



Case Study on Food Security, Livelihoods and Customary Tenure Recognition in Laos



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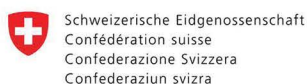
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Food Security, Livelihoods, and Customary Tenure Recognition in Laos
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Acronyms and Abbreviations

| | |
|---------|--|
| CF | Contract Farming |
| CT | Customary tenure |
| DONRE | District Office of Natural Resources and Environment |
| FPIC | Free Prior and Informed Consent |
| LBA | Lao Biodiversity Association |
| LFN | Lao Farmer Network |
| LIFE | Land Learning Initiative for Food security Enhancement |
| LIWG | Land Information Working Group |
| LUC | Land Use Certificate |
| MAF | Ministry of Agriculture and Forestry |
| MRLG | Mekong Regional Land Governance |
| MoNRE | Ministry of Natural Resources and Environment |
| NTFP | Non-Timber Forest Product |
| PLUP | Participatory Land-Use Planning |
| RECOFTC | Regional Community Forestry Training Center for Asia and the Pacific |
| TLIC | Turning Land Into Capital |
| UPR | Universal Periodic Review |



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Introduction

This report aims to assess the status of customary tenure recognition and implementation in livelihoods and food security in Laos. It is part of 'Strengthening regional mechanisms and capacities in engaging, implementing, and adopting customary tenure (CT) recognition and free, prior, and informed consent (FPIC) as safeguards in the Mekong region' project led by the Asian Farmers Association for Sustainable Rural Development. As a partner organization, Lao Farmer Network (LFN) commissioned the case study of Laos through literature review, key informant interviews, and group focus discussion in communities.

This study aims to answer the following questions:

1. How does CT recognition improve and enhance the livelihoods and food security of communities in Laos?
2. How do traditional livelihoods and the consideration for food security enhance support formal CT recognition in communities in Laos?
3. How can CT recognition defend communities against increasing threats to their livelihoods and food security, such as those brought about by the rising demand for land, and climate change impacts, among others?
4. What forms or mechanisms for recognizing CT best support communities' livelihoods and food security?



The study consists of three main chapters. It begins with an overview of the status of customary tenure in Laos. This is followed by a review of relevant literature, policies, and laws on customary tenure recognition and FPIC. The second chapter examines the community case study. This involves two case studies: formal recognition and information recognition on customary tenure in respective communities. The final (third) chapter explores the challenges and opportunities for improving the recognition of customary tenure and implementation of FPIC in the context of Laos. It also outlines recommendations for policy options for enhancing customary tenure recognition, livelihoods, and food security in Laos.

Overview

1. The overall situation of customary tenure recognition in Laos

Most members of the 50 recognized ethnic groups in Laos have traditionally subsisted from cultivation, including shifting (swidden) agriculture and forest products (ODL, 2019). Most of these groups show complex interrelationships between ecosystems and cultural systems, such that changes in the external environment result in multiple impacts on the culture, livelihoods, and customary practices (Ironsides, 2017).

Customary tenure arrangements exist in most rural villages and ethnic groups, including the lowland Lao population. For centuries, rural communities have managed common property resources for the benefit of all community members and have used and protected specific resources such as forests and water bodies. Rural communities have also created local rules and regulations for the seasonal or sporadic use of these areas by groups or individual households for cropping, non-timber forest product (NTFP) collection, livestock grazing and fishing (FAO and MRLG, 2019).

Traditionally, villages in the mountainous areas of Laos were relatively evenly distributed over space, with most having recognized village areas of between 1 500 and 2 500 hectares. In many cases, village boundaries were well-known and local rules and traditions for the use and protection of village land were respected by villagers themselves and neighbors alike. Conflicts over resource use were rare. However, this situation began to change during the Indochina Wars when people had to migrate to safe areas and sometimes resettle permanently.



In the 1990s, customary village land came under increasing threats, especially from implementing the national shifting cultivation stabilization program launched through land and forest allocation (LFA) activities between 1994 and 2006. Under LFA, shifting cultivation practices were limited to three parcels only per family for rotational use, and great emphasis was placed on forest protection. As LFA activities were carried out in around 50 percent of Lao villages, they had widespread impacts on the collective use of village land, contributing to decreased access to land and natural resources, and food insecurity.

A further factor leading to the loss of access to land and land tenure insecurity has been the arrival of outside investors. In view of promoting increased investments in land, the Lao Government allocated numerous land concessions to domestic and foreign investors. The vast majority of these concession areas overlap with community land, thereby causing an increase in land disputes, and threatening rural livelihoods.

Resettlement has also been a key strategy to facilitate the implementation of a range of rural development and poverty reduction policies, including the shifting cultivation stabilization and opium eradication programme. From 2004 onwards, Lao Government policies and strategies called for the resettlement of remote communities into consolidated village clusters to maximize poverty reduction activities and accelerate economic development. One result was that relocated villages lost access to their customary land and faced situations of land scarcity.

Meanwhile, Lao Government policies continue to place significant emphasis on forest protection. The 2005 Forestry Strategy provides a target of 70% forest coverage by 2020, and this has been restated in the Party Resolution on Land Management, issued in 2017. The country counts 24 national protected areas and 51 national production forest areas. In addition, provinces and districts have delineated their own protected forest areas, and these areas may contain entire villages, including their residential and agricultural production areas and customary use zones.

