  
A report outlining main outcomes from the workshop



This report outlines the main findings of the workshop, illustrated by some statements and case studies as presented by participants. For further information on other useful knowledge products, please visit:

- [MRLG](#)
- [Land Portal](#)
- [Mekong Land Research Forum](#)

The Mekong Region Customary Tenure Workshop brought together over 70 participants from government, civil society organizations, donors, the private sector and academia from the region. Participation and exchange mostly focused on Cambodia, Lao PDR, Myanmar and Viet Nam (the “CLMV countries”), but was complemented with guest speakers from India and the Philippines. The central aim was to build a common understanding of customary tenure and promote customary tenure recognition in the Mekong region.

The workshop included a mix of presentations, panels and group discussions. The main findings were extracted in the plenary and group discussions, and then presented, discussed and agreed on by participants at the end of the workshop.

Acting as a precursor to the workshop, an Online Dialogue on Customary Tenure in the Mekong Region was held from 13-27 February 2017. 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 recognition. A summary report of the Online Dialogue can be found [here](#).

The workshop highlighted that customary tenure is vital to a diversity of communities in the Mekong region, not just indigenous peoples or particular ethnic groups. Customary tenure includes many forms of communal forest, grazing land and fisheries critical to the livelihoods of rural communities.

A key message emerging from the workshop is that customary tenure systems are “living institutions” capable of addressing modern day challenges of development and conservation. Far from being relics of the past, customary tenure systems play a critical role in fostering environmental protection, cultural diversity, inclusive and peaceful economic growth, and strengthened resilience in the face of natural disasters.

The workshop also addressed how customary tenure recognition could be better integrated into legal frameworks to enhance the tenure security and livelihoods of women and men in farming, fishing and forest dwelling communities in the region.

# 1. WHAT IS CUSTOMARY TENURE?

Customary tenure is of key importance to millions of rural families in the Mekong region. It covers a wide range of resources and land use types, and is practiced both by upland ethnic minorities and by lowland farmers. Policy development will benefit from improved understanding and the sharing of experiences between countries, thereby appreciating the full scope of customary tenure.

## 1.1. The nature and importance of customary tenure

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

Customary tenure covers different land use types including agricultural lands, forest lands, grazing lands, fisheries, as well as sacred, spiritual and burial sites.

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

## 1.2. Who customary tenure concerns

Customary tenure concerns people who have a long-standing relationship to land and natural resources, which they depend on for their livelihoods, cultures and wellbeing.

Customary tenure is not restricted to indigenous people and ethnic minorities. Customary tenure also concerns non-indigenous peoples for communal forest, grazing land and fisheries management in particular.

Legal protections do not always extend to all groups. In Cambodia, for example, only 1-2% of the population defined by the state as “indigenous” are eligible to receive communal land titles. This excludes the majority non-indigenous population from accessing equivalent legal protection for their communal forests, grazing land and fisheries. On the other hand, in Lao PDR the government does not recognize the concept of “indigenous” and all social and ethnic groups are eligible to register land as communal or collective. The difference in approach highlights how exchange between countries has the potential to inform inclusive recognition of customary tenure.

## 1.3. Communal and individual rights in customary tenure

Customary tenure includes many scales and uses ranging from areas of ancestral domains and historical use to communal management to individual/ family claims.

In customary systems, the community manages a territory in which some lands are reserved for conservation or cultural usages. Some lands are fully communal in that they can be accessed by any community member, albeit during certain periods and for certain usages (such as pastures for grazing, or forests for the collection of NTFPs). Some areas are considered communal but are attributed to individual households for a given period and usage (for example for a short-term crop over one year). Other lands are recognized as being permanently used by a given household, such as with rice paddy land or tree plantations. This last case approaches the status of “ownership”, but is not equivalent to the “private ownership” of Western-based legal systems. For example, even land used for permanent plantations in some customary systems cannot be sold to outsiders.

“There are all kinds of rights and claims to land and resources. They can be private or collective, temporary or permanent. For example, if you plant a tree on customary land, that tree can be claimed as private and sold.”



