



# The Importance of Customary Tenure Recognition for Food Security and Sustainable Livelihood Generation in the Mekong Region

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## Research Objectives and Methodology

### Objectives of the Study

The study looks at practices of customary tenure vis-à-vis statutory tenure regimes which have impacted on the ability of select communities in forest areas to secure food and make a living in the CLMV (Cambodia, Laos, Myanmar and Viet Nam) aggrupation.

Its objective is to build the case for upholding customary tenure as a key part of sustainable livelihood development and food security in the Mekong region. Because the CLMV belongs to the broader Association of Southeast Asian Nations (ASEAN), policies in as well as the situation of other member states from this regional bloc are also considered.

### Methodology

The paper gathered data through desk research, key informant interviews (KIs), and focus group discussions (FGDs) held in Cambodia, Laos, Viet Nam, and Myanmar. To ensure the comparability of data across countries, a common GD instrument was developed for the research, in close coordination with the country teams via Zoom consultations. A series of online consultations was also conducted to orient the researchers regarding the use of the instrument, as well as to discuss the results of the country research. Data from the GD were also used for country case studies.

A total of ten case studies across the four countries were conducted for this report. Due to the limitations posed by the pandemic, the researchers adopted a hybrid approach involving online and face-to-face information gathering techniques.

The Asian Farmers' Association worked with several organizations in developing this report, namely: Farmer and Nature Net (FNN) in Cambodia, Consultative Institute for Socio-economic Development of Rural and Mountainous Areas (CISDOMA) in Viet Nam, Lao Farmer Network (LFN) in Laos PDR, and Myanmar Environment Rehabilitation-conservation Network (MERN).



## Executive Summary

Southeast Asia's extensive forest cover is a critical source of food and livelihood for approximately 140 million people, particularly for indigenous peoples and ethnic minorities. Forest areas-where customary tenure predominantly shapes and defines how communities manage land and other re-sources, including the way community members collect and produce food and earn income to meet their families' needs-account for a significant percentage of land areas of countries in the region.

Country reports on customary tenure in the context of food security and livelihoods were undertaken in Cambodia, Laos, Viet Nam, and Myanmar, to provide evidence for upholding customary tenure as a key part of sustainable livelihood development and food security in the Mekong region. These countries form the CLMV, a smaller aggrupation within the broader Association of Southeast Asian Nations (ASEAN).

Several key themes emerged from the country reports, as follows:

Customary tenure is essential to the food security and livelihoods of communities. The main source of food and incomes of communities-rice and vegetable production, livestock and poultry raising, fishing, as well as the gathering and selling of non-timber forest products -are firmly rooted in the use of natural resources that can be found within their customary lands and forests. Any challenge to their use of their customary domain poses risk to their ability to produce food and generate income to meet their needs. Current policies on lands and forests do not sufficiently capture customary tenure as practiced by communities, and fail to adequately recognize and formalize customary tenure rights.

The process of securing titles is not accessible to many communities. The process of securing these documents, especially land titles, are long complicated and costly, making it inaccessible to many communities and community members. Moreover, most laws provide for the granting of individual or household certificates, instead of collective user rights or titles. The granting of individual titles changes the dynamics of customary tenure, which is mainly based on a community's collective stewardship over lands, forests and the ecosystem in which they live.



Observing free, prior and informed consent (FPIC) policies essential to protecting customary tenure, food security, and livelihoods. The principle of free, prior and informed consent ensures that indigenous peoples have a voice over projects that will impact them. However, although FPIC is well recognized and accepted, it is not always implemented. The implementation of FPIC helps ensure continued protection of customary tenure as well as of community's food security and livelihoods.

Environmental services are made possible by secure customary tenure. Communities perform environmental services that are vital to protecting forests and the environment. These services include environmental monitoring, reforestation and the protection and promotion of biodiversity, among others. Social forestry, ecotourism, and the payment for forest environment services are just some of the approaches that build on communities' close relationship with the environment.

Organized communities, supported by allies, are in a better position to advocate with the government, the private sector, and other stakeholders, resulting in the improved ability to safeguard their community tenure and promote food security and livelihoods.

The rich diversity of practices and norms comprising customary tenure across Southeast Asia preclude a rigid one-size-fits-all set of rules on the same. Below are specific recommendations on how to support customary tenure recognition in the context of food security and sustainable livelihoods in the region:

1. Mainstream customary tenure in national and regional policy on food security and livelihoods. This entails reviewing relevant national regional plans so that these include customary tenure recognition as part of these plans' goals and strategic thrusts.
2. Promote livelihood strategies that build on and enhance the natural linkage between customary tenure, food security and livelihoods. Social forestry, ecotourism and payment for environmental services, are some of the livelihood strategies that enable communities to uphold customary tenure, while allowing them to meet their food security and livelihoods objectives.





3. Ensure that existing and future ASEAN guidelines on international commitments (SDGs, VGGTs, etc.) include concrete commitments on customary tenure recognition. This will enable ASEAN and ASEAN Member states to implement these global instruments while supporting communities in the region in maintaining their rights over customary lands and forests, produce food and earn income, while taking care of the environment.

4. Support and work with communities in shaping, claiming and leveraging policies on customary tenure recognition. Ultimately, the successful adoption and implementation of customary tenure rights will depend largely on communities' ability to advocate for and claim these policies. A critical part of building this capacity involves raising awareness within and outside the community regarding laws and policies on customary tenure.

5. Strengthen communities to become partners in climate change adaptation and mitigation programs and policies, ultimately to promote environmental sustainability. The protection of communities' customary rights over lands and forests should be embedded in ASEAN and CLMV strategies on climate change and environmental protection.

In sum, upholding communities' customary tenure helps to support their sustainable livelihoods and food security. Many communities with customary tenure typically maintain what is viewed as environmental conservation, safeguarding and providing ecosystem services for society in general. Communities have a better chance at upholding their customary tenure when they are organized and enjoy support from civil society actors.



## Overview

For many communities across Southeast Asia, food security, sustainable livelihood generation, and customary tenure are inextricably intertwined. Forest areas-where customary tenure predominantly shapes and defines how communities manage land and other resources, including the way community members, collect and produce food and earn income to meet their families' needs-account for a significant percentage of land areas of countries in the region. In the Cambodia, Laos, Myanmar and Viet Nam (CLMV) aggrupation, forest areas constitute 81.3% in Lao PDR, and 53.6% in Cambodia, of the total land area, while close to half of total lands in Myanmar (44.5%) and in Viet Nam (47.6%) are forest.<sup>1</sup> In the Association of Southeast Asian Nations (ASEAN), member countries' average percentage share of forest lands to total lands is at 49.9%.<sup>2</sup>

Southeast Asia's extensive forest cover is a critical source of food and livelihoods for millions of people, particularly for indigenous communities and ethnic minorities. Approximately 140 million in Southeast Asia depend on forests for their livelihoods.<sup>3</sup> In forest areas, communities plant grains and vegetables, gather fruits and herbs and raise poultry and livestock to meet their food needs.

They catch fish from inland water systems and wild animals to supplement their diet. Families earn income by collecting and selling various non-timber forest products such as honey and herbs and by bringing some of their excess produce to the market. They make and sell various products and handicrafts from materials found in forests. Some communities are slowly but successfully venturing into ecotourism. If managed well and in a sustainable manner, ecotourism offers opportunities for communities to earn income and raise awareness regarding the importance of forests and the need for environmental sustainability while sharing their culture and traditions with others outside their community.

Customary tenure arrangements are the norm in many forest areas across the region and serve as the basis for communities' right to use lands and other resources within their domain. Customary tenure refers to "a set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources."<sup>4</sup> It is typically "associated with indigenous communities and administered in accordance with their customs, as opposed to statutory tenure usually introduced during the colonial period."<sup>5</sup>



<sup>1</sup> Association of Southeast Asian Nations. (2018). ASEAN statistical yearbook 2018. <https://www.aseanstats.org/wp-content/uploads/2019/01/asyb-2018.pdf>

<sup>2</sup> Association of Southeast Asian Nations. (2018). ASEAN statistical yearbook 2018. <https://www.aseanstats.org/wp-content/uploads/2019/01/asyb-2018.pdf>

<sup>3</sup> Regional Community Forestry Training Center for Asia and the Pacific. (2021).

