Report

Pathways for the recognition of customary forest tenure in the Mekong region

MRLG
MEKONG REGION LAND GOVERNANCE

RECOFTC

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About the Regional Customary Tenure Alliance

The Regional Customary Tenure Alliance is a partnership funded by the Mekong Region Land Governance (MRLG) Project. The Regional Customary Tenure Alliance is implemented by RECOFTC, the Non-Timber Forest Products Exchange Programme (NTFP-EP), the Asian Farmers' Association for Sustainable Rural Development (AFA) and the Asia Indigenous Peoples Pact (AIPP), in collaboration with partners in Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. The Alliance also works with national and regional platforms that focus on forests, land and other natural resources. Through these collaborations, the Alliance promotes safeguard mechanisms for the recognition and protection of customary tenure rights of forest-dependent communities, farmers, Indigenous Peoples, ethnic minorities and women in the Mekong region.

The Alliance's outputs include primary research and case studies on food security, the implementation of free, prior and informed consent and gender within complex tenure systems. The Alliance has also produced legal and policy analyses and a guideline adopted by the Association of Southeast Asian Nations (ASEAN) that promotes increased recognition of customary recognition in forested landscapes by its Member States.

With these products, the Alliance provides national governments and other actors involved in legal reforms with evidence and tools so that they can better understand customary tenure systems; identify diverse options for the recognition of land and forest tenure under customary systems; provide and implement strategic policy recommendations to better secure tenure for local communities and Indigenous Peoples; and foster safe spaces for dialogues and learning across Southeast Asia and the Mekong region in particular.

The Mekong Region Land Governance Project aims to improve the land tenure security of smallholder farmers by contributing to the design and implementation of appropriate land policies and practices. It is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation, with co-financing from the Government of Germany and the Government of Luxembourg.

Executive summary

Globally, about 2 billion people live under a customary tenure system, which is a set of rules and norms that govern local peoples' use of forests, land and other natural resources. This tenure and its accompanying rights are crucial to peoples' livelihoods, food security and culture, as well as to forest protection, biodiversity conservation and climate change mitigation.

Customary tenure has long been insecure and, in many places, it is under growing pressure. But it is also increasingly recognized through a variety of mechanisms, both formal and informal. This report focuses on the recognition of customary tenure of communities living in forested landscapes in Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam and includes a case study from Thailand.

The report addresses a variety of questions: What is meant by the "recognition" of customary tenure? What mechanisms can be used to strengthen communities' tenure security? How have these mechanisms been used in the Mekong region and what are the remaining gaps or challenges? What are the opportunities to better integrate customary tenure in ongoing interventions at the landscape, national and regional levels? And what lessons can be learned for the region and beyond?

The report identifies three main pathways into which mechanisms for recognizing customary tenure can be categorized: self-recognition by communities; joint recognition by communities and others; and formal recognition in legal frameworks. It introduces a conceptual framework for assessing these mechanisms, including by analysing them through the lenses of rights, livelihoods, governance, gender equity and social inclusion, customary and traditional practices and dispute resolution.

Ten case studies illustrate different approaches, often a mix of formal and informal mechanisms that have been used to recognize customary tenure in five countries of the Mekong region covered in this analysis.

The report also provides an updated account of customary tenure recognition within legal frameworks, reflecting recent legal reforms in some countries. The analysis shows that legal frameworks in all five countries have provisions enabling communities to use and manage forests and natural resources. In most cases, however, these provisions do not fully recognize customary rights and practices and come with various responsibilities and conditions. Restrictions still apply to the scope of rights, the geographical area and land-use types and the duration over which rights are granted.

The report identifies gaps and inconsistencies in legal frameworks and how they are implemented. It suggests promising avenues for improving the recognition of customary tenure and makes specific recommendations for each of the three pathways of recognition. It also describes some entry points for improving recognition of customary tenure that are relevant to most or all countries in the region. These include improved coordination and information-sharing mechanisms, awareness-raising, capacity-building, legal reforms and improved implementation of legal frameworks, documentation, testing and safeguards.

Introduction

A customary tenure system is a set of rules and norms that govern local peoples' use of forests, land and other natural resources. They include the allocation, use, access and transfer of these resources (FAO, 2002). Globally, about 2 billion people live under such systems (Freudenberger, 2013). This includes more than 200 ethnic groups and 70 million people in the Mekong region of Southeast Asia (Deligne et al., 2021), which encompasses Cambodia, Lao People's Democratic Republic (PDR), Myanmar, Thailand and Viet Nam.