It is virtually impossible to determine the extent of customary tenure in the country. Village-based assessments can only identify how much land is claimed under communal land management systems, which can then be harmonized at the kumban (communal) level. This is one reason why numerous donor-funded projects, nongovernmental organizations and even private companies have supported participatory land-use planning (PLUP) at the village and kumban levels, mostly in accordance with a standardized PLUP approach defined by the Ministry of Natural Resources and Environment (MoNRE) and the Ministry of Agriculture and Forestry (MAF) in 2009. More recently, modified and varying approaches have emerged (Dwyer and Dejvongsa, 2017). It has been estimated that improved and up-to-date land-use plans are now available for some 470 rural villages (Ling, 2017).



Systematic land registration in the country started in 1997. By November 2015, 806 000 land titles were issued, mostly for individual parcels in urban and peri-urban areas. The first communal land titles (using collective title formats) were awarded in 2012 for communal bamboo resources in Sangthong District as part of a pilot project in four villages. In 2013, collective land titles were issued to 14 resettled communities in the area of the Nam Theun 2 hydropower project in Nakai District. Other pilot efforts have been made toward communal land registration based on PLUP, mostly in the north and Khammouane Province. The most frequently cited objectives of communal land titling are increased tenure security for rural communities, increased productive use of village land as a key poverty reduction strategy, and improved community management of natural resources with greater community participation, ownership and unity.



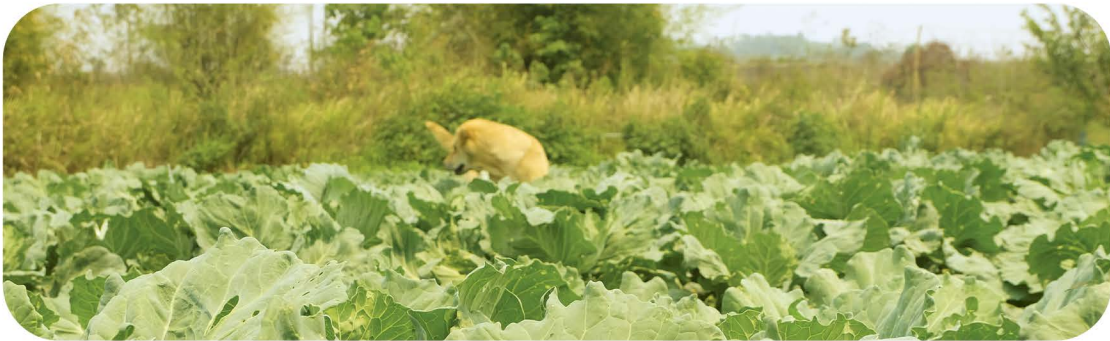
2. Linking food security and tenure security in Laos

“Inequality in access to and ownership of land, agricultural assets and natural resources and income are complex and related concerns for poverty and food security and nutrition” (UN Laos, 2021).

Poverty, inequality and locational disadvantage are key influential factors in the malnutrition situation, quality of diet and nutritional status of the population. For instance, though many households still engage in subsistence agriculture, the reliance on bought food is increasing. Informal markets remain a crucial source of food in Laos, which often provide mostly nutritious foods, including fruits and vegetables. However, informal markets are increasingly supplying more ultra-processed foods high in fat, sugar and sodium. Consequently, there is increased consumption of cheap, highly processed foods, such as instant noodles, instant rice porridge, and sugar-sweetened beverages, which are harmful to nutrition (World Vision, 2020).



There are still many locations in Lao PDR where a “traditional” food system is practiced. In some remote villages, households source their food seasonally through a combination of agricultural production, foraging, wild food sources and local marketplaces. With the disappearance of forest coverage and an increasing population, these traditional food system choices and diets are changing as access to wild foods declines, often being replaced by less nutritious food products. Securing these traditional food systems that primarily provide for the most vulnerable communities in Lao PDR should be a key consideration in transitioning to a nutrition-centered approach to food, focusing on the nexus between accessing food and the increasing risks of zoonotic diseases (UN Laos, 2021).



In the near future, agriculture will continue to be the primary source of income and livelihood for most of the population. Large agribusinesses are key players in the agricultural sector. While they can contribute to greater income and create more employment opportunities, they also present several disadvantages including: (i) granting land use rights to cultivate large areas of land in monocrops; (ii) loss of flexibility in the agriculture sector; and (iii) loss of control of land management. For instance, the commercialization of agroforestry and the expansion of hydropower, land concessions have been agreed upon with investors for large scale development projects such as the construction of hydro-power dams. As a result, reports have emerged of relocation of communities with no proper consultation and provision of adequate compensation. The poor and the marginalized are among those most often negatively affected by development projects, and those with customary land rights but without legal titles are the most vulnerable. This has numerous negative consequences, including the displacement of populations, contributing to the creation of internal migrants. With no access to land, one option for many displaced persons is to take up work on large commercial farms, where they face insecure living and working conditions which are highly vulnerable to shocks and stresses, including low and irregular payment, informal or unclear contracts, limited access to healthcare and exposure to unsafe levels of pesticide (UN Laos, 2021).



More than 70% of the population resides in rural areas, with more than 80% engaged in agriculture. It has limited arable land and depends on the intensive use of lowland and upland and forest areas to ensure food security. The agriculture sector is also constrained by limited investment, both public and private, insufficient infrastructures and the occurrence of natural disasters. Input and output markets remain fragmented and underdeveloped, with limited access to credit by farmers and producers (MAF & IFAD, UN Laos 2021).