<sup>4</sup> Tenure and social forestry in ASEAN member states: status, analysis and recommendations. <https://www.refcoftc.org/publications/0000387>

Freudenberger, Mark. (2013, 13 July). The future of customary tenure. Landlinks. <https://land-links.org/issue-brief/the-future-of-customary-tenure/>

<sup>5</sup> Food and Agriculture Organization of the United Nations. (2002). Land tenure and rural development. FAO Land tenure studies, 3. <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>.

It is the social, cultural, and economic backbone that underpins communities' rights and capabilities to leverage various resources - lands, forests, inland bodies of water, indigenous knowledge to meet their food security and livelihood objectives.

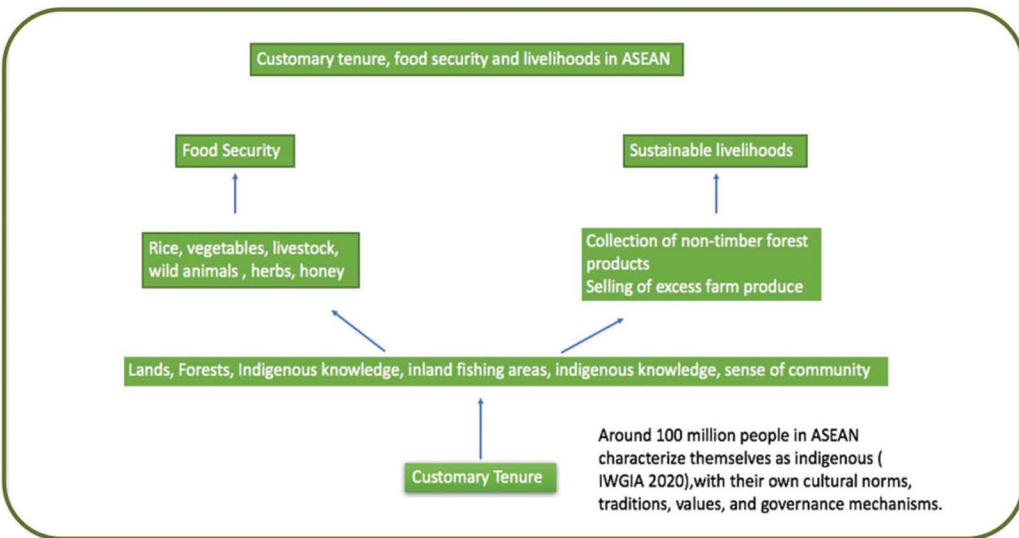


Figure 1: Customary tenure, food security, and livelihoods in ASEAN

Indeed, the close interlinkages between customary tenure, food security, and sustainable livelihood activities are common threads that run through all indigenous communities in Southeast Asia. Like parts of a richly woven tapestry, the characteristics of these interlinkages vary, in response to local contexts and influences, but all are deeply connected to the narrative of the close interdependence between communities and their environment. We see examples of this narrative all over the region. which will be discussed in the country report findings.



However, customary tenure is giving way to statutory tenure regimes across CLMV as well as the ASEAN. The main rationale behind initiatives to transform customary tenure to legally binding statutory instruments, such as titles and user rights, is that this will provide communities with greater security with respect to the possession, control and management of ancestral lands. However, the experience of communities across the region indicates that this is not always the case. In fact, there are assertions that, in some cases, the formalization of customary tenure such as through the issuance of titles and other instruments may actually weaken the system of customary rights.<sup>6</sup>

Securing titles and other formal instruments of customary tenure recognition requires resources such as funds, network and knowledge of titling procedures. As discussed earlier, this serves as major barriers for communities that do not have the wherewithal to successfully negotiate this process. In this context, titling may serve to exacerbate inequality within and across communities.

Additionally, titling can also serve to prejudice other communities that are excluded and already discriminated against in existing customary laws. The issuance of titles, especially if given to individual community members or households, also raises the possibility of these being sold to interested companies or other outsiders. Unfortunately, communities that are confronted with challenges brought about by climate change, the loss of livelihoods due to the displacement brought about by increasing food imports, and limited support from the government, are vulnerable to investors' offers to buy land. This will have lasting repercussions on customary tenure, and on communities' food security, livelihoods, and way of life. This also means displacing communities that take care of the region's forests, which will have a lasting impact on the environment and on society as well.

The fact that CLMV, as well as most ASEAN Member States, have policies relating to customary tenure reflects, but does not adequately capture, the long-standing prevalence and significance of customary tenure in the region. The effectiveness of these policies varies widely across and within countries depending on a host of factors, such as policy coherence, implementation issues, and different priorities on land use allocation in light of the increasing demand for land. Informal customary tenure recognition is threatened by large-scale development projects, which displace communities and negatively impact their way of life, sustainable livelihoods and food security.

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<sup>6</sup> Mekong Land Research Forum. (2015 & 2020). Land rights recognition/ formalization/ titling/ collective tenure.



## Key Finding from Country Reports

County reports on customary tenure in the context of food security and livelihoods were undertaken in Cambodia, Laos, Viet Nam and Myanmar. Several key themes emerged from the country reports, which expound on the relationship between community tenure and statutory tenure regimes in the CLMV as well as the ASEAN. This section lists and expounds on these themes, situates them in larger contexts, and cites specific case studies to buttress the assertions under the themes.

### 1 Customary tenure is essential to the food security and livelihoods of communities

The main source of food and incomes of communities in CLMV, in particular, and in Southeast Asia, in general-rice and vegetable production, livestock and poultry raising, fishing, as well as the gathering and selling of non-timber forest products- is firmly rooted in the use of natural resources within their customary lands and forests. Hence, any challenge to their use of their customary domain poses risk to their ability to produce food and generate income to meet their needs.

The country reports provide a profile of select communities which typify livelihood and food security arrangements in CLMV as in other Southeast Asian countries. The following are snapshots of these arrangements, which will be described in more detail in subsequent case studies in the report.

In Viet Nam, the Ma Lieng people in the Quang Bing province earn income by processing and selling bamboo shoots that they gather from the forests.<sup>7</sup> As a community, the Ma Lien people are deeply committed to caring for the forests, with forest conservation playing a key theme in their cultural traditions and norms.<sup>8</sup> The Kade kadut in Myanmar make a living from growing rubber and betel nut, and engage in fishing and gathering non-timber forest products. And in Laos, a community in the Xaythany district grows rice and vegetables, gathers non-timber forest products, and raises livestock- for subsistence as for selling to the market. A community in the Kbal Romes vil-lage, in Stung Tren, Cambodia, maintains farmlands from which they secure their food and crops they sell in the city proper.

<sup>7</sup> CISDOMA. (2021). Viet Nam Country Report: 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.

<sup>8</sup> CISDOMA. (2021). Viet Nam Country Report: 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.



In Indonesia, the people in Wae Rebo village in Flores Islands embarked on community-based ecotourism as an innovative approach to create livelihoods for community members while sharing their knowledge of their environment with visitors who are eager to reconnect with nature.<sup>9</sup> The Igorot, the indigenous peoples in the northern Philippines, serve as environmental stewards of the Cordillera mountains, producing traditional rice and conserving heirloom seeds. In all these cases, customary tenure provides the critical social, cultural and economic architecture for communities to produce food and earn income, while caring for the environment.

### **QUICK GLANCE: Losing customary lands in Indonesia and Malaysia**

In Indonesia and Malaysia - two countries which account for 84% of global palm oil supply' - many communities have lost their customary lands and forests as a result of not having secure tenure, due to large scale expansion of palm oil plantations.' In Indonesia, the Human Rights Watch documented the case of two indigenous groups, the Iban Dayak in Jagon the West Kalimantan province, and the Orange Rimba in the Sarolangan regency of Jambi province in Sumatra.' The forests which were part of their customary forests were cleared and converted into palm oil plantations. They could no longer forage in the forests for foods as well as for materials essential to their livelihoods, such as leaves that they use to weave into mats and baskets, and gum resin for crafting lamps and other products. They were left with little land to cultivate food crops, and they observed the decline in fish populations in their inland water sources after the establishment of the plantations.