Customary tenure systems are unique to their localities. They vary greatly in scale. But they generally include some form of collective and individual management of land and resources, such as forests, water and fisheries. Although based on tradition, customary tenure is dynamic and flexible. It can evolve. It embodies people's cultures, values and relationships with the land and natural resources on which their livelihoods, food security, identities and well-being depend.

There is robust evidence that securing communities' customary tenure to land, forests and other natural resources contributes to socioeconomic benefits (Ding et al., 2016; Larson and Springer, 2016; Gray et al., 2015; Stevens et al., 2014; Larson and Dahal, 2012; Ostrom and Nagendra, 2006). It also provides local and global environmental gains, for example, by protecting ecosystems and helping to mitigate climate change (Ding et al., 2016; Larson and Springer, 2016).

Indigenous Peoples' territories that are under secure tenure, including forestlands, tend to be better protected than those under state control (Ricketts et al., 2010; Stickler et al., 2008). In addition, customary tenure systems, including through natural resource management, have been shown to increase communities' resilience and adaptability to changes, such as population growth, shifts in markets, the COVID-19 pandemic and climate change (RECOFTC, 2021a; Freudenberger, 2013).

Despite its importance to so many people, there has been limited official recognition and protection of land under customary tenure. This partly stems from the legacy of colonialism, which often denied communities their traditional rights. The lack of recognition of customary tenure has been reinforced by an industrial development model that values land as an economic asset and places it in the control of companies or governments for large agricultural holdings and other development projects (JRT, 2021).

Customary tenure is often insecure

Indigenous Peoples and local communities manage more than half of the world's land surface through customary tenure systems (Alden Wily, 2011). But this tenure is insecure because governments officially recognize less than one fifth of land under such systems (RRI, 2015). The remaining four fifths, or 5 billion hectares of land are unprotected and vulnerable to land grabs from more powerful actors (Pearce, 2016). In particular, governments, extractive industries, agribusiness companies, speculators and local elites have been appropriating forests and other community-owned resources from their rightful owners. The lack of tenure security disproportionately affects vulnerable groups, such as women, youth, ethnic groups and other minorities.

The allocation of forestland to communities for their use and management through community forestry schemes can enable the recognition of certain customary tenure rights. However, this often does not equate to full recognition of customary tenure. And while there has been growth in the total area of formalized community forests in the Mekong region, this growth has been uneven, ranging from 1.6 percent of the land in Myanmar and 4 percent in Cambodia to 25 percent in Viet Nam (RECOFTC, 2021b and 2020).

The area of forests managed by local people is increasing at different speeds and with different levels of success in each country (RECOFTC, 2021b). It is important to measure success not only by the area allocated but also by the ability of local people to attain tenure security and derive economic, environmental and social benefits from forest management (RECOFTC, 2020).

Conservation has also undermined customary tenure, such as when governments have designated communities' customary lands as protected areas governed by the State. This has often failed to control forest degradation and deforestation and has led to the replacement of traditional systems by institutions that are less effective at managing natural resources (Larson and Springer, 2016). The uptake of cash cropping by smallholders has also attracted migrants in search of land on which to produce crops for export markets. This also puts pressure on land and the resources, with significant implications for customary tenure through the privatization of land and the loss of commons (Hayward, Hirsch and Scurrah, 2021).

Because of these factors, customary tenure systems have long been under threat. Rising demand for resources and land, including in remote areas, is now increasing pressure on these systems. The recognition of customary tenure and traditional practices is particularly important for specific groups, such as Indigenous Peoples and women, who are most affected by tenure insecurity.

The importance of securing Indigenous Peoples' customary tenure

Land and forests are critical to many Indigenous Peoples as sources of food, fuelwood, hunting, fishing, timber, non-timber products, shifting agriculture and medicines and as a source of cultural identity and livelihood. Indigenous Peoples have lived in close harmony with nature for generations. Growing evidence demonstrates that respect for Indigenous Peoples' rights to land and natural resources leads to lower deforestation rates than in areas managed by governments (Larson and Springer, 2016; Alcorn, 2011d). Indigenous Peoples own, occupy and use a quarter of the world's surface area and safeguard 80 percent of the world's remaining biodiversity (World Bank, 2008 and 2003).