3. Legal Analysis: the existing laws and policies on livelihoods, food security and customary tenure recognition in Laos

The 2019 revisions of the Forest and Land Laws entail new opportunities and challenges concerning the recognition of customary tenure and the formalization of land and forest claims, particularly within state forest areas where approximately 35% of all villages in Lao PDR. While revised legal frameworks affirm the rights of these communities to use and benefit from their land and forest resources, they also delimit these by prohibiting, for example, non-state land titles. Efforts are underway to address tenure security challenges through reforms in policy and institutional practices (MLRF, 2021).

Private sector investments have largely driven growth in the natural resources sector, principally through large-scale land concessions. The costs of this investment model—particularly for local communities—have largely outweighed its benefits, prompting a transition toward alternative investment models such as contract farming (CF). CF presents new opportunities for smallholders and social and environmental impacts that are poorly regulated. Efforts to promote responsible agricultural investments face an uphill battle (MLRF, 2021).

3.1. Customary land use rights in Lao Laws

The 2019 revisions of the Forest and Land Laws entail new opportunities and challenges concerning the recognition of customary tenure and the formalization of land and forest claims, particularly within state forest areas where approximately 35% of all villages in Lao PDR. While revised legal frameworks affirm the rights of these communities to use and benefit from their land and forest resources, they also delimit these by prohibiting, for example, non-state land titles. Efforts are underway to address tenure security challenges through reforms in policy and institutional practices (MLRF, 2021).



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The comparative analysis to assess the new Land Law and Forestry Law in Laos done by MRLG¹ & LIWG² points out that while the recognition of rights arising by custom is an important step forward within these new laws, there are still concerns with how it is to be enacted as it explains below:

- The primary concern is the formulation of the requirements in Article 130 of Land Law, particularly the length of time required to establish the right. The requirement to show 20 years of regular land use is likely to exclude many land parcels, such as those of recently established families, those where extra land was cultivated as the family expanded, and those of villagers who have had to move due to natural disaster, climate change or due to state-sponsored (or state-mandated) resettlement. Additionally, the Article may be interpreted to exclude lands used for swidden cultivation.
- Article 127 is unclear about how and when the power to allocate land based on custom will be used, although the drafters of the Law clearly had something in mind when they included customary rights in the Article. Perhaps it was intended to overcome the many requirements in Article 130 that a person would have to satisfy before the State would recognize a right arising by customary use.
- Article 44 is also unclear, although the obligation to administer that Article is given to the Ministry of Agriculture and Forestry.

Another challenge is the rights over land used for swidden or shifting cultivation, which is not permanently cultivated year by year. The Law does not appear to include protections for shifting cultivation land. Article 130, in particular, indicates that the protection of use rights applies only to those lands that have been developed and continually used, possibly excluding shifting cultivation land which, by definition, is not. This interpretation of the law is also consistent with current State land management practice, wherein fallowed land is generally regarded as abandoned (LIWG & MRLG, 2021).

¹ Mekong Regional Land Governance Project (MRLG) is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC). The MRLG aims to improve land tenure security for smallholder farmers in the Mekong Region. <https://www.mrlg.org/>

² The Land Information Working Group (LIWG) promotes awareness and understanding of the social, economic and environmental impacts of land-related projects, by gathering and disseminating information, facilitating dialogue and carrying out studies. The LIWG consists mostly of international and local civil society organization staff and other individuals working on land issues in Lao PDR. <https://laolandinfo.org/en/>



Legal recognition of customary tenure over land and forests in Lao law shows some acceptance, but provisions are generally weak and poorly implemented (Ironsides, 2017, iv). This means that rural communities struggle to have their customary rights fully respected. This is especially true for communal land and forests, and the new Land Law only refers to individual ownership of land and not communal. The state has decided not to provide a legal document to communities that would formally recognize communal ownership of resources. Instead, the land is registered as state land, meaning user rights can be revoked, and villagers only have the right to use and protect the land (as stated in Land Law, article 81). This will negatively affect all people, especially women who rely on communal forests and aquatic resources for a wide variety of forest products as part of household income and food (LIWG, 2020, P. 12).



3.2. Land registration and titling in Laos

In principle, all land in the Lao PDR belongs to the National Community, although citizens and legal entities have the right to receive permanent land use rights. These land use rights are certified in the form of land titles, which currently can be issued to individuals (persons, couples, joint ownership or legal entities), collectives and state land. The mandate to survey and adjudicate land parcels and to issue the land titles rests with the Department of Land Administration (DoLA) under the Ministry of Natural Resources and Environment (MoNRE) and their decentralized offices at Provincial (PONRE) and District level (DONRE).

Land title registration is the issuance of the first edition of land titles to individuals, legal entities and organizations for certifying their legal rights to use different land categories and for facilitating the management and protection of land in a uniform manner across the country (Land Law, Article 94).



As stated in article 101 of current Land Law (procedures for Land Title Registration), land title registration shall be performed at the one door service unit of the District Office of Natural Resources and Environment (DONRE). DONRE coordinates with the relevant village authorities and conducts adjudication and data collection on how the land use right has been acquired. It also takes measurements (i.e. survey) of the parcel in the presence of the owners of the adjacent land parcels or their delegated representative, who also certify the survey. The land parcel survey plan and land file for each parcel are created thereafter for land title registration. All these steps must be completed within fifteen days.

Land registration and titling is conducted either sporadically (at the request of the landowner), or systematically (by initiative of the land administration with the aim to cover entire administrative areas, e.g. village). Sporadic registration is usually connected to higher fees for the landowner. To date, roughly 1.2 million land titles have been issued nationwide, out of an estimated total of 3.0 to 3.5 million land plots.