### **Food Security**

Achieving zero hunger is an important economic, social and political objective of ASEAN and its Member States. While there has been much improvement in addressing hunger in Southeast Asia over the last decade, food insecurity continues to be a critical development challenge for countries in the region. In 2019, the Global Hunger Organization, using four indicators (undernourishment, child wasting child stunting and child mortality) reported that hunger remains a serious problem for Myanmar, Lao PDR, Cambodia, Philippines and Indonesia. Malaysia, Viet Nam and Thailand were reported as having moderate hunger.<sup>10</sup>

<sup>9</sup> Sara Hucal. (2018, 6 August). An indigenous village navigates its ecotourism success. Mongabay News. <https://news.mongabay.com/2018/08/an-indigenous-village-navigates-its-ecotourism-success/>

<sup>10</sup> The ASEAN Post Staff. (2019, 7 December). ASEAN's children are still hungry. The ASEAN Post. <https://theaseanpost.com/article/aseans-children-are-still-hungry>



The Covid-19 pandemic exacerbated hunger in the region. At the height of the health crisis, the prevalence of undernourishment in Southeast rose from 7% in 2019 to 7.3% in 2020.<sup>11</sup> The ranks of undernourished people increased to close to 3 million, from 46 million in 2019 to 48.8 million to 2020.<sup>12</sup> Additionally, the number of moderately and severely food insecure grew by 14.5 million people, from 111 million in 2019 to 125.5 million people in 2020.<sup>13</sup> Indigenous communities and ethnic minorities are not spared. Government imposed lockdowns to prevent the spread of the diseases limited their movement, including their ability to attend to their farms and to bring their produce and other goods to the market. For many of these communities the challenge of food insecurity is further heightened by the fact that they have little access to health care facilities.

The changing diets and lifestyles in many Southeast Asian countries are also creating a host of nutrition and health problems. Obesity is on the rise, as well as the incidence of diseases such as diabetes, heart and kidney diseases, hypertension, among others. Cases of overweight and obesity rose in Indonesia from 15% in 1990 to 26% in 2013, while it grew from 21% to 36% for the same period in Thailand; similar rapid increases can be observed in Cambodia, Philippines, and Viet Nam.<sup>14</sup> These changes place a heavy burden on countries' health care system, especially during the Covid-19 pandemic when nutrition related problems and comorbidities became highly vulnerable to the severe effects of Covid-19 infections. These changes can be attributed to the loss of customarily claims land area and capacity to utilize said land productively; shift from traditional subsistence farming and historic consumption patterns to increased production of cash crops, and increased land investment and coinciding employment opportunities (or necessities).

Communities have, over time, in many ways lost control over their time, using the income from working in plantations to buy food that is convenient and less time-consuming to prepare and consume. The growing awareness of the need to go back to traditional food that is produced and prepared in a sustainable manner, provides us with some hope that this can be reversed by slow food and locavore movements are gaining attention, emphasizes that communities' unique and special contribution to food security is dependent on the strength of governments' recognition of customary tenure, particularly of communities' right to use the lands, forests, and resources to produce food that is healthy and grown in a sustainable manner.



<sup>11</sup> Food and Agriculture Organization of the United Nations. (2021). The State of food security and nutrition in the world 2021. [https://www.fao.org/3/cb4474en/online/cb4474en.html#chapter-2\\_1](https://www.fao.org/3/cb4474en/online/cb4474en.html#chapter-2_1)

<sup>12</sup> Food and Agriculture Organization of the United Nations. (2021). The state of food security and nutrition in the world 2021. [https://www.fao.org/3/cb4474en/online/cb4474en.html#chapter-2\\_1](https://www.fao.org/3/cb4474en/online/cb4474en.html#chapter-2_1)

<sup>13</sup> Food and Agriculture Organization of the United Nations. (2021). The state of food security and nutrition in the world 2021. [https://www.fao.org/3/cb4474en/online/cb4474en.html#chapter-2\\_1\\_1](https://www.fao.org/3/cb4474en/online/cb4474en.html#chapter-2_1_1)

<sup>14</sup> The Asian Development Bank. (2017). The imminent obesity crisis in Asia and the Pacific: First cost estimates. <https://www.adb.org/sites/default/files/publication/320411/adbi-wp743.pdf>

## Government strategies for food security

Like many countries around the world, the strategies of ASEAN Member States, including CLMV, to achieve food security revolve generally around two main goals - improving food availability and accessibility. Enhancing food availability involves ensuring a sufficient supply of food to meet the needs of the population. This can be achieved by increasing domestic food production, and/or by allowing food imports. On the other hand, improving people's access can be realized by keeping food prices down, and/or by improving peoples income. In recent years, there has been renewed interest in nutrition and food safety as governments realize that availability and accessibility are not sufficient metrics to measure and address hunger. As we will see in the latter part of this section, these policies have far-reaching impacts on peoples' diet, nutrition, food culture, and livelihoods. For many indigenous communities and ethnic minorities, these affect customary tenure, and their food security as well.

Increasing food production is a core and common component in the food security and food self-sufficiency strategies of ASEAN Member States. The OECD observed that almost all ASEAN countries have some articulation of self-sufficiency policies and/or targets in key food products.<sup>15</sup>

However, even though most ASEAN Member States have an expressed commitment to increase domestic food production in order to support their respective food security and self-sufficiency objectives, this exists alongside commitments to liberalize food trade.

Various studies have documented the devastating impacts of the entry of low priced imported food products on the livelihoods of small farmers and food producers. The inflow of imported food generally dampens prices and demand for products from local producers, effectively crowding them out from the market. Communities with strong customary tenure are able to produce their own food and are relatively shielded from fluctuations in food prices and supply if they are able to produce enough to be self-sufficient. To cope with the negative impacts of trade liberalization, they engage in a diverse set of income-generating activities, from selling produce or other products sourced from forests to creating handicrafts, to running micro businesses or seeking employment as waged, daily laborers.



<sup>15</sup> OECD-Food and Agriculture Organization of the United Nations. (2017). Agricultural outlook 2017-2026: Southeast Asia: Prospects and challenges. DOI: [https://doi.org/10.1787/agr\\_outlook-2017-en](https://doi.org/10.1787/agr_outlook-2017-en)



In theory, trade liberalization policies, particularly the opening up of markets to food imports are envisioned to help lower food prices and provide people with a more affordable, more accessible, and wider range of food choices. However, imperfections in markets, such as collusion among traders and asymmetry in information, among others, enable importers and traders to manipulate food supply and prices.

Many governments sought to create employment opportunities in rural areas by encouraging private sector investments in agriculture. The ASEAN, for example, aims to "promote investment in food, agriculture and forestry in the ASEAN region that contributes to regional economic development, food and nutrition security, food safety and equitable benefits, as well as the sustainable use of natural resources." <sup>16</sup>

But the "liberalization of the food and agricultural trade has made millions increasingly dependent on global food supply chains dominated by TNCs, agro-industrial and agritech firms, and food retail giants." <sup>17</sup>

This has given rise to agro-industrialization as companies converted thousands of hectares of lands and forests in customarily claimed areas, into large-scale plantations dedicated to producing and processing commodities for the export market, such as palm oil, bananas, pineapples, coffee, tea, among others. The advent of the massive plantations changed livelihood profiles and food culture in rural communities across Southeast Asia. It has transformed food producers into food buyers.

### Food security frameworks and community tenure

Food security is an important focus of regional cooperation in ASEAN. In 2009, the regional body adopted the ASEAN Integrated Food Security Framework (AIFS) for 2009-2013. The AIFS was launched a year after the rice crisis of 2007-2008 <sup>18</sup>, when world rice prices rose sharply, making the staple grain inaccessible to many families in the region, especially in net rice importing countries like the Philippines. The rice price crisis exposed the need for closer regional cooperation on food security within ASEAN, where members include some of the world's biggest producers, exporters, and importers of the staple grain. It also underscored the need to prioritize food security as a key goal for the regional body.

<sup>16</sup> ASEAN, Grow Asia, IIED, SDC and World Bank. (2019). ASEAN guidelines for responsible investment in food, agriculture and forestry. <https://www.iisd.org/publications/guide/asean-guidelines-responsible-investment-food-agriculture-and-forestry>

<sup>17</sup> Martinez, B. and Baladad, R. (2022, 13 September). Southeast Asia and South Asia in the grip of a food crisis. Focus on the Global South. <https://focusweb.org/southeast-asia-and-south-asia-in-the-grip-of-the-food-crisis/>

<sup>18</sup> Association of Southeast Asian Nations. (n.d.). ASEAN integrated food security framework and strategic plan of action on food security in the ASEAN region (2009-2013). <https://asean.org/wp-content/uploads/images/archive/22338.pdf>



Food security exists when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences for an active and healthy life. (World Food Summit, 1996).<sup>19</sup>

Analyzing the AIFS-SPA 2009-2013 and AIFS-SPA 2015-2020 in the context of the close linkage between customary tenure and food security in Southeast Asia reveals three key insights.