Securing access to natural resources and formalizing land rights are fundamental protections for Indigenous Peoples to maintain their livelihoods and cultural identities and contribute to sustainable development. But Indigenous Peoples are disproportionately affected by poverty and inequality, accounting for 19 percent of the world's extreme poor (Dhir et al., 2019). In addition, they often lack formal recognition or documentation of their lands, territories and natural resources, and their cultures and socioeconomic status are threatened by expanding agriculture and infrastructure development (Alcorn, 2011).

Gender, tenure and customary practices

There is a lack of data on how much land is legally held or controlled by women or on how many women legally hold or control land (Hanstad, 2020). It has been shown, however, that when women have secure land tenure, it increases their control over and ability to benefit from family assets. Secure land tenure enhances women's voice and agency (Meinzen-Dick et al., 2017). And women's greater power and ability to control family assets and related decision-making lead to more investments in children's education (Hanstad, 2020; Salcedo-La Viña, 2021).

Secure land tenure also gives women greater food security, which improves children's nutrition and contributes to stable family incomes (Salcedo-La Viña, 2021). Household food security directly links to women's central role in the collective management of forests and in fostering agrobiodiversity. The benefits of securing women's rights also extend to entire communities because women with secure rights are empowered and can participate meaningfully in community governance and development. In some countries, though, women only have limited land rights or no land rights at all due to restrictions in national laws and/or social and customary norms. In some cases, the limitations may be due to women's lack of knowledge on how to claim and protect their rights.

RECOFTC-supported research on gender, tenure and customary indigenous practices in seven Asian countries

(Cambodia, Indonesia, Lao PDR, Myanmar, Nepal, Thailand and Viet Nam) has highlighted the commonalities and differences among indigenous groups in terms of rights and women's participation in governance (RECOFTC and MRLG, 2022). That study revealed that:

Women have basic legal rights to access and manage forests and use forest resources in Cambodia, Indonesia, Lao PDR, Nepal and Viet Nam. But those rights are limited by customary law in Myanmar and by national law in Thailand.

In most of the study sites, traditional practices limit the degree to which women can exercise their rights to varying extent.

Traditional practices also limit women's tenure. This was most significant in the two study sites in Myanmar, where customary practices limit or prevent women from inheriting and owning land. Women also receive fewer benefits than men from forest activities, even where they have more responsibility for such activities and they generate income for their families. In these sites, women's contributions were rarely acknowledged.

An unequal gendered division of labour in households, agricultural fields and forests was an issue for women in the study sites in Cambodia, Lao PDR and Viet Nam.

Customs and traditions are also barriers to women's education and literacy in the majority of the study sites and contribute to their lack of participation in forest governance.

Overall, women's low literacy level contributes to making them insecure about speaking out in public. Indonesia is the only country where a lack of education and/or a language barrier was not cited as a reason for women's lack of participation in forest governance.

Customary and traditional factors that discourage women from participating more actively in forest governance include a lack of time due to an unequal division of labour, men's attitudes towards women's participation and cultural aversions to women undertaking activities in the public sphere. In the study sites in Myanmar and Viet Nam, men tended to not recognize or to undervalue women's knowledge of forest management and to ignore women when they spoke about it.

Improving women's literacy and increasing acceptance of women's participation in decision-making are essential to improve forest governance as well as all aspects of family and community life.

After a long period of disregard for customary tenure, political and legal changes over the past few decades suggest a global shift is under way, even if it remains a work in progress (Alden Wily, 2018). Important tenure reforms have started to recognize the rights of communities to own, manage or use land and natural resources (Aggarwal and Freudenberger, 2013; RRI, 2014). Policy-makers considering the governance of land and natural resources beyond productive uses and adopting more socially equitable approaches are essential to this shift (JRT, 2021).

Progress has also been made in the Mekong region to formally recognize customary tenure rights. But there are persistent challenges to ensuring that tenure security is appropriately embedded in legal frameworks and recognized in practice. In addition to legal protection, some informal initiatives have been carried out in the region to recognize customary tenure, such as through documentation and mapping of communities' customary land and rights. But too often, customary tenure and practices remain unprotected, and this can result in land and resource grabbing, poverty and conflicts (Stevens et al., 2014).

To better understand these dynamics and the pathways for securing customary tenure in the region, it is essential to know the types and current levels of recognition of customary tenure and to assess opportunities to promote greater recognition. This report can help do that. It covers the recognition of customary tenure of communities living in forested landscapes in Cambodia, Lao PDR, Myanmar and Viet Nam, and includes case studies from these countries as well as from Thailand.