Land Titling in rural areas is slower, costlier and more challenging. Land Registration carried out by the government is usually connected to collecting a registration fee to cover expenditure, which is often unaffordable for poor families and farmers in rural areas. Laos is a multicultural society with 50 officially recognized ethnic groups in Laos³. That means customary law remains an integral part of people's daily lives, including land tenure. However, there are no official records of land areas under customary tenure, despite the various laws in Lao PDR that make reference to customary use.⁴

3.3. Communal Land Titling

Despite a process for the issue of collective title being set out in the PLUP manual, only two such cases of any significance had been issued by 2016, being for five villages (2,189 hectares) in Sangthong district close to the capital Vientiane (to conserve bamboo forests for handicraft production) and for 14 villages (20,208 hectares) resettled to make way for the Nam Theun 2 hydropower project in Khammouane province. The lack of clear guidelines for government on how to transform the legal definition of communal land into actual land use certificates has been cited as one reason for the lack of scaling up (Schneider, 2014; GIZ 2015).

The current Land Law (2019) stipulates that the use of State land for collective purposes is the granting of State land use rights to the villagers in one or more villages to collectively use the land in accordance with the local land allocation plans and the laws. This land includes cemeteries, sacred forest, common ponds, temples, schools, health centers, village administrative office and village markets (Article 80).

³ It is important to note there is no use of the term indigenous in Laos. See more: <https://laos.opendevlopmentmekong.net/topics/ethnic-minorities-and-indigenous-people/>

⁴ The 3rd Mekong Regional Land Forum Land, on 26 – 27 May 2021, co-organized by the Mekong Region Land Governance (MRLG) project, the Land Portal and FAO, the Forum focused on two key themes: the recognition of customary and collective forest tenure in the Mekong Region. <https://landportal.org/blog-post/2021/05/customary-and-collective-forest-tenure-mekong-region>

⁵ LIWG LUP study. <https://laolandinfo.org/wp-content/uploads/2017/05/LIWG-LUP-Study-English-2017.pdf>



Article 80 of Land law also states that State land use rights for collective purposes comprise the rights to protect and utilize the land for collective interests of the villagers from one or more villages with no rights to transfer, sell, exchange or lease the land use rights, nor granting of concessions or use of the right as a share in a joint venture or as collateral.

However, this article does not cover lands collectively used for agricultural practice, especially in the upland areas of Laos.

4. National commitments relating to VGGT, RAI and SDG with respect to livelihood and food security and CT recognition in Laos



4.1. RAI and VGGT

Land concessions granted to investors, unequal investor- farmer relations, and inadequate protection of traditional land-use rights threaten the livelihoods of many small-holder farmers, especially those belonging to ethnic minorities. Investor practices are frequently not aligned with national laws or international standards, such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT). Research shows that “the ongoing transfer of land from private households to companies is a major driver of new forms of poverty in rural areas” (CDE Socio-Economic Development Atlas Lao PDR 2015, 116). Increasingly commercialized small-holder farming is raising new questions: how can the government and communities ensure that families, especially vulnerable ones, living and working in rural Laos benefit from these economic developments in the long term? ⁶

⁶ <https://landportal.org/es/node/87488>

Over 70% of Laotians depend directly or indirectly on agriculture and forestry for their living. Almost half of all farming families rely on subsistence farming. The Lao Government is investing in agriculture and forestry, mining, and hydropower to drive forward the country's development. It frequently awards extensive concessions to investors from within Laos and from neighboring countries, including Vietnam and China. Until now, the rural population has derived limited benefits from this practice. It has little involvement in socio-economic planning and management, and it is rare for civil society organizations to represent the population's interests. Local people are not familiar with the state structure that ensures their land rights and cannot afford the fees to secure a title to their land.⁷

In Laos, RAI is still not progressive. Many development projects do not respect local villagers' rights and the effects of the project on their land and natural resources.

"Comparing to 10 years ago, it's changed because before that the term of RAI was very rarely mentioned. Now government is more open to discuss and take this in account. However, the implementation level is still weak and we do not see many good practices," a key informant pointed out. She (anonymous) also stated that there are not many good lessons to learn from the ground's realities.

In Laos, the government has promoted land and natural resources investments for ten years through the 'Turning Land Into Capital' (TLIC) policy. In recent years, however, the government and international development community have acknowledged that the TLIC policy negatively impacted communities and economic growth. The Party Resolution on Land Management and Development (2017), for example, states that TLIC "still has no comprehensive legal framework, due to which the Government and peoples have not received as many benefits as they should have."

Development partners and civil society organizations have also created guidance on RAI in the Lao context. The Land Information Working Group's Voluntary Commitments for Responsible Agribusiness (2017) and Mekong Region Land Governance (MRLG) Field Guide for Planning a Socially Responsible Agricultural Investment in Lao PDR (2018) are signs that RAI is being integrated into the conversation around investment in Laos, while the World Bank is also promoting RAI through its support to the Green Growth program.⁸

4.2. FPIC implementation in Laos

When looking at the implementation, FPIC is still very limited within only some organizations, a Lao legal trainer said.