**Luck Boumixay**, Lao researcher

In customary tenure, there are different rights to different resources (for example, to access, use, control, manage, or transfer).

The rules established by a community (customary rules) determine who can access which resources, under what conditions, at which time, and for what duration. They also establish if these rights of usage can be transferred or sold, to whom, and with what form of monitoring.

## 1.4. Customary management

Customary tenure systems have their own rules and regulations, which are decided by community-based institutions.

Customary tenure systems display a range of regulatory forms. Although often not written down, these rules frequently represent a sophisticated means to collectively manage land for communities.

The collective endeavour to allocate, monitor and enforce rules highlights an institutional strength that may endure over several generations and prove highly adaptable to modern social, environmental and economic challenges facing communities.

Communal customary tenure is generally based on principles of equity, ensuring access to land and natural resources for the poorest members.

The rules for using communal resources and land are generally based on equitable access for all members of the community. This may include the harvesting of timber (for family use) or NTFP during a certain period, or the grazing of livestock in a specified area. When land is allocated for short-term crops, the size of land is usually the same for each household, or based on labour force in each household. In this way, customary systems ensure that a few wealthy families cannot accumulate land while others become landless.

As an example, a study in Houaphanh Province, northern Lao PDR, by Luck Boumixay, highlights the rules for customary tenure in both upland and lowland areas. Local regulations cover all ethnic and socio-economic groups within a community, acknowledging in-migrants as well as original inhabitants. Villagers will collectively decide how to distribute land along equitable lines for fair benefits, using a set of criteria. These include the size of a plot and its distance from households; the contribution of a family to the community; government directives such as how much rice a family should consume in a year; and special needs such as provisions for a poor or single-parent family. If a household leaves the village, their land is returned to the community.

Communities with customary systems have demonstrated capacity to manage natural resources sustainably.

A growing body of evidence underscores that secure land rights for forest communities are the best defence to forest destruction. In the Philippines, Indigenous Peoples' ancestral domain titles overlap with many key biodiversity areas and management rights are formalized in protected areas.

"Due to mass environmental destruction and climate change, there is a growing acceptance in Philippine society that traditional governance of our environment might be our last hope. The trees remain, the flora and fauna remain because of traditional governance by indigenous peoples."



**David Vera**, Executive Director of the [Philippines Association for Intercultural Development](#)

### Case study – Forest management in Viet Nam

In Viet Nam, it is thought that up to 25 million people are dependent on resources provided by forest areas. Over 1 million ha of forestland is managed by communities under customary tenure. State recognition is limited here, although there are cases of user rights being handed out to forest areas. The government has not granted land use rights over many traditional land and forest areas. Studies show that customary systems provide a strong platform for forest management. To support such findings, there are opportunities to press for better coverage and improved tenure rights for those dependent on forests. As a signatory to international conventions on ethnic minorities and biodiversity, and the Voluntary Guidelines to Responsible Governance of Tenure (VGGT), Viet Nam may be encouraged to implement recommendations in relation to recognition of customary tenure and the rights of ethnic minorities. Furthermore, advocates are pursuing greater recognition of customary tenure in the revision of the Law on Forest Protection and Development.

"Many studies show that forests are managed better by communities rather than by other owners as various precious species and biodiversity are maintained"



**Ngo Van Hong**, Director of the Centre for Indigenous Knowledge Research and Development (CIRD)



## 2. CUSTOMARY TENURE RECOGNITION IN THE MEKONG REGION

A comparison of some of the legal mechanisms for the recognition of customary tenure in the CLMV countries is summarized in Table 1, based on presentations by experts in the opening workshop session. It leads to the following conclusions:

### 2.1. Formal recognition and protection of customary tenure in Cambodia, Lao PDR, Myanmar and Viet Nam remain limited

This is despite the fact that all four countries have endorsed international legislation that supports land rights of indigenous peoples and local communities. These include the Convention on Biological Diversity (CBD), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT). In particular, the VGGT supports the safeguarding of all legitimate tenure rights, the enjoyment of these rights, and the provision of justice mechanisms against infringements (paragraph 3A). The VGGT calls for states to recognize customary tenure rights, acknowledging a form of legitimacy that reaches beyond present national law, and offers guidelines in how to achieve this recognition (paragraphs 9.5-9.8 & 9.11).