Scope of the report

The report focuses on the recognition of communities' customary tenure systems, which often relate to a combination of communal land, such as collectively managed shifting cultivation areas and forest areas, and plots of land claimed by individuals, families or other groups, such as fields where rice or other long-term crops are grown. The report does not focus on privately owned land outside of communities' customary areas.

References to communities mean any group of people who live in a given area, usually sharing a common culture or heritage. This includes local communities, indigenous communities and ethnic minorities and communities who are geographical entities living in one or several villages. The reference is to all subgroups within a community because communities are not homogenous and their members may have different statuses and capacities.

In this report, recognition means the identification, acknowledgement and respect of the customary tenure of communities, whether through formal or informal approaches.

The analysis covers forest landscapes, which are defined as mosaics of forest, agricultural and other land uses that influence biodiversity, water, soil and other factors upon which life depends. This is acknowledgement that customary tenure goes beyond administrative boundaries and official categories of forests, such as protected areas, national parks and production forests.

The regional and national contexts in relation to land use should also be mentioned here because they heavily influence customary tenure and its recognition. They include histories of colonialism, conflict, socialism and the more recent market liberalization that has shifted dynamics around land governance, particularly by promoting large-scale land acquisitions. Other influential factors that impact tenure include trends related to commodity flows, foreign investment in land from within region, migration and the adoption of cash crops, which has led to the individualization of tenure. Regional trends highlighted in the literature include "the adoption of neoliberal policies aimed at turning land into capital, creating efficient land markets and formalizing land by means of titling programs" (Hirsch and Scurrah, 2015).

The political economy of land influences the recognition of customary tenure in the region, which has been largely covered in the literature (see Hayward, Hirsch and Scurrah, 2021; Hirsch and Scurrah, 2015). This report thus focuses on aspects of how, in the given context, customary tenure recognition may be actualized and strengthened.

Structure of the report

The first chapter proposes three categories or "pathways" into which mechanisms for recognizing customary tenure and securing communities' rights can be grouped. It introduces six aspects of these mechanisms that can be analysed—a methodology that was developed during the research for this report.

The second chapter discusses the current state of customary tenure recognition in the Mekong region, in relation to each of the three pathways. It includes case studies illustrating the different approaches outside of legal frameworks that have been used to recognize customary tenure. It also provides an updated account of customary tenure recognition within national legal frameworks, including the changes from legal reforms in recent years.

The third chapter identifies gaps in policy and legal frameworks in the Mekong region in general and in Cambodia, Lao PDR, Myanmar and Viet Nam specifically. It also identifies opportunities for addressing these gaps.

The fourth chapter highlights the avenues for improving recognition of customary tenure. It recommends ways that policy-makers and other stakeholders should focus their efforts to achieve this.

This report was developed to support policy-makers, non-governmental organizations and other stakeholders engaged in policy reform processes or other initiatives to enhance recognition of customary tenure rights. It can be used to develop contributions to legal reforms and to improve the implementation of legal frameworks. The best practices and the evaluation of the level of recognition of customary rights presented here can help embed valuable lessons into policy.

The report will also be useful to researchers and others focusing on communities' rights, tenure and policy development and on implementing ground-level non-formal initiatives

to secure communities' practices. They will benefit in particular from the case studies and the main conclusions, which can be considered in similar situations. Finally, while the report focuses on the Mekong region, it can be useful to anyone assessing customary tenure recognition elsewhere.

Considerations for policy-makers

- Customary tenure systems are intrinsically unique to their local contexts and therefore cannot be made generic. This means there is also no single best practice for recognizing customary tenure.
- Customary forest tenure evolves. It has been called a "living institution" (Freudenberger, 2013) because practices relating to forests, land and other natural resources as well as the nature and availability of those resources change over time. Any analysis of the recognition of customary tenure must take into account these dynamics.
- The evolving nature of customary tenure practices can create a challenge to policy-makers considering the recognition of customary tenure by laws, which are by nature more static and centralized. It is important, therefore, to choose carefully when and how to regulate customary tenure. Various aspects must be considered, such as the nature and scope of tenure security or insecurity.
- Policy-makers and government agencies also need to take into account and reflect the variety and complexities existing within customary tenure systems in their recognition processes. In particular, they should consider the combination of collective land, such as shifting cultivation areas and forest areas, and individual or family plots, such as agricultural land, and the community management rules over those areas.
- Where conflict frequency and intensity are low and internal community governance is strong, the definition of customary rights at the community level may be sufficient to ensure security and prevent encroachment by outsiders. In such cases, regulatory intervention can be ineffective or even counter-effective. It can lead to unequal recognition of rights, especially for vulnerable people (Fitzpatrick, 2005). In other cases, where conflicts are more prominent or where there is more pressure on land and resources, regulation may be required to protect customary rights.
- Customary tenure systems get their legitimacy from the people using them. Outsiders may or may not recognize these arrangements. External pressures from more powerful national or international stakeholders threaten customary tenure systems (Freudenberger, 2013).
- The nature of a resource, such as whether it is static (as with trees or forests), moves (wildlife) or flows (water), changes the nature of tenure and resource governance (Larson and Springer, 2016). Similarly, the nature of crops changes the nature of tenure and land allocation within customary tenure systems. These are important factors to consider in the way that customary tenure is recognized and especially for policy-makers to consider when determining if, when and how to regulate the use of such resources.