⁷ https://www.giz.de/en/downloads/2021_05_26_Projektinfo_GV_Land_Laos_EN.pdf

⁸ <https://data.opendatacommons.org/data-set/563cc6ce-0ddf-40fd-a1a3-e7a71e705499/resource/8c8b434f-c132-43e8-9847-ea59241471b2/download/rai-policy-brief-english.pdf>



In July 2019, the Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC), with the Lao Biodiversity Association (LBA) and the World Wide Fund for Nature (WWF), organized a training on free, prior and informed consent (FPIC). Civil society organizations forming the Lao CSO FLEGT committee took part in the training that helped identify initial design steps in implementing processes that respect local communities' rights through FPIC and develop action points for interventions that can promote good governance through applying FPIC in their own work contexts. Through its CARBI II project, WWF also used the FPIC process to ensure community engagement based on the model developed under the SUFORD Project and piloted in over 600 villages throughout Laos.⁹

The civil society network and development partners also made an effort to initiate the 'FPIC and land rights' video, an advocacy and raising awareness tool.

Despite all these efforts, the Lao government has not yet made any move toward the proper recognition of FPIC.

Besides civil society organizations and International Non-Government Organizations, some companies in Laos applied to work with international standards and embrace the concept of FPIC, like big and international agricultural companies, Burapha AgroCompany and Stor Enso.

However, the question remains about how they gain consent and if it's a meaningful consent' from communities?

Free, Prior and Informed Consent (FPIC) is not new to Laos. Based on the interview with key informants (anonymous), at the concept and policy level, the government seems to be open more compared to the past after many years of effort from civil society organizations and development partners. The documents and concepts have been translated into Lao language. However, in term of implementation, it's not progressive. One key informant who has experienced working on land issues in Laos for said that 'It's the time for Laos to really get into the implementation'. She emphasized if not starting now, Laos will remain stagnant without progress.

The awareness and the understanding of FPIC principle in Laos are not yet in the same direction. A legal trainer who has worked on land rights for a decade states that 'the dissemination of policy or principle of FPIC is not progressive and rarely seen in the implementation. He emphasized that doing FPIC is quite complicated and it's difficult to access information of it. The understanding of official staff is also still limited. More importantly, mutual understanding and clear definition among civil society organizations and development partners in Laos have not yet been established.

⁹ <https://www.iwgia.org/en/laos/3604-iw-2020-laos.html>



However, the advocacy of Land Information Working Group and concerned villagers has been rejected during the preparation of the Law and its consideration by the National Assembly (P. 26 LIWG & MRLG, 2021). They have been campaigning for the prioritization of mechanisms to ensure villagers' full free, prior and informed consent (FPIC) to developments. This campaign further forwards the exercise of FPIC within the administrative boundaries of their village.

4.3. The implementation of SDGs with respect to livelihood and food security and customary tenure recognition in Laos

Table 1. The implementation of SDGs with respect to livelihood and food security and customary tenure recognition in Laos

| SDG | Key Information |
|---|---|
| SDG 1: No Poverty | <p>Households in agriculture are twice more likely than non-farm households to fall back into poverty, as they are highly vulnerable to shocks. The limited health insurance coverage and social protection limit the ability of households to mitigate risks.</p> <p>Overall, poverty reduction and consumption growth lag behind the country's GDP resource-intensive growth. Inequity patterns emerge from differences in location and access, which affect education and livelihoods, especially the ethnic groups, who traditionally live in mountainous and remote areas that are difficult to access and have seen slower progress in poverty reduction.</p> |
| SDG2: Zero Hunger | <p>Food insecurity is still significant. Threats to food security include soil degradation and decreasing yields, linked to land pressure from population and large-scale investment projects, limited access to irrigation, rainfall dependent agricultural practices, disease outbreaks among livestock, the difficulties for farmers to find economically attractive legal alternatives to opium growing, low resilience to natural disasters and climate change.</p> |
| SDG 8: Decent work and Economic Growth | <p>Food insecurity is still significant. Threats to food security include soil degradation and decreasing yields, linked to land pressure from population and large-scale investment projects, limited access to irrigation, rainfall dependent agricultural practices, disease outbreaks among livestock, the difficulties for farmers to find economically attractive legal alternatives to opium growing, low resilience to natural disasters and climate change.</p> |
| SDG 13: Climate Action | <p>Lao PDR is highly vulnerable to the impacts of natural hazards and climate change. The impact will be felt on crops, livestock, fisheries, and communities in Lao PDR.</p> <p>Changes in rainfall and temperature patterns have significant ramifications for ecosystems, communities, and livelihoods that depend on them.</p> |
| SDG 13: Climate Action | <p>Lao PDR has used its resources to advance the country's growth and development. However, the government recognizes that excessive resource use will undermine future growth prospects. The Ministry of Agriculture and Forest estimated deforestation rates as 0.26 percent per annum between 2010 and 2015. Continued environmental degradation will negatively affect livelihoods, especially for the poor.</p> <p>There are still some pending issues, such as the need for clear criteria for sustainable management of all types of forests.</p> |

Source: Voluntary National Review on the implementation of the 2030 agenda for SDGs of Lao PDR, 2018



Community Case Studies

The study team's selection of communities (provinces, districts and villages) depended on different LFN members' locations based on the possibility of access during this pandemic outbreak. Although this case study cannot serve as a representative of the whole farmer's communities in Laos, this study could give an overview of the status of customary tenure recognition in two selected communities in different locations: one village in northern Laos (more traditional); and other villages in Vientiane Capital (more modern). The case study examines the level of formal and informal land management in those two communities and gathers the community's perspective on customary tenure recognition.