### 2.2. There are a variety of ways to recognize tenure

As seen in Section 3 and also in Table 1, the forms of obtaining formal recognition of customary tenure vary significantly in CLMV countries. There are various options for the formal registration and countries can certainly learn from each other's experiences. One key challenge is the ability to achieve efficiency and affordability in formal processes of recognition. Engaging the autonomous knowledge of

communities could help here. However, it should be acknowledged that formal registration and titling represent one route to recognition, and there are other non-tilting tenure enhancing options that may provide a form of protection to local communities.

For example, legal frameworks may address community forestry, local government recognition of village land and forest management plans and agreements. These may not provide the same legal strength, but they may achieve greater land coverage, as they often involve simpler procedures that are less dependent on precision technology or engaging with complex institutional, administrative and political processes.

### 2.3. Poor recognition of customary tenure has negative impacts on people who depend on land, forests and aquatic resources for their livelihoods

The lack of secure land rights serves as a strong disincentive to invest, undermining efforts to enhance farmer productivity. Lack of tenure for both land and forest has consistently emerged as a cause of forest loss. In view of promoting large-scale investments in agriculture, mining and other land uses, national governments have allocated numerous land concessions to domestic and foreign investors. The vast majority of these concessions overlap with community land, have caused an increase in land disputes and are a threat to rural livelihoods. Compensation for lost land and resources is often inadequate, and sometimes not provided at all.

Without formal recognition or proof of land ownership, communities have found it difficult to defend their land against various forms of encroachment, including by wealthy and powerful individuals. At worst, it has resulted in loss of land and resources and a reduction in food security. This works against the goal of achieving sustainable economic growth for which secure land rights for smallholders is a fundamental precondition.