First, strategies to eliminate hunger and promote food security can only be holistic if these cover interventions aimed at securing communities' access to lands and forests and other resources that enable them to gather, produce and buy safe and nutritious food.

Second, achieving food stability, which is a key objective in the framework, requires the robust recognition of communities' customary tenure. For millions of the indigenous, ethnic minorities and local communities across Southeast Asia, ensuring food stability is very much connected to the recognition of their rights over lands and resources which enables them to produce food. The 2008 rice price crisis showed that over-dependence on food imports increases vulnerability to international food price and supply fluctuations. Although there are exceptions, communities that have their rights over customary tenure systems and lands have greater control over food access and availability, as they are able to use the lands, forests, and other productive resources under their care to meet their food needs.

In Cambodia, members of the Bunong community from the Stung Treng province enjoy a healthy diet consisting of rice, vegetables, and meat from chicken and other domestic poultry which they themselves as raised, as well as from wild animals from the forests. They eat three times and have not experienced hunger. They consider themselves self-sufficient when it comes to food because they are able to tap the lands, forests, and resources covered by their customary tenure to produce food for their communities.<sup>20</sup>

Following the food crisis of 2008, calls for food self-sufficiency and food sovereignty gained traction throughout the region. Today, threats to global supply chains and food distribution lines brought about by climate change, disasters and the recent Covid-19 pandemic further underscore the need to strengthen domestic food production and local food sources.



<sup>19</sup> Food and Agriculture Organization of the United Nations. (n.d.). Food security information for action. <https://www.fao.org/3/al936e/al936e00.pdf>  
<sup>20</sup> FNN. (2021). FGD Results: Cambodia case studies.

Locavore movements, which encourage people to eat food that are grown locally and in a sustainable manner, mirror the principles and values that characterize ethnic minorities' food culture, which have prevailed for countless generations. Apart from ensuring that communities have access to nutritious food, this culture supports climate change mitigation as it contributes to the reduction of greenhouse gas emissions generated from transporting food across the world.

Finally, the framework highlighted the negative impact of unregulated land investments on peoples' customary tenure, food security and livelihoods. It acknowledged the increasing pressures on food production, including the conversion of agricultural lands, urbanization and migration of labor from rural areas.<sup>21</sup> All across the region, there are many documented cases of communities being displaced from their ancestral lands, which are converted into agricultural plantations or used for development projects such as dams. Examples from Indonesia demonstrate the vulnerability of communities who lack security tenure and direct impacts on food supply and nutrition. Emphasizing the importance of ensuring that national and regional strategies aimed at achieving food security integrate strategies for strengthening formal and informal customary tenure recognition.

### Sustainable Livelihoods

Agriculture, which covers farming, fishing, and forestry, is the most important source of livelihood of people in Southeast Asia. It accounts for a significant percentage of employment in Lao PDR (72%), Cambodia (55%), Myanmar (50%), and Viet Nam (42%).<sup>22</sup> Many of the region's poor are in the sector, making it a significant focus for national and regional initiatives to expand and improve livelihoods in order to address poverty.

**QUICK GLANCE :** In Viet Nam, where 53 ethnic minority groups account for 14.6% of the total population, the Vietnamese government has adopted the Master Plan for the Socio-economic Development in the Ethnic Minorities and Mountainous Areas for 2021-2030. The master plan aims to reduce the gap in the standard of living between ethnic minorities, and national averages. It provides for the allocation of public investments in essential and other services such as housing, infrastructure, education, healthcare, vocational training among others. One of its main strategies to achieve this goal is to promote sustainable livelihood development and to improve the incomes among ethnic minority groups.

<sup>21</sup> Association of Southeast Asian Nations. (n.d.). ASEAN integrated food security framework and strategic plan of action on food security in the ASEAN region (2015-2020). [https://www.asean-agrifood.org/?wpfb\\_dl=58](https://www.asean-agrifood.org/?wpfb_dl=58)

<sup>22</sup> Food and Agriculture Organization. (2020). Southeast Asian nations examine the state of food systems to ensure recovery and resilience in a post-COVID-19 era. <https://www.fao.org/asiapacific/news/detail-events/en/c/1295300/>



The livelihood strategies of most individual ASEAN Member States reflect the same policy contour as that of ASEAN as a regional aggragation there is an expressed support for communities in customary lands and forests and for social forestry. However, this is linked to or predicated on a strong push to attract investments and increase revenues from the export of key agricultural prod-ucts, which are not in sync with sustainable livelihoods of communities. Social forestry is the most relevant policy handle and start- ing point for discussing livelihoods and customary tenure in the region. It is broadly defined as "the management of forests by local communities to achieve different environmental social and development goals, including climate change mitigation and adaptation, food security, nutrition and livelihood support.<sup>23</sup> The fact that close to half of the region's total area is forests underscores the importance and the potential of social forestry initiatives to support many of ASEAN's goals.

The priorities of ASEAN Member States on social forestry can generally be grouped into three:

1. leveraging social forestry principles to address climate change and other environmental issues;
2. supporting communities, particularly in terms of capacity building, livelihoods development, and poverty alleviation; and
3. Institutionalizing social forestry through integration in policies, research, and development, establishing networks, among others. By working closely with involved communities and stakeholders, ASEAN Member States hold the potential to transform these priorities into concrete programs and activities that benefit communities and the environment.

Additionally, some countries in the CLMV regional bloc, especially those with many indigenous groups and ethnic minorities, have a wide range of initiatives aimed at supporting the livelihoods of communities in areas under customary tenure. Yet it is also understood that increased private and public sector investments in agriculture, forestry and other sectors, such as mining and energy, has been championed as a mechanism to increase income and livelihood opportunities for communities in rural areas.

On the one hand, social forestry supports and enhances communities' contribution to food se- curity, sustainable livelihoods, climate change mitigation and adaptation, biodiversity, and other environmental sustainability objectives.



<sup>23</sup> Center for International Forestry Research (n.d.). Social forestry, REDD+ and livelihoods. <https://www2.cifor.org/asfcc/about/social-forestry-redd-livelihoods/>

On the other hand, the aggressive drive to attract land and forest investments and to produce a small group of products for the global markets clearing away forests and pushing community members to work in plantations where wages and labor conditions are not optimal. It emphasizes the importance of policy cohesion and complementarity, especially when it comes to interventions that will have long-term impacts on communities and on ecosystems. Finally, it demonstrates the danger of how some livelihood strategies can disempower people from their community, their natural environment, and their way of life.

### Proposals for promoting customary tenure in sustainable livelihoods

Apart from enabling communities to meet their basic needs, livelihoods are considered sustainable if they allow people to "cope with and recover from stresses and shocks and maintain or enhance (their) capabilities and assets both now and in the future, while not undermining the natural resource base."<sup>24</sup> Based on this definition, promoting sustainable livelihoods goes beyond merely creating employment opportunities for communities. Noting the current challenges and context confronting communities in customary lands and forests, and drawing from the results of the country case studies, several themes are emerging as essential components for a sustainable livelihood strategy, in the context of customary tenure and food security.

Customary tenure systems are at the heart of sustainable livelihood strategies. Customary tenure is deeply embedded in the social, cultural, and economic way of life of people in the region.

This is, to a large extent, due to the fact that close to half of the region's total land areas are forests where customary tenure is the norm.

Communities taking the lead. By working with communities and ensuring that they take the lead in developing food security and livelihood strategies and programs, governments, development organizations and civil society groups can help ensure that interventions in the region's vast forest areas are able to leverage and preserve indigenous knowledge, systems and practices (IKSPs), including indigenous food systems and agroecological practices.



<sup>24</sup> Department for International Development. (2001) Sustainable livelihoods guidance sheets [Fact sheet]. <https://www.livelihoodscentre.org/documents/114097690/114438878/Sustainable+livelihoods+guidance+sheets.pdf>

Integration of climate change adaptation measures particularly ecosystem based adaptation. Extreme weather events brought about by changing climate patterns are creating new levels of challenges that undermine communities' capacity to produce food and earn income. In order to be sustainable, livelihood strategies need to be climate proofed. This entails working closely with communities in developing climate change adaptation strategies and activities that respond to their particular needs, and are especially attuned to their specific environment. Examples of adaptation activities in communities are the development of early warning systems to enable communities to prepare for storms and droughts, setting up natural water catchment facilities, or creating a place where they can safely store seeds and seedlings during typhoons, among others.