Table 2. Communities involved in the case study

| Communities selected for case study | Status/Situation |
|--|---|
| Thongmung Village, Xaythany district, Vientiane capital | It is located in the semi-urban area. Most of villagers have Land Use Certificate (LUC). Some of them have land title. The official documents recognize their rights over land. |
| Naom Village, Xay district, Oudomxay Province (Northern of Laos) | It is located in the rural area. Their customary land rights are recognized within communities. They neither have Land Use Certificate nor Land title; they have used land-based on customary practice. But they pay land tax every year. |



5.1. The Customary land rights norm

These two communities are situated in different locations geographically and they have different levels of land tenure recognition and livelihood systems. Thongmang village, Xaythany district, and Vientiane capital are semi-urban communities residing in low-land, paddy field villages. On the other hand, Naom village, Xay district, and Oudomxay Province are considered rural areas where livelihoods depend on upland-agriculture and forests. The forms of recognition on customary tenure (their rights over the land) are different because of the location and the implementation of land use planning. Case studies of the two communities show that the communities living in urban areas refer to official documents regarding their land rights. While in rural areas, many still use the land in the form of customary practice, and recognition of their rights within the community.

5.1.1. Thongmung Village, Xaythany district, Vientiane capital

Thongmang village is located about 40 km away from the capital of Laos. Villagers in this village are mostly Lao-Tai speakers (there are some numbers of other ethnic groups like Hmong). The landscape of village is low-land and paddy field.

Communities have practiced their customary land tenure in the form of inheritance system for many generations before the official law [land law]. Since the past, the customary land tenure has been well recognized among villagers (inside and nearby village). The ways of recognizing customary land rights following the inheritance system mean that members in the village respect and recognize both individual land and collective land tenures. Within the village, they also have other resources such as forest (village conservation forest) and water sources that are essential for their livelihoods. There are two plots of communal land in the village where theoretically, all villagers should manage the land together. But there were also stories stating that the head village has more power to control and decide the use of these plots of land.



The Land Law specifies that a Land Title is the only legal document "considered as main evidence for permanent land use rights" (Article 99).¹⁰ So, people living in urban areas are willing to get land titles as they believe that this is the most 'recognized right' of land tenure. However, the process of getting a land title can be very costly and tedious. So, villagers who do not have high income and could not afford to go to this process tend to base on land use certificate (less cost, and still protected by law) as a reference of their land use rights. According to villagers, only 30% of families in this village have land title, and the rest still have land use certificates.

Based on the discussion with villagers, the land in this village had been managed by previous generations. Still, some changes due to urbanization and development impact the traditional way of life and land use. Before, they heavily depended on paddy fields and accessed the forest to find some food, especially non-timber forest products (NTFP) around their village. As shown in the map below, they have slightly changed to focus more on growing vegetables and do livestock and poultry raising to earn income to support family's living.

In 2018, the village implemented the land use planning which serves as the official process to manage land use in Laos. The local government from the district level led and informed the process and not the villager. In this map, however, villagers, especially village authorities, play an essential role in identifying the area of land use for each purpose. The map is not for individual allocation, but for allocating the zone used in the village level.

In the social pattern, men are the head of the family, thus making most decisions, including land ownership. Based on the information provided from the group discussion, women in this village understand their customary land rights. They shared that 'land ownership' should be based on the inheritance practice, which means that a person, regardless of gender, who inherits the land from their parents first should have rights over that land. On the other hand, if it's marital property, both men and women have equal rights over their own land. However, land titles mostly only include the name of the head family (who are usually men).

Villagers who joined the discussion said that males dominate the decision-making on behalf of their families in the community level. The Women and Land Rights in Lao PDR Study of LIWG (2020, 11) presented the evident differences between the formal and customary land rights for matrilineal Lao-Tai women. Within the Lao-Tai ethnic group, women's customary inheritance rights favor women over men and youngest daughters over sons. Women are the main caregivers of elderly parents and thus have more property rights, including land rights.



¹⁰Land Law (2019). https://laolandinfo.org/wp-content/uploads/2021/05/Land-Law-2019_Eng-Unofficial-Translation.pdf

As shown in the map below, the village has changed, especially the transformation of customary land tenure practice. More people tend to turn to official documents from local government as the 'more secured recognition'.

Currently, Thongmang villagers have two types of documents that validate their land use: land use certificates and land title. Villagers shared that most of the members in this village have land use certificates and only some have land titles. Within these documents, they feel more secured over their land tenures.

From this, it illustrates that people, especially in the adult age group, recognize the customary tenure based on the inheritance practice or evidence. Since the policies and laws impact the community recognition system, people, especially in the younger generation, trend to be more based on official documents to recognize the rights of land ownership. In short, within or inside the community, the customary tenure practice is recognition. Still, in order to protect and have more security on their land tenure, they tend to secure official documents (land use certificate and land title).



Figure 1. Villagers draw village map based on their knowledge of this area

In patrilineal communities, customary private land rights favor men or sons and limit women's ownership, access to, and control over land. For these women, the stipulation of the joint ownership for husband and wife in the Land Law was a step forward in securing tenure rights for women. However, legal recognition is still important for these women as holders of communal rights over land since it is still an essential resource to ensure a family's survival.

The head village or village committee plays a vital role in deciding at the community level, including the land customary tenure recognition.

“Village head is a key. When there is issue related to village development plan, they will discuss among themselves first to make a decision. After that, they will hold a meeting to announce to villagers and gather opinions. However, the decision is already made in the structural level”, one of Thongmang villagers confirmed.