Participants at the workshop

**TABLE 1: Legal Recognition of Customary Tenure in the Mekong Region**

	GROUP OF PEOPLE RECOGNIZED	LAND USE TYPE RECOGNIZED	PRINCIPAL LEGAL FRAMEWORK	COVERAGE
<b>CAMBODIA</b>	<p>Only Indigenous Peoples (1-2% of the national population) are eligible to receive communal land titles.</p> <p>Limited user rights to forest resources for traditional use available for all communities living in or near forests.</p> <p>Limited (conditional) management rights for communities who establish a Community Forest (CF) and a Community Protected Area (CPA)</p>	<p>Communal land titles for IP communities include agricultural land (including fallow land used for rotational swidden cultivation); spiritual forest and burial sites (limited to 7 ha each). Titles exclude forestland.</p> <p>CF can be established in production forests and CPAs in protected areas.</p>	<p>National Land Law (2001) recognizes communal titling for IP communities.</p> <p>Sub-decree (2009 – No. 83) lays out process to register communal land titles for IP communities.</p> <p>Law on Forestry (2002) recognizes traditional rights to forest use at “family scale” for all local communities living in or nearby forests. This law also gives Cambodia’s Forestry Administration the authority to grant areas of production forest to local community management.</p> <p>A community forest sub-decree and subsequent guidelines allow for establishment of a national community forestry program.</p> <p>Law on Protected Areas (2008) recognizes customary land within “community zone” and allows for the establishment of CPAs within “sustainable use” zones.</p>	<p>As of 2016, only 14 villages have completed the process for communal land titles (est. 573 in total country-wide).</p> <p>Land coverage under communal titles is small and usually less than that previously used by communities.</p> <p>Community forests have been established in over 400,000 ha; and while they confer limited rights, they have served to stave off some loss of village land to concessions.</p> <p>Limited security of tenure for communities within Protected Areas (PA), due to slow boundary demarcation within PAs.</p>
<b>LAO PDR</b>	<p>All people eligible to register collective or communal land titles (concept of Indigenous Peoples not recognized in Lao PDR)</p>	<p>In principle includes all land use types. The draft land policy and land law excludes communal land titles from being granted in protected areas and watershed conservation zones.</p>	<p>Ministerial Direction (2014 – No. 6036)</p> <p>Forestry Law (2007 – Article 42)</p> <p>Communal land is recognized in the draft National Land Policy (now a Party Resolution) as well as the draft Land Law, but procedures for communal land registration and titling are not yet developed.</p> <p>To date, Land and Forest Allocation and Participatory Land Use Planning (PLUP) have been the main mechanisms for recognizing village land, including communal forests. These require management plans be drawn up and approved by local government.</p>	<p>Despite efforts by donor projects, only two concrete collective land titles have been issued as of the end of 2016.</p> <p>Through a PLUP process, NGOs have worked with communities and local government to identify, develop and approve management plans for village communal land and forests.</p>
<b>MYANMAR</b>	<p>As yet, the direction of emerging national policy is unclear</p>	<p>-----</p>	<p>There is insufficient formal recognition of customary tenure within present laws. However, the National Land Use Policy includes provisions recognizing customary tenure and traditional land management, including shifting cultivation.</p> <p>Some ethnic states have developed their own land policies recognizing customary tenure. Whether these will be recognized at union level is uncertain and a topic within current peace negotiations.</p> <p>The Community Forestry Instruction grants 30-year subsistence use rights to user groups upon receipt of a Community Forestry certificate. Community Forestry is the most common mechanism for recognizing community claims over forests within Myanmar’s current legal framework.</p>	<p>No formal coverage.</p> <p>Some ethnic states are implementing their own land policies and land titling systems.</p> <p>Under the Community Forestry Instructions, around 840 Community Forestry groups are managing around 83,000 ha of community forests.</p>
<b>VIET NAM</b>	<p>Discussion focused upon ethnic minorities in upland forest areas.</p>	<p>Focus on community forests in upland areas.</p>	<p>Customary tenure of ethnic minorities is recognized under the Land Law and Forest Law.</p>	<p>Limited land rights of ethnic minorities gained through state reallocation of forestland, previously held by state-owned enterprises. Usage titles have been issued for traditional lands and forests (mainly to individual households) but implementation is a problem</p>

### 3. MECHANISMS TO RECOGNIZE CUSTOMARY TENURE: FORMAL REGISTRATION

#### 3.1. Registration of individual and communal customary land

One approach is to register communal land and individual customary land separately.

This approach is common in the Mekong region, notably in Cambodia and Lao PDR. There are some advantages to this approach, such as when people already have or want to obtain an individual land title to mortgage their land. However, it also places fixed categorizations on land, in contrast to a dynamic tenure system where a community can move between communal and individual tenure at their own discretion.

“Many people are frustrated – I interviewed two communities they said ‘if I wait too long I will not be in the community any more. I will leave and I go for an individual title.’”



**Poch Sophorn**, Independent Consultant

#### 3.2. Territory-based recognition

Another approach consists of demarcating the village territory or wider ancestral domain. This includes both communal use areas and individual/ family areas, and can even include state protected areas.

This approach recognizes pre-existing rights over different land types within a territory, and can include private claims. It also allows lease of land to migrants or businesses, but not land sales. As a result, territory-based recognition is flexible, and allows for changes over time as in the evolution of community, environment, land allocation and land use. However, the community has a responsibility to manage the environment according to national laws, which can benefit the whole country. This may include management and conservation of protected areas.

This approach, as seen in the examples of India and the Philippines, would be new to the Mekong region, and represent an alternative means of recognition.

#### 3.3. State recognition in exchange for demonstration of intra-community equity

Equity and fairness, including gender equity, could be encouraged by the state when recognizing customary institutions, and may even be a condition for customary land registration.