What are the different ways of recognizing customary tenure?

A conceptual framework was developed to analyse customary tenure recognition in the Mekong region (Faure, 2021). The framework guided the production of case studies and legal analyses.

Customary tenure can be recognized in multiple ways, including written or oral and formal or informal formats. The different mechanisms for recognizing customary tenure can be categorized into three broad pathways, based on who identifies and recognizes the customary rights and in particular who initiates the recognition process.

Figure 1: Three pathways for customary tenure recognition

1

Self-recognition
is where communities themselves identify and recognize their customary tenure rights. This can be done through the documentation and mapping of their practices and land uses or through oral tradition and sustained practice that transmits knowledge on rights from one generation to the next. External tools and support have also been used to help communities document customary tenure (for example, see Allaverdian et al., 2017). Self-recognition may be exercised for customary practices within the community or to articulate and claim rights in interactions with outsiders, such as other communities, companies, the State or others.

Examples include:

- A community map identifying the areas where a community practises fishing, forest management, watershed uses and other types of land use.
- A community protocol in which the community identifies its values, procedures and priorities. These protocols generally rely on customary tenure and practices. Communities can use them in negotiations or discussions with external actors.

2

Co-recognition
of customary tenure occurs when community members and external stakeholders jointly recognize a community's rights. The external stakeholders might include the local government, a private sector company or another group or individual, including a neighbouring community. Co-recognition of customary tenure can be achieved through a formal agreement, such as a benefit-sharing agreement, but it can also be the result of a non-formalized negotiation.

Examples include:

- A free, prior and informed consent agreement between a community and a project developer, through which the customary tenure rights of the community are identified and acknowledged.An informal agreement between a local authority and a community that allows that community to manage land and natural resources according to its traditional practices.
- An informal agreement between neighbouring communities on ownership, rights and responsibilities for areas in a specific landscape.

3

Legal recognition
is the formal recognition of customary tenure rights in policies, laws and regulations. This often includes forest and land legislation, but it can also include other legal texts that recognize communities' practices and rights to land and natural resources, such as a civil code and a law on the protection of Indigenous Peoples' rights. While these laws offer a framework for recognizing customary tenure, their implementation in practice is often challenging.

Examples include:

- The 1997 Indigenous Peoples' Rights Act in the Philippines, which upon issuance of a certificate recognizes the "ancestral domains" of Indigenous Peoples, their rights over natural resources and their right to self-governance.
- The 2001 Land Law in Cambodia, which recognizes Indigenous Peoples' communal ownership of land through collective land titles.
- The legal recognition of communities' management of forest resources through, for example, a community forestry scheme, such as in Cambodia, Myanmar and Thailand, or a community-protected area like in Cambodia and village forestry in Lao PDR.

The three types of recognition mechanisms are not mutually exclusive. In fact, they often build on each other and may overlap or be sequential. For example, the documentation of a community's rights and practices through a mapping process (self-recognition) could be later used to formalize the community's rights through a legal registration process and for the community to obtain a land title or certificate (formal recognition). The different types of mechanisms are, however, not necessarily linked. For example, communities can document their rights themselves, regardless of any formal process to issue a certificate or title.

In addition, some mechanisms may combine different types of recognition and take a hybrid form. For example, when a government allocates a community forest according to the law, the process may involve informal discussions between the local administration and the community on their co-identification of the community's use and management rights over the forest. This may also rely on an initial process of self-recognition of a community's internal rules over natural resources.

For these reasons, some mechanisms may be difficult to fit only within one category, especially when customary tenure recognition is the result of a co-creation process between actors or when it is carried out at various geographical levels. In this sense, the pathways for