Supporting communities' contribution to climate change mitigation and environmental sustainability. In a world made more vulnerable by climate change and other environmental disasters, the livelihood activities of communities in areas covered by customary tenure contributes to climate change mitigation and environmental sustainability. Communities' activities to collect and produce food, and to earn income from the sale of non-timber forest products are closely intertwined with the performance of essential environmental services. Instead of creating livelihood opportunities outside customary areas, government support for existing community livelihoods can form part of national interventions on climate change mitigation, reforestation, biodiversity promotion, environmental surveillance, and other similar programs.

Support services that respond to specific needs of communities. Expanding the delivery of support services to reach more communities, including indigenous people, ethnic minorities, and communities in forested areas will help promote sustainable livelihoods. It is important that support programs are not formulated through a top-down, one size fits all approach, but designed and developed with communities using their indigenous knowledge and their familiarity with their specific environment.



Meeting multiple objectives. Sustainable livelihood practices enable communities to earn income while continuing to take care of the environment. As mentioned previously, new livelihood initiatives like ecotourism, if handled well and in a sustainable manner, allow communities to meet these objectives, while also helping increase people's awareness about the need to take care of the environment.

## 2 Current policies on lands and forests do not sufficiently capture customary tenure as practiced by communities

### **Myanmar: Environmental conservation at the expense of communities' customary tenure**

The Kade kadut community and the impact of government's forest protection programs on their customary tenure, food security and livelihoods. The community in Kade kadut village was established around 100 years ago. It is located in the Tanintharyi Region in the southern part of Myanmar. It has 120 households and a population of 521 people consisting of 240 men and 272 women. The community's customary areas cover an estimated 404 hectares of agricultural lands as well as communal fishing grounds, mangrove areas and community forests. Their main sources of livelihoods include growing rubber and betel nut.

Community members also engage in fishing and gathering of forest products though at a much lower scale compared to rubber tapping and betel nut farming.

Like in many communities in Southeast Asia, the typical household diet in Kade kadut village consists of rice, meat and vegetables, which they buy using the income generated from rubber and betel nut production. A typical family in the village allocate around 77% of its household income to buy food. Hence, food insecurity is relatively high compared to other communities because their access to food is vulnerable to price and supply fluctuations in the rubber and betel nut market.



When asked why they do not cultivate and produce their own food, community members responded that it is because they have no time to do so as bulk of their time and energy are devoted to rubber and betel nut production.

In 2001, Myanmar's Forest Department confiscated their lands and designated it as part of the Katan Protected Public Forest (Katan PPF). By law, the community had a right to file a grievance or claim over the lands within 90 days upon being declared as part of PPF. However, the community was not made aware of these provisions, and as such, lost their right to file the claim. Moreover, they were not given the opportunity to exercise their right to free, prior and informed consent (FPIC) with respect to the inclusion of their lands under the Katan PPF. Because of this, the people of Kade kadut village found themselves becoming encroachers in lands and forests which had been under their community's care for more than a century.

Although members of the Kade kadut village are still able to live and to gather and collect food and other items from their traditional lands and forests they now do so on a very limited basis. They can still get rubber and betel nut but they are not able to tend to it as much as before because they have limited access to their farms. This serves to heighten their food insecurity.

Moreover, they are not in a position to enjoy significant elements of the bundle of rights associated with secure tenure, particularly the right to: (i) enter into customary tenure areas with permission, (ii) sell lands among other villagers as well as to outsiders, and (iii) inherit land. The Kade kadut village are also in a very insecure position because government can evict them anytime.

The Kade kadut case demonstrates how government programs to protect forests can come at the expense of indigenous peoples. If undertaken without community participation and without observing FPIC, it can lead to increased hunger and loss of livelihoods among vulnerable communities. It also underscores the need to support communities in increasing awareness about their rights, as well as in developing approaches that will help diversify their income and food sources.

As mentioned earlier, customary tenure is the norm in Southeast Asia's vast forest areas. Communities, including indigenous people and ethnic minorities, have been managing and taking care of the region's extensive forest cover for countless generations.





They do so using complex customary tenure systems that are fit to the particularities of their environment and their way of life. A common and defining characteristic in customary tenure approaches is the close interdependence between communities and the environment. Lands, forests, and water systems are no viewed as properties to be owned and subdued but are valued as vital elements of a dynamic bio-network.

Being in a place for hundreds of years or more, customary tenure precedes the use of legal property instruments. It draws its legitimacy from societal recognition and is characterized by a bundle of rights exercised by the communities. These include the rights of access, withdrawal, management, exclusion, and alienation. This bundle of rights is very similar to the rights accorded to property owners under statutory tenure systems.

The importance and prevalence of community rights over lands and forests in the region can be gleaned from the wide breadth of policies that touch on customary tenure in most ASEAN

Member States. The intent and coverage of these policies vary, ranging from recognizing community rights over lands and forests to land use delineation and classification, to providing procedures for applying for user rights and titles.

However, notwithstanding these policies, implementation challenges are undermining the rationale and effectiveness of government rules relating to customary tenure.

Rules relating to customary tenure in ASEAN Member States are spread across various policy instruments. These include legislation and executive issuances on lands, forests and indigenous communities. Because of this, ensuring coherence is a major challenge. In some cases, laws and programs overlap or lack complementarity, particularly in terms of coverage and jurisdiction. These situations create confusion among various stakeholders.

**Quick Glance: Philippines:** A policy issuance for delineating ancestral domains and agricultural lands

In the Philippines, indigenous communities can apply for a Certificate of Ancestral Domain Title (CADT) as formal recognition of their rights over their ancestral domain.



However, there are cases when areas covered by CADTs overlap with lands that are distributed to farmers through the issuance of Certificate of Land Ownership Awards (CLOA) under the country's Comprehensive Agrarian Reform Program (CARP).<sup>25</sup> A subsequent joint memorandum of understanding between the Philippines' Department of Environment and Natural Resources and Department of Agrarian Reform were adopted to avoid these overlaps.<sup>26</sup>

In Myanmar, RECOFTC observes that under the Community Instruction Law of 1995, communities can secure land tenure rights. On the other hand, the Farmland Law of 2012 does not provide for the assignment of land to individuals or communities with customary systems.<sup>27</sup> The lack of complementarity between laws undermines communities' customary tenure. Reviewing and harmonizing land and forest law provisions relevant to customary tenure is an important starting point in helping communities secure their right over lands and forests, and their food security and livelihoods.

Additionally, the idea of policy coherence should be broadened so that customary tenure and community rights are integrated not only in land and forest legislation and programs but in national development strategies and programs as well. This means ensuring that investment and trade policies support and do not undermine peoples' food security and livelihoods. It also means ensuring that agricultural support programs and climate change interventions are crafted in partnership with local communities so that these respond to their specific needs, and the needs of their environment.

Policies on customary tenure recognition typically revolve around the granting of instruments, in the form of user rights or titles to affirm communities' right to lands, forests, and other resources.

However, these do not necessarily translate to actual formal recognition. In general, there are three factors that undermine the potential of existing laws to ensure the formal recognition of communities' customary rights.

1. The first relates to limitations embedded in laws, particularly in terms of coverage. As mentioned earlier, many governments have policies expressing commitment to uphold and recognize customary tenure, however, some of these tend to exclude specific groups.

<sup>25</sup> Plant, R. and Austria-Young, J. (2011). Safeguarding the rights of indigenous peoples in the agriculture and natural resources management sector. Asian Development Bank. from <https://www.adb.org/sites/default/files/project-document/79231/39356-012-reg-tacr-03.pdf>

<sup>26</sup> Roger Plant and Jane Austria-Young. (2011). Safeguarding the rights of indigenous peoples in the agriculture and natural resources management sector. Asian Development Bank. <https://www.adb.org/sites/default/files/project-document/79231/39356-012-reg-tacr-03.pdf>

<sup>27</sup> Regional Community Forestry Training Center for Asia and the Pacific. (2021).