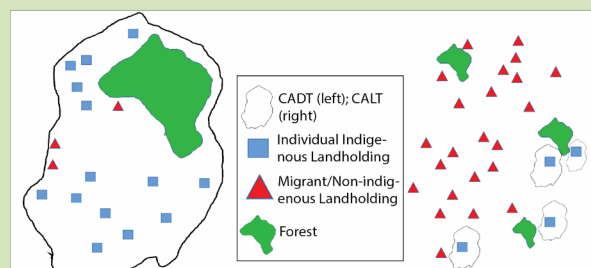
#### Case study – Territory-based recognition in the Philippines

The Indigenous People Rights Act of 1997 (No. 8371) provided the means to recognize traditional land ownership. Approximately 4.3 million ha (7% of total land area) is officially recognized and titled to indigenous peoples. The Act allows for the registration of land under two types of title:

1. Certificate of Ancestral Domain Titles (CADT): a title referring to a wider area controlled collectively by a community
2. Certificate of Ancestral Land Title (CALT): smaller individual titles for households within fragmented communities unable to assert domain control

2.63 million ha have been issued with Certificates of Ancestral Domain Titles (CADT's), including both terrestrial and marine areas under traditional rights. The title contains a full bundle of rights recognizing traditional land ownership. Land transfers must take place within the community or family. Furthermore, communities can assert Free Prior and Informed Consent (FPIC) if there are any other claims or requests for resource use in the designated area. They also have autonomy to create their own management plan, which can involve sub-zoning.

Disadvantages of the Act (and its implementation) point to the fact that other laws may sometimes restrict access to land despite claims by communities. Also, the process of registration is complex and expensive, demanding external support. Part of this complexity is due to the requirement that communities or ethnic groups negotiate with other stakeholders to reach consensus on the ancestral claim, thereby representing an inclusive process. For example, the rights of migrants who have moved to an area can be acknowledged in relation to ancestral owners. Nevertheless, the cost may still be preferential compared to that of individual titling and the potential consequences of resulting conflicts if proper negotiations are not undertaken.



Source: David Vera

### 3.4. The process of registration

In the process of registration there are three key factors to consider:

- Communities need to take the lead and manage first steps, with the support of the administration,
- Long-term commitment is needed,
- Conflict needs to be managed rather than avoided.

It is important that communities do not wait for official legislation to be finalized and operationalized before taking action. There is much preliminary work that can be done in

documenting customary tenure and internal rules for use and management. If carried out in conjunction with local administrations, a solid base is provided for recognition once national legislation comes into force.

The documentation of local practices and engagement with national law may not be a smooth process, and issues of contested rights to land and resources need to be addressed rather than ignored. This can involve a series of stakeholder dialogues. As seen in the Philippines, getting a title may be a long process, and is a consequence of inclusive negotiation. Therefore, a long-term commitment is vital for progress.

#### Case study – Recognizing Customary Tenure in Protected Areas of Cambodia

The 2008 Protected Area Law of Cambodia provides a framework for recognizing customary tenure in community (residential) and conservation (Non-Timber Forest Product collection) zones. Once a zoning and management structure has been set up, which could involve local communities through Participatory Land Use Planning (PLUP), usage rights can be ratified through the signing of a Prime Ministerial sub-decree. So far there are 45 protected areas in Cambodia with three gaining official zoning through a sub-decree. Although not representing land titling as such, the example here shows how there may be a variety of means through which to recognize customary tenure. There are 200 communities in Cambodia that might receive rights through the Protected Area Law, which include both IP and non-IP groups.

Wildlife Conservation Society, with support from MRLG, has been developing guidelines for the zonation process and assisting with the process of PLUP. More information can be found [here](#).

## 4. MECHANISMS TO RECOGNIZE CUSTOMARY TENURE: IMMEDIATE RECOGNITION AND INTERIM PROTECTION MEASURES

Interim protection measures are simple and quick measures for temporary recognition of customary lands, providing a form of security whilst a registration process is ongoing or formal mechanisms are still undeveloped. This can be vital for local communities that remain vulnerable to expropriation by large-scale land concessions for agribusiness, mining, hydropower and infrastructure projects.