Another factor that affects customary tenure of this village is the location. Since the village is considered as a semi-urban area, its land use might be changed due to city development plans and expansion.¹¹ Additionally, transformations entailed by rapid economic developments may also influence customary tenure of the village.

5.1.2. Naom Village, Xay district, Oudomxay Province

A Khmu ethnic community, Naom village is located in Xay district of Oudomxay province. The landscape of the village is mountainous, and most of the villagers are farmers. Villagers have sustained their living by cultivating rice and crops in their rotational farming areas.

This village has precisely practiced their customary tenure for many generations. People in the villagers clearly recognized their rights on land and property inheritance from their ancestors. Like Thongmang village, the well-known recognition that considers customary tenure within the villages is through the inheritance system.

Communities have managed their land based on the resources in their village's territory such as forest areas, residential areas, agricultural areas, and water sources.

In this village, rotational shifting cultivation is a common livelihood, especially in the past. Although this traditionally served as the source of their rice, it has been increasingly applied to commercial agriculture like planting corn.

¹¹ Mayor of Vientiane Capital issued a notice to establish the new district in the capital. Vientiane authorities are planning to rezone some of 24 villages Xaythany District to be with new created district which Thongmang village is also in the list of those 24 villages. See more: <https://laotian-times.com/2021/06/24/vientiane-rezones-over-20-villages-into-new-district/>



Based on the results of the focus group discussion with villagers, Naom village is considered a patrilineal village. This is reflected in the village structure showing that almost 30 adult/young males are represented in the village, while only 3-4 adult/young females are represented. This is particularly risky for women's land rights as their representatives at the community level are limited, which could disadvantage women in the future.

5.2. Livelihoods and food security situation in communities

As defined by international standards, food security means that all people, at all times, have access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences for an active and healthy life. Food security is an important factor in maintaining necessary nutrition, especially rural areas. Proper nutrition among children provides for growth and development, both physical and mental, allowing them to avoid illness, succeed academically, and become healthy, productive adults.

The result of the two selected communities' discussion reveals that these two communities have different livelihoods based on geography and access. Thongmang village is located in the urban area and mostly relies on paddy fields and farming for food security. Most of their food is from the market, owned crops, and raised animals. Moreover, they can get some type of food from forest near by their village. Women also play essential role in managing all food activities including gathering foods and caring for the animals.



“Having permanent land tenure for doing agriculture in the long term is a key factor for determining food availability and access,” said the villagers of Thongamng, telling how important having permanent land is to them.

Most Thongmang villagers' income is from selling vegetables and the animals they raise. They are one of the key food suppliers, especially for Vientiane markets.

Based on information from the group discussion, Thongman villagers have stable income and livelihoods. As they are one of the organic farming groups in Vientiane, the primary source of income is selling crops and animals they raise. While in Naom village, most of their food sources are mainly from the forest and their own crops, including rice and NTFP.

'Land is a key factor for us to grow our own food, and raise animals. Forest is also important for us to access wild vegetable and other NTFP', stated by a group of villagers, expressing how land and forest are essential for them.

The villagers' main source of income is from selling rice, corn, and NTFP. They could not earn as much as Thongmang villagers because of the different locations, and the purpose of Naom villagers' agricultural practices, which are intended to support their food security.

Even if people from Naom village can access the forest to collect food, they are still facing hunger because food remains inadequate to feed the population. This stems from the fact that they have limited access to forest, and their commercial crop practices have negatively impacted their food security and livelihood. Worse, they did not earn more from growing corn.



Other challenges Naom villagers face include labor shortage to work on farm, and climate change.

Villagers said that more and more young people are migrating to work in the city, causing a shortage on manpower to work on their farms. Some villagers had to sell their land to address financial needs such as hospital bills and other essentials.



Climate change also affects villagers' capacity to produce their agricultural productivities both in Naom and Thongmang villages. But what is happening in Naom villagers is very concerning, especially drought and degraded land, so they have less productivity each year. Sometimes, they do not have enough food for their daily living.

'We want to be able to extend our farming areas to grow our own crop and raise animals to serve as our food source and earn income to support our family', said Naom villagers, in the hopes of extending their farming land.

5.3. The linking between customary tenure norms and livelihoods and food security in communities

Evidence from Laos shows that rural populations with lower access to or ownership of land are more likely to be food insecure and face malnutrition. Farmers interviewed in Chamberlain attribute food shortages and poverty to a lack of land for cultivation, particularly rice production. They further report that land access has decreased due to land allocation policies, village relocation and consolidation, and economic land concessions, which have created population pressures and scarcities of natural resources (Chamberlain 2007, Arnst 2010).



The case study of two communities presented above reflects an overview of the significance of customary tenure and food security on the livelihoods of the villagers. Findings from this study show that most of civilians in both villages are farmers (70-80%) even though they live in different conditions. Land remains a critical asset that influences their food security and livelihood, given that they rely on their land to grow their own crops (i.e. rice), establish their food source, and have a source of income.



However, villagers feel more insecure about their land ownership now because they do not have land documents that validate their land use rights (especially in Naom village). This limitation of land use also force some villagers who have less land to work as laborers in order to financially support their family.

The study also found that there are no proper land use planning in these selected communities that can help villagers secure their land use rights. The agricultural transformation also has impacts on the use of their land. Currently, villagers feel insecure about their land tenure recognition without having access to official land documents (like land use certificate or land title) to be more confident to practice their agricultural cultivation.

However, Kenney-Lazar, M. recommends that it's important to improve land tenure security in rural areas through multi-pronged strategies, promoting land registration, recognizing non-formal or customary land tenure systems, and zoning agricultural land use areas (Kenney-Lazar, M. 2016).