Tenure and social forestry in ASEAN Member States: Status, analysis and recommendations. <https://www.recoftc.org/publications/0000387>



For instance, in Cambodia, indigenous communities can apply for communal land titles under the Land Law of 2001. However, non-indigenous communities are not able to apply for the same even if they have customary tenure over lands and forests.<sup>28</sup> In Viet Nam, it was found that in 1993, communities were excluded from the granting of land user rights mainly because they were not considered legal entities. It is only under the 2003 Land Law that communities were recognized and given the opportunity to apply for user rights.<sup>29</sup>

In other cases, laws impose limitations on the area that can be covered by formal customary tenure. For instance, in Cambodia, communities can only secure formal recognition for up to 7 hectares of spirit forests and 7 hectares of burial forests instead of the actual number of hectares used by the communities.<sup>30</sup> In Indonesia, the Adat Land Registration Policy provides for the formal recognition of communities' rights over adat lands. However, this policy can only be applied in areas where government has not given permits to other parties.<sup>31</sup>

2. The second factor is the capacity of governments to undertake all the necessary technical and administrative processes and procedures to support formal customary recognition. The process of issuing user rights and/or titles is underpinned by a wide variety of preparatory work. This includes the conduct of land surveys, land mapping, as well as the setting and demarcation boundaries, among others. The availability of resources, such as technical expertise and funding, or the level of priority government attaches to the completion of these activities determine the pace and success of the implementation of laws on customary tenure recognition. The Viet Nam country report notes that the distribution of forest and forested lands to communities has been very slow. As of 2019, only 326,831, representing 2.7% of Viet Nam's total forested lands which is at 14,491,295 hectares have been distributed to communities.<sup>32</sup>

3. The third factor is the complicated and costly process of applying for formal recognition. The country reports from Cambodia, Viet Nam and Laos PDR indicate that many communities find it difficult to comply with the different procedures and documentary requirements of securing rights and/or titles for their land. In the Philippines, communities are required to submit at least 10 documentary proofs to support their claim. These include survey plans and maps, genealogical surveys, historical accounts including pacts and agreements on boundaries entered into by communities, and written account of the communities' customs and traditions, political structure, and institutions, among others.



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<sup>28</sup> Regional Community Forestry Training Center for Asia and the Pacific. (2021). Tenure and social forestry in ASEAN Member States: Status, analysis and recommendations. <https://www.recoftc.org/publications/0000387>

<sup>29</sup> Regional Community Forestry Training Center for Asia and the Pacific. (2021). Tenure and social forestry in ASEAN Member States: Status, analysis and recommendations. <https://www.recoftc.org/publications/0000387>

<sup>30</sup> Regional Community Forestry Training Center for Asia and the Pacific. (2021). Tenure and social forestry in ASEAN Member States: Status, analysis and recommendations. <https://www.recoftc.org/publications/0000387>

The compilation of these documentary requirements takes time, resources, and technical expertise, making the process highly inaccessible to many communities.<sup>33</sup>

Cambodia, Laos, Myanmar, and Viet Nam have forest and land laws that impact on customary tenure. However, many of these laws do not adequately reflect and recognize the norms and rights that characterize customary tenure as practiced by communities for countless generations. For instance, one of the requirements for the issuance of land user rights or titles is the continued cultivation of land. However, many communities practice swidden agriculture, which means that there are periods of time when lands are deliberately left unsown or fallowed in order to restore soil fertility.

One other example is the non-inclusion of sacred or spiritual forests in collective titles though these are essential components of communities' customary rights. Government policies aimed at formally recognizing customary tenure need to incorporate essential elements of peoples' norms, culture and tradition vis-à-vis lands and forests. Additionally, there is a need to harmonize laws and executive issuances that impact on customary tenure in order to avoid conflicts, particularly in terms of coverage.

### **3. The process of securing titles is not accessible to many communities**

#### **Laos: The implications of formal titling policies on customary tenure and forest use**

Thongmang village is a semi-urban community situated in the Xaythany district, 40 kilometers away from the country's capital of Vientiane. It is located in the lowland areas. Since precolonial times, the community has depended on rice production and the gathering of non-timber forest products for food and to earn income. Today, apart from cultivating rice and vegetables and raising animals to meet their food requirements, they also produce vegetables, livestock and poultry to sell to the market. In fact, Thongmang village is one of the key suppliers of organic vegetables in the Vientiane market. Village members use the income from selling organic vegetables, livestock and poultry to meet their household needs as well as to buy other food items. Women play a major role in producing food. They are involved in farming and taking care of the animals as well as in preparing food and in managing the community's food activities.



<sup>31</sup> Sirait, M. (2009). Indigenous peoples and oil palm plantation expansion in West Kalimantan, Indonesia. Amsterdam University Law Faculty and Cordaid. <http://apps.worldagroforestry.org/downloads/Publications/PDFS/RP16385.pdf>

<sup>32</sup> CISDOM. (2021). Viet Nam Country Report: 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.

<sup>33</sup> National Commission of Indigenous Peoples. (2020). Rules on recognition and delineation of ancestral domains and ancestral lands of 2020 and other processes. [http://ncipcar.ph/images/pdfs/ncip\\_admin\\_order\\_01\\_2020\\_rules\\_on\\_delineation\\_titling.pdf](http://ncipcar.ph/images/pdfs/ncip_admin_order_01_2020_rules_on_delineation_titling.pdf)

In Laos, land is considered as part of the national heritage and as such is deemed to be owned by the national community," enshrined in their Law on Land. What the government grants is the right to use land to its citizens; as such ownership is defined by the level of land use rights granted to the individual." <sup>34</sup>

Before the passage of the Law on Land, customary tenure was the norm. The Land Law provides that a land title is the only legal document that serves as the "main evidence of permanent land use rights." <sup>35</sup>

With customary tenure, people followed the inheritance system, and as such, respect and recognize individual/household land allocation based on inheritance. Villagers had access to common resources such as the village conservation forest and water sources, which are essential to their food security and livelihoods. The community also has two common plots. Theoretically, these should be collectively managed by the community, however imbalances in power relations allows the village head to exercise greater control and decision-making power over these lots.

With new laws on land rights in recent years, there has been an emphasis on securing official documents to safeguard individual/household rights over their lands. The adult and elder generation recognize customary tenure and the inheritance system. However, the younger generation are more inclined to obtain formal and official recognition of land rights in the form of the land use certificate, "a document which is considered as official evidence for temporary land use rights of agricultural land or forest land is issued by the district or municipal Land Management Authority." <sup>36</sup>

These formal documents are considered essential to securing long-term right over the lands.

Hence, within the village, customary tenure is still in place as this is recognized by community members, but this is slowly giving way to the more formal means of recognizing land rights. Securing formal recognition is not without challenges. Under the Land Law, the process of applying for a land title takes a long time and is very costly. Many of the community members do not have sufficient income to be able to afford this process. The villagers reported that only 30% of families in Thongmang have titles. Many instead have resorted to availing the land use certificate.



<sup>34</sup> ZICO Law. (2018). FAQs: Ownership of land and property in Laos. <https://www.zicolaw.com/resources/alerts/faqs-ownership-of-land-and-property-in-laos/>  
<sup>35</sup> ZICO Law. (2018). FAQs: Ownership of land and property in Laos. <https://www.zicolaw.com/resources/alerts/faqs-ownership-of-land-and-property-in-laos/>  
<sup>36</sup> ZICO Law. (2018). FAQs: Ownership of land and property in Laos. <https://www.zicolaw.com/resources/alerts/faqs-ownership-of-land-and-property-in-laos/>

The proximity of the community to the urban center and the demand for their agricultural produce resulted to changes in the village's land use plans. Areas for rice farming gave way to vegetable plots and spaces for livestock and poultry production. Villagers are concerned that the development and further expansion of the city and rapid economic development will exert pressures on land and undermine their customary tenure.

This concern is exacerbated by community members' limited awareness of land laws and their rights. They do not have information on possible courses of action in cases of land conflicts. For village members, of which 70-80% are farmers, any threat to their rights over land pose dangers to their ability to produce food for themselves and for nearby markets, as well as loss of income essential to meeting their family's household needs. Hence, building their capacity to safeguard their customary tenure and their right to land, in the face or rapid urbanization is essential to their food security and their livelihoods.

Land use certificates and land titles are often regarded as proofs of rights over lands and forests. In the past, customary tenure is sufficient to safeguard communities' rights over lands, forest and other resources that had been under their care for several generations. However, the rising demand for land and forest resources brought about by rapid urbanization and the entry of large-scale agricultural investments and development projects undermine customary tenure.

Today, community members, particularly the youth want to secure formal recognition of their rights by obtaining land use certificates or land titles, as can be shown in the case study above on Laos. However, the process of securing these documents, especially land titles, are long complicated and costly, making it inaccessible to many communities and community members. Moreo-ver, most laws provide for the granting of individual or household certificates, instead of collective user rights or titles. The granting of individual titles changes the dynamics of customary tenure, which is mainly based on a community's collective stewardship over lands, forests and the ecosystem in which they live.