### 4.1. The need for immediate recognition mechanisms/ interim protection measures

The formal registration of communal lands often needs considerable effort, resources and time, during which customary tenure will remain under threat.

If formal registration is legally possible, interim protection measures are needed while waiting for the procedure to take place.

If registration is not an immediate option, alternative recognition mechanisms based on existing legal frameworks (for example, community forestry or community protected areas) are needed which are reasonably quick to establish and not too complex or costly.

“I am an advocate for keeping it simple, particularly for an interim measure. If you can say this is what we have and these are the boundaries to our community, and somehow get a stamp on that from a government official, even as an interim measure for 5 years, that’s a level of protection that is very meaningful and everyone will note that this area of land is not available for allocation.”



**Rob Obendorf**, Legal expert US AID Land Titling Program



## 4.2. Recognition of community-based documentation of customary tenure

Community led efforts to document and map their customary lands using participatory mapping approaches or participatory land use planning can be the basis for interim protection measures.

Participatory mapping and Land Use Planning will vary depending on the actual involvement of government, NGOs and communities. At times the result may represent a top-down rather than inclusive process. In this case, plans may reflect governmental categories of land administration and the jurisdictional responsibilities accorded to different government agencies, rather than land use as understood and practiced by villagers on the ground. This is particularly the case when it comes to land used for shifting cultivation, which is often categorized as ‘forest land’ under jurisdiction of the forest department, in contrast to community usage for agriculture and as forest.

These maps can be recognized by the local administration and serve as a basis to declare a ban on new land transactions in the concerned area. Mapping can be

communicated to concerned line departments to enact this ban, until a formal registration process is realized.

For the above to be effective, interim measures need to be a part of the legal framework.

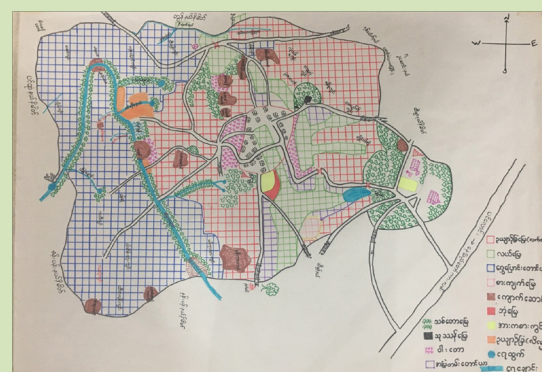
“There are real trade-offs between the title-based route to tenure and other types of tenure that are potentially legally weaker but have a broader base. I think that you are all wrestling with this trade-off between coverage and legal strength. The answer will be really contextually dependent and so [we must see] how examples across the region can expand the possibilities for other countries”



**Mike Dwyer, Independent Consultant**

### Case study – Documenting customary tenure and participatory mapping in Myanmar

The Farmer and Land Workers Union (FLU), together with other partners supported by MRLG, have been working with ethnic communities in Myanmar to systematically document their customary tenure systems. There are different forms of mapping (sketch, scale, 3D, GIS) each carrying pros and cons around ease of production, readability to different stakeholders, and legitimacy. FLU has generated a six-step method for participatory mapping involving: preparation; sketch mapping; refining the sketch map throughout the documentation process; drawing a scale map using Google Earth satellite images; verification; sharing the maps. Detailed information on this process can be found in the [Guidebook on Documenting Customary Land Tenure in Myanmar](#).



Land use map from customary documentation process by the Farmer and Land Workers Union (FLU)

## 4.3. Concession moratorium as potential interim protection measure

If customary tenure is not registered or protection mechanisms are not in place, a moratorium on large-scale land concessions is a way to avoid conflicts between communities and potential investors.

Putting a stop to new concessions can be a quick and effective way to significantly reduce outside pressure on customary land by new investors. 2012 moratoriums in Lao PDR and Cambodia (in the former case focusing on acquisitions for eucalyptus and rubber) have been effective in relieving some of the pressure on communities. This has

coincided with a shift in state policy towards other forms of contractual agreements with communities, particularly in Lao PDR. Such contracts include land leases with communities or farmers, sharecropping agreements, or other types of arrangements between agro-industry and local farmers. The contracts often favour the investor, but at least in the short term, they offer a better alternative to communities than appropriation of lands with limited or no compensation.