One observation from this study is that most villagers do not have access to legal information (especially laws) that are pivotal to protecting their rights. Based on the information gathered from the selected communities, many did not know what rights they have according to the law and what they can do when encountering conflicts on land.



Recommendations

6.1. Best Practices

In Laos, there are only a few cases of communal land titling to improve the tenure security of local communities. One of them was for five villages (2,189 hectares) in Sangthong district near the capital Vientiane, which aimed to conserve bamboo forests for handicraft production. However, there is a lack of clear guidelines for the government to transform the legal definition of communal land into actual land-use certificates. This has been cited as one reason for the lack of scaling up (Schneider, 2014; GIZ 2015).



All respondents in Schneider's research in Sangthong reported satisfaction with the communal title, including that tenure security had been enhanced due to the clarity of boundaries and protection from outsiders. This was even though most villagers did not harvest the bamboo resource since they had sufficient resources on their own land. Given this, scaling up communal land title remains challenging.

One of the key informants shared that it's important to continue to capture good practices of communities. This can help strengthen their tenure security. At the same time, it could aid in getting recognition from the government, which can be at different levels.

Civil society organizations and development partners in Laos have launched many efforts for awareness raising despite the existing challenges in customary land right recognition. They have been advocating and working to support local communities for their customary land rights recognition by raising awareness regarding these issues.

One of them is through legal awareness activities such as the Land Information Working Group (LIWG), a civil society network working on land issues in Laos. It developed a Legal Calendar¹³ on land and natural resources that have been widely used in whole countries through its members and partners, especially in the rural communities, to raise awareness on legal rights on land and natural resources that communities have. Another initiative is a Land learning Initiative for Food security Enhancement (LIFE) Project¹⁴, a unique capacity building initiative improving awareness, legal knowledge and capacities to enhance land tenure security. LIFE project also delivers practical and innovative training on land rights to civil society organizations, government counterpart and communities.

The practical legal awareness raising is one of the key pathways that will help local communities protect their customary land rights. Despite the need for improvements in the legal context related on customary tenure, the existing legalities could be a safeguard for communities to protect their rights. More improvements are still needed in terms of legal contexts on customary tenure recognition in the policy level and awareness-raising among communities so that it can be reflected to law and policy implementation.

Civil society organizations and development partners play an important role in providing capacity building, policy improvement, and legal awareness at the community level. Based on the results of the study, access to legal information, especially laws, is very limited for communities in rural areas, which limits their capability to protect their land rights when amidst land conflicts.

¹³Legal Calendar is a raising awareness tool that have been developed by LIWG members together with government partners aiming to disseminate legal knowledge to rural communities on land rights. <https://laolandinfo.org/en/category/resource/legal-calendar/>

¹⁴LIFE project was launched in 2014 to address these shortcomings in land policy and its implementation, and the consequent missed opportunities for Lao farmers. LIFE was established by a broad coalition of civil society organizations (CSOs) that are members of the Land Information Working Group (LIWG). The project is hosted by Village Focus International (VFI) and implemented by a consortium of partners. <https://laolandinfo.org/en/category/life/>



6.2. Policy options for enhancing customary tenure recognition and livelihoods and food security

Based upon the research conducted, recommendations are made based on community's voices and suggestions from key informants for enhancing CT recognition and livelihoods and food security in Laos.

- There is a need to define rights under article 130 (customary Acquisition of Customary Land Use Rights) of Land Law 2019, especially for the rotational shifting cultivation practice. It's important because most people living mainly in rural areas still follow their customary land rights. It's also important for this article to specify how their land titling registration will be implemented and what elements to consider in the process, especially their cultural belief and way of their customary tenure practice. There is also a need to define the specific period of time to prove customary tenure rights because this varies in terms of locations and practices.
- There is a need for public awareness-raising regarding the Land Law and Forestry Law at local and community levels. In this way, it can help villagers protect their rights and can help villagers feel more secure on the land they own.
- For civil society organizations and development partners, it's essential to continue to engage in capacity building and training for government officials at all levels and in other sectors concerning the interlink between land tenure security and food security that can enhance the food security achievement in the policy and practical level.
- It's needed for better coordination among government agencies responsible for land and agricultural tasks at the central and local levels is needed. Villagers from selected communities also highly recommended this, especially among local authorities because this is one of the key aspects that will help better land use management and communication to villagers, especially during conflict situations they face.



- The practice of national commitments (VGGTs, RAI, FPIC and SDGs) must be strengthened to be more practical. This can be done by focusing on what level can be prioritized and what should move forward. It is imperative to capture what they can do in the Laos context and what needs to be improved or adjusted to ensure they align with domestic laws and policies. The capacities building on those national commitments are still needed. But more importantly, the real practice should be more focused and more organized on the levels of those commitments that can be done within specific timeframes; otherwise, it will be like pouring water in the sand. The process has to be inclusive and participatory in each level of implementation.

- Enhance and broaden advocacy efforts to strengthen access to legal information and knowledge. The advocacy should also look at regional and international opportunities. NGO staff working in Laos also suggested that it is important to use many channels for advocacy. One of these is through the Universal Periodic Review (UPR) and other international mechanisms which can help to call international attention to push Lao government to be more transparent and consider recommendations from civil society for ensuring community rights on land are protected and respected. Although it's not a very effective approach, it helps bring attention to broader groups, especially international donors that can push the government to take action or follow recommendations.



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