## 4 Observing FPIC policies essential to protecting CT, food security, and livelihoods

### **Cambodia: The difficulty of learning the language of formal tenurial mechanisms**

The Kbal Romeas village is located in Sesan district in Stung Treng provinces. The community is composed of 52 families, tending to customary areas spread across 7,743 hectares. Their customary lands and forests consist of farmlands including areas for rotational farming spiritual forests, housing and buriallands, among others. Their typical diet includes rice and traditional dishes made up of meat, vegetables and wild animals. They consider themselves self-sufficient in terms of food and are able to eat three times a day. Hunger is very rare, mainly because they produce or gather their own food from their customary lands and forests.

The community also cultivate crops for the market. These include rice, cashew nuts, vegetables, green grass, sugar cane among other. Cashew nut is an important cash crop for the community, enabling them to earn USD 1000 for every hectare planted to this commodity.

Community members identify three types of resources essential to their food security and livelihoods: (i) sufficient lands for cultivating food crops (ii) forests and forest resources from which they source fish, wild meat, vegetables and fruits (ii) domestic animals which they raise in available spaces in the community' customary lands (iv) indigenous knowledge which allows them to manage these resources in a sustainable manner. The community is also considering ecotourism as an opportunity to earn additional income and maintain their rights over their customary tenure.

All of these resources and activities are closely interlinked with their customary tenure.

The Kbal Romeas commune have an active customary tenure system that they practice to this day. In the past, they were not very concerned over laws and regulations regarding lands and forests as they had been managing these resources based on traditional norms and customary rights for several generations. However, the proposed construction of the Lower Sesan Hydropower dam impressed upon them the value of securing formal recognition of their rights. The participants in the FGD reported that the Cambodian government granted a private company the license to construct the Lower Sesan Hydropower dam near the village.



The establishment of the dam has resulted to the flooding of the village and the community's farm areas, affecting 3000 hectares of customary lands.

The project was undertaken without the free, prior and informed consent of the community. Village members were offered an area where they could resettle. However, they refused the offer because they did not want to leave their ancestral lands, electing to stay. Because of the opposition to the project, the community faced harassment and intimidation, including threats from government, filing of cases and the deprivation of access to public services.

The community identified the absence of a formal legal tenure system as a threat to their food security and livelihoods, especially in the face of projects like the Lower Sesan Hydropower dam. But they noted that "the process of communal land titling is complicated, lengthy and too expensive for the indigenous community to afford, without the support of NGOs or government." The community has decided to pursue the formal recognition of their customary tenure, to better protect their customary rights.

Fortunately, the community is well organized and committed to engaging different stakeholders.

The village has an established governance and decision-making structure that is inclusive and participative, enabling them to work together and maintain their solidarity amidst the threats they face.

The principle of free prior and informed consent ensures that indigenous communities have a voice-over projects that will impact them. It affirms peoples agency, and acknowledges their right as well as their capacity to decide and choose the development path that is best for them. However, although FPIC is well recognized and accepted, it is not always implemented. The case study above, as well as the previous one on Myanmar, show how the failure to observe FPIC led to the implementation of projects that undermine peoples' customary tenure, food security and livelihoods.





In Cambodia, the establishment of the Lower Sesan Hydropower Dam despite the strong and active opposition of the Kbal Romes community led to the flooding of lands that are essential to their food production. In Myanmar, the inclusion of the Kade kadut's traditional lands into the Katan Protected Public Forest without prior consultation with the community limited their access to farmlands and forests from which they source their food and other products that they sell to the market to earn income for their families. The implementation of FPIC helps ensure continued protection of customary tenure as well as of community's food security and livelihoods.

### 5 Environmental services are made possible by secure customary tenure

#### **Viet Nam: A model for engaging authorities for community forest use**

The story of the Ma Lieng people: recognizing their customary tenure and their contribution to sustainable forest management

The Ma Lieng people live in Quang Binh province at the foot of the Gian Man mountain. They live in three villages in the Lam Hoa commune, namely: (i) the Ke Village with 62 households and about 265 people, (i) the Cao village with 54 households consisting of 170 people and (il) the Chuoi village with.<sup>37</sup> households comprising of 146 people. They depend on the Ban Ke forests for their food and income.

Their deep appreciation for the lands, forests and the natural environment around them is deeply ingrained in their customs and traditions. In one of their rituals, the village elder recounts harms committed by community members against the forest, and asks forgiveness from the Forest God.

In another ritual, they ask permission for going into the forest and collection non-timber products. These rituals are anchored in indigenous cosmologies regarding resource use which emphasize "balance and reciprocity with nature."

Though these activities are cultural and spiritual in nature, they clearly have practical value for the community because they ensure that forests, which are critical to their food security, livelihoods and way of life, are cared for and protected from over exploitation.



<sup>37</sup> Krystyna Swiderska. (2021). Here's why indigenous economics is the key to saving nature. <https://www.iied.org/heres-why-indigenous-economics-key-saving-nature>

The Ma Lien community also practices self-regulation when it comes to using forest resources. For instance, if a family needs wood to build their house, they need to go to the village elder to ask for permission to cut down a tree. The village elder then relays the family's request to the community. The family can only cut down the tree when it gets the approval from the village elder and the community. Before using the tree, the family they must also perform a spiritual ritual to ask for the Forest God's permission. In general, community members do not cut big and old trees, but only those that are small or medium sized.

However, during the period of 2000-2015, the State handed over the management of forests to individuals and organizations. Many forests were cleared and planted with a single variety of tree (usually acacia). The entry of outsiders led to the exploitation and excessive extraction of forest re-sources. All these resulted in reduced diversity, erosion and landslides. For the Ma Lien commu-nity, this meant the reduced availability of non-timber forest products, food insecurity and loss of livelihoods. It also meant the loss of their spiritual forests where they practice rituals that are essential to their culture and beliefs.

In 2015, through community effort, the Ma Lieng people were formally granted an area of the forests designated as community forest.

They established and elected a community forest management board, which over sees the pa-trolling, monitoring, management and protection of forest resources. More importantly, the board developed rules on forest management based on a combination of customary norms as well as legal and executive issuances. The adoption of Ma Lien peoples' tradition and practices in caring for the forest helped maintain trust among the community. It also created a good relationship between the community and local authorities, with the latter participating in some of the Ma Lieng peoples' ceremonies.

The experience of the Ma Lien people provides a model for successful engagement between communities and local authorities in recognizing and upholding community tenure. Equally important it demonstrates how community rituals, customs and traditions on caring for the forest can be combined with legal and executive issuance to create an effective and inclusive system of local forest management.



The case study in Viet Nam shows how environmental protection is deeply embedded in communities' culture and traditions, including in the way they produce food and sustain their livelihoods. Communities perform environmental services that are vital to protecting forests and the environment. These services include environmental monitoring, reforestation and the protection and promotion of biodiversity, among others. Social forestry, ecotourism, and the payment for forest environment services are just some of the approaches that build on communities' close relationship with the environment.

The livelihoods of indigenous people and ethnic minorities are underpinned by a wide range of functions that help ensure long-term food security and environmental sustainability.

Community members collect, save, plant, and crossbreed various kinds of seeds and crops, thus promoting biodiversity.<sup>38</sup> They help diversify diets by acting as custodians to different varieties of highly nutritious food. They preserve and propagate medicinal plants and herbs essential to addressing current and future health problems.<sup>39</sup> Community members conduct environmental monitoring as they forage and collect food and other materials from the forests. This enables them to observe, detect and immediately respond to changes within their ecosystems. Communities draw from indigenous knowledge, passed down from generation to generation to address problems observed in the environment, or develop innovative solutions based on their awareness and intimate knowledge of the ecosystems, of which they are an integral part. As custodians of the forests, which are important carbon sinks, they play a major role in climate mitigation.

Traditional livelihoods among indigenous communities and ethnic minorities exemplify the symbiotic relationship between men and women and children, and their environment. They perform the dual function of enabling communities to meet their food and income needs, while safeguarding ecosystems and critical environmental services. When livelihood opportunities push people out of customary lands and forests, these very important environmental services get left behind. In a world undermined by climate change and other environmental disasters, it is essential that national and regional livelihood strategies recognize and uphold this duality of objectives that characterize livelihoods in many customary lands in Southeast Asia. The community's continued performance of these critical environmental services is premised on their ability to uphold their customary tenure.