## 4.4. Building Political Will

It is important to reflect on why we see slow progress towards greater recognition of customary land. Linked to this is the conundrum that many of the legal reforms and titling



efforts are donor-led and seem to go against the grain of host government priorities. Expanding the “constituency” for customary tenure recognition involves addressing socio-economic inequalities and coming up against entrenched interests of powerful actors.

The case of India (see Section 5) shows how grassroots activism has had a direct impact on central policy. Customary rights on forestland became recognized in the 2006 Forest Rights Act. In this case, advocacy bypassed the Forestry Department and aimed directly at the parliamentary level using support from the Ministry of Environment. Therefore, political will is needed from a variety of actors and at many levels.

“[In India] there was a large conflict when the Forestry Department started evicting large numbers of people by treating them as encroachers on their own ancestral land. This led to the whole movement for the recognition of pre-existing rights. We fought for the Forest Rights Act, which was then enacted unanimously by the Indian Parliament.”



**Madhu Sarin,**  
[Campaign for Survival and Dignity](#)

### **Case study – Promoting customary tenure in post-conflict Myanmar**

As Myanmar enters a new period of democratic governance, returning from international isolation, a central feature of discussion in the peace process entails the level of autonomy offered to ethnic states within a possible federal system. The recognition of customary tenure has taken on a prominent role as a mechanism with which to leverage for political legitimacy. For example, in Karen State the KNU (Karen National Union) has implemented its own land registration policy, including the recognition of customary ‘kaw’ tenure, and the issuance of individual land titles through which transfer must be community-approved.

“Myanmar is engaged in a peace process which is directly linked to the customary tenure system in ethnic community areas, so recognition is also about political territorialization”



**Julia Khu,**  
[Land In Our Hands](#)  
(LIOH) alliance

## **5. MANAGEMENT OF COMMUNAL LANDS**

Recognizing customary tenure involves recognizing the customary institutions regulating the use of land and natural resources by local communities. However, to be effective these systems need the support of government and formal legal systems.

### **5.1. Supporting community decision making and living institutions**

Decisions on the use and management of communal land and resources must be community-based. Emphasis needs to be placed on strengthening communal decision-making process and institutions rather than only defining the local “rules and regulations” or land zoning, which will change over time to adapt to evolving needs and interests of the community.

“Based on experience, we found that local communities should be involved in the management of natural resources for their own sustainable development. In Protected Areas, we have more than 200 communities. They have a role in management and conservation to improve their livelihoods.”



**Kim Nong,** Deputy Director General of General Directorate of Administration for Nature Conservation and Protection (GDANCP), Ministry of Environment, Cambodia

### Case study – Governance of customary forests by communities in India

Legislation in India recognizes customary tenure for different social and ethnic groups over different land use types, including both forest and non-forest areas. Different temporal access to land and resources is also recognized, such as with seasonal access to private lands. The strength of recognition varies throughout the country, enjoying greatest strength in northeast India under constitutional provisions. The Forest Rights Act of 2006 recognizes pre-existing customary rights in forest areas, thereby acknowledging historical injustices committed on forest dwelling communities. The Act challenges the classification of these communities' lands as 'state forests'. The reclassification from 'national' to 'community' forests represents a form of decentralization and democratization in forest use and management. The Forest Rights Act was spearheaded by an alliance of grassroots movements, academics and professionals, and was tabled to Parliament by the Ministry of Tribal Affairs rather than Ministry of Environment and Forests.

The Act promotes conservation, sustainable use-management, and the increased participation of women. Community rights to protect, conserve and manage forests for sustainable use are already recognized for over 1 million ha. However, barely 3% of the potential forest area under customary tenure has currently gained official recognition.