<sup>38</sup> Food and Agriculture Organization of the United Nations. (2017). 6 ways indigenous peoples are helping the world achieve #zerohunger. <https://www.fao.org/zhc/detail-events/en/c/1028010/>

<sup>39</sup> Sarmiento, B. (2020, 2 October). A Philippine tribe's plant-based medical tradition gets its moment. Mongabay. Retrieved from <https://news.mongabay.com/2020/10/a-philippine-tribes-plant-based-medical-tradition-gets-its-moment>

Climate change-induced extreme weather events such as droughts, heavy rains, storms, tropical cyclones, and other climate shocks and shifts in Southeast Asia pose serious threats to communities' capacity to produce food and sustain livelihoods, including areas covered by customary tenure.

First, "increasing heat and water stresses, extreme weather events, and climate-associated pests and diseases have all contributed to the decline in agricultural production potential in many parts of the region. Thousands of hectares devoted to rice production have been damaged by frequent flooding in the Red River Delta, Central Region, and Mekong Delta." <sup>40</sup>

Increases in temperature "are also likely to threaten agricultural productivity because of crop stress and yield reduction."<sup>41</sup> Another is changing seasonality where weather patterns have changed or become unpredictable, making growing or harvesting food an unpredictable if risky undertaking. In the Philippines, for example, weather patterns can change abruptly, "from very hot weather to short episodes of heavy rain showers in a day. Farmers take a big risk to planting because their traditional cropping calendar is no longer applicable." <sup>42</sup>

Finally, the fact they are harder to reach in terms of government support and assistance increases their vulnerability to climate change impacts. Many governments are allocating resources to support climate change adaptation and mitigation interventions. However, there is a need for more granular information on how climate change adaptation support and initiatives are developed with indigenous peoples, ethnic minorities and other communities covered by customary tenure. Focused interventions aimed at supporting and engaging communities on climate change adaptation is essential in safeguarding their food security and livelihoods.

## **6 Strong communities are essential to safeguarding CT, food security and livelihoods**

Most communities in areas covered by customary tenure have a clear governance structure, which generally consists of (i) a leadership council composed of the elders and most respected members of the community, (ii) subgroups or committees, typically based on characteristics (women, youth, elderly) or functions and/or interest (agricultural committee) and (i) the general assembly or the broader community.



<sup>40</sup> Asian Development Bank. (n.d.). Climate change in Southeast Asia: Focused actions on the frontlines of climate change. <https://www.adb.org/sites/default/files/publication/27474/climate-change-sea.pdf>

<sup>41</sup> Raghavan, S.V., J. Ze, J. Hur, L. Jiaodong, N.S. Nguyen and Shie-Yui, L. (2019), 'ASEAN Food Security under the 2°C-4°C Global Warming Climate Change Scenarios', in Anbumozhi, V., M. Breiling, and V. Reddy (eds.), Towards a Resilient ASEAN Volume 1: Disasters, Climate Change, and Food Security: Supporting ASEAN Resilience. Jakarta, Indonesia: Economic Research Institute for ASEAN and East Asia, pp. 37-52.

<sup>42</sup> SEARCA. (2015). Climate change 'rattles' farmers' cropping calendar [Press release]. <https://www.searca.org/press/climate-change-rattles-farmers-cropping-calendar>

Decisions by communities, including on conflict resolution, are made following discussions and consultations within their governance mechanism. Communities' engagement with other parties, through their respective leadership council, are informed by the agreed decisions of the whole group.

The community's governance structure enables them to maintain solidarity in meeting goals and in addressing challenges. However, the growing threats against customary tenure warrant the need for communities to go beyond sustaining and strengthening these mechanisms. It entails enhancing communities' capacity to engage and advocate with government, the private sector, and other stakeholders. It requires building knowledge on land and forest laws and leveraging this to safeguard their customary rights. It involves developing their technical skills in delineating and identifying areas within ancestral domain as basis for claiming customary tenure recognition. It necessitates building a network of partners and allies to support their advocacies.

The experience of Cambodia and Viet Nam have shown that when the community is organized, it has a better chance of influencing the policy environment.



## Recommendations

The rich diversity of practices and norms comprising customary tenure across Southeast Asia precludes a rigid one-size-fits all set of rules on the same. Nevertheless, the regional research shows that common themes and issues confronting communities' customary rights over lands, forests and other resources across the region - such as the impact of land investments, climate change, and natural and man-made disasters, among others can be better addressed through ASEAN action and cooperation. In this context, the paper proposes a regional approach to safeguarding customary tenure in the context of food security and livelihoods.

This approach should:

1. Build on existing ASEAN platforms relevant to customary tenure, food security and live-lihoods, such as the AIFS-SPA, AFCC, ASEAN Working Group on Social Forestry, to name a few
2. Be multi-stakeholder in nature, with communities, especially women and youth, effectively represented in decision making, plan implementation, monitoring and evaluation of national and regional initiatives on customary tenure recognition
3. Recognize the wide range of customary tenure norms and practices across different ASEAN Member States, and provides for flexibility in the implementation of plans on customary tenure, food security and livelihoods be reflected in national and regional action plans for the implementation of global goals and standards, particularly the: (i) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (VGGT) (i) the Principles for Responsible Agricultural Investments (RAI) and the (iii) the Sustainable Development Goals (SDGs)

Below are recommendations on interventions that should comprise this regional approach:

**Mainstream customary tenure in national and regional policy on food security and livelihoods.**



Customary tenure enables communities to produce their own food and to earn income to meet household needs. Hence, customary tenure recognition should be viewed as an integral part of regional plans on food security and livelihoods, and on other initiatives that impact on these goals, such as climate change and environmental protection, among others. Mainstreaming customary tenure entails reviewing relevant regional plans, particularly the AIFS-SPA and the AFCC so that these include customary tenure recognition as part of these plans' goals and strategic thrusts.

grams aimed at encouraging Member States to work with community groups and civil society in developing, sharing and scaling up innovative best practices in the field of sustainable forest management as well as livelihoods and food security. ASEAN can promote a bottom-up approach in developing these programs by encouraging Member States to work directly with communities and community based organizations/peoples' organizations, thereby enabling them to draw from communities' intergenerational and long-standing knowledge and practices in managing resources within their domain.

In sum, upholding communities' customary tenure helps to support their sustainable livelihoods and food security. Many communities with customary tenure typically maintain what is viewed as environmental conservation, safeguarding and providing ecosystem services. Communities have a better chance at upholding their customary tenure when they are organized and enjoy support from civil society actors.

### **Promote livelihood strategies that build on and enhance the natural linkage between customary tenure, food security and livelihoods.**

A large part of ASEAN Member States' strategy to create employment as well as livelihood opportunities is focused on attracting investments in various sectors, including agriculture, mining and energy among others. Many of these investment projects involve the clearing of lands and forests, as well as the displacement of communities from their ancestral domain from which they traditionally source their food and generate income.

On the other hand, livelihood strategies such as social forestry, ecotourism and payment for environmental services, among others, enable communities to uphold customary tenure, while allowing them to meet their food security and livelihoods objectives. ASEAN is in the best position to document, promote and scale up best practices with respect to these livelihood strategies.



## **Promote, strengthen and facilitate the granting of collective/ community rights/titles.**

In Southeast Asia and in many parts of the world, customary tenure revolves around communities' relationship with lands and forests. Indigenous groups, ethnic minorities and communities in customary areas manage their ancestral domain collectively. This fosters solidarity within the community and helps ensure that resources are managed and shared equitably and in a sustainable manner. However, most laws tend to prioritize individual or household titles over collective titles. This tends to change the dynamics within a community, from one that prioritizes collective action to one that is more individualistic in nature. It also heightens inequality, as those with greater control over resources are in a better position to secure land user rights or titles.

## **Support and work with communities in shaping, claiming and leveraging policies on customary tenure recognition.**

Ultimately, the successful adoption and implementation of customary tenure rules will depend largely on communities' ability to advocate for and claim these policies. A critical part of building this capacity involves raising awareness within and outside the community regarding laws on customary tenure and its attendant rights, documenting existing customs and best practices to guide present and future policies and programs, and improving communities' economic leverage by supporting livelihood activities that are culturally appropriate and developed by and with the communities, among many others.

Strengthen customary tenure and tap communities as implementing partners in climate change adaptation and mitigation, and in promoting environmental sustainability. The environmental services currently rendered by communities contribute to climate change adaptation, mitigation and other environmental goals, such as the promotion of biodiversity. The performance of these services is only possible for as long as communities retain customary tenure over their ancestral domain. Hence, the protection of communities' customary rights over lands and forests should be embedded in ASEAN strategies on climate change and environmental protection.





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