Source: Madhu Sarin

### 5.2. Restrictions on private land sales according to community will

Customary management systems cover a range of land and resource use practices, including access that is not based on exclusive private property. They need to remain flexible to be able to evolve over time.

The decision to shift from “collectively managed” to “individually managed”, and possibly to “private land” should rest on the community, based on its internal rules. For example, community rules may allow for individually owned lands to be sold within the community, but not to outsiders.

The case study of the Philippines in section 3.2 demonstrates how both communal and individually claimed land in areas under customary tenure can be recognized and titled. Central to legislation is that existing property rights are recognized and that an indigenous community carries the right to regulate land use and transfer.

### 5.3. Responsible partnerships between business and communities

Leasing of communal lands to outside investors should be based on and comply with the internal rules of communities.

Communal lands should only be leased to outside investors after Free Prior Informed Consent has been obtained from communities. Communities need to be sufficiently

informed and empowered to dialogue with companies so that fair agreements are reached between businesses and communities. These agreements must include a fair sharing of the benefits and contribute to local economic and social development of communities in line with their own priorities.

“Equal and secure access to land, and control over land, is a prerequisite for any kind of investment, and therefore also for economic development”



**Markus Buerli**, Head of agriculture and food security, Swiss Cooperation Office Myanmar

## Case study – Responsible Agroforestry Investment in Lao PDR

Stora Enso Laos (SEL) is a local subsidiary of the global paper and packaging company Stora Enso. The company has developed an inclusive model to work with local communities in Laos. On the one hand, it sources land for sustainable forestry, contributing to its own business. However, at the same time, the company addresses UXO clearing, food security, and livelihood development, aiming for the alleviation of poverty in affected communities. Central to the company's approach is the issuance of appropriate compensation, and respect to autonomous local decision-making processes, including an adherence to Free and Prior Informed Consent (FPIC). The company undertakes Participatory Land Use Planning (PLUP) to identify community land use and tenure. It cooperates with independent third parties (CSOs such as VFI) to develop appropriate information tools to guarantee effective inclusion of communities and their effective informed consent on the agreements proposed to them. This improves the security and rights of communities in areas still recognized as State land.

“Investors are knocking on the door of the many of these countries and it is up to the governments to decide which type of company they want to invite in”

**Helena Hae See Axelsson,**  
Stora Enso Laos



A company video looking at this project can be found [here](#)

A discussion note on responsible agricultural investment in Lao PDR is found [here](#)

## 6. NEXT STEPS

Participants at the workshop confirmed the usefulness of cross-country and regional learning exchanges and dialogue, and brainstormed ideas for possible future collaboration. Ideas that emerged include a study visit to the Philippines to learn more about their approach to formal recognition of customary land, customary institutions and communal management of forests; training and capacity building for government actors on customary tenure, including compilation of case studies on effective laws, policies and practices; and collaborative research.

The outcomes of the workshop will also inform the production of policy briefs, whose recommendations can serve as a basis for future policy dialogues on customary tenure recognition at both country and regional level.

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

*Report compilation: Daniel Hayward*

*Reviewers: Christian Castellanet & Natalia Scurrah*

*Photographs: Terry Parnell & Aung Tin Moe*

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*Photo of Kim Nong: Furqan Asif & Thi Ho Kim*





The **Mekong Region Land Governance** project aims to contribute to the design of appropriate land policies and practices in the Mekong Region. It responds to national priorities in terms of reducing poverty, improving tenure security, increasing economic development, and supporting family farmers, so that they can be secure and make good decisions on land use and land management. MRLG is operating in Cambodia, Laos, Myanmar and Viet Nam since April 2014, with the support of SDC and the German cooperation. For more information on MRLG, please visit [www.mrlg.org](http://www.mrlg.org).

The **Forestry Department**, under the Ministry of Natural Resources and Environmental Conservation, Myanmar, is responsible for the protection and conservation of biodiversity and the sustainable management of forest resources in the country. For more information on the Forestry Department, visit <http://www.fdmoeaf.gov.mm/eng/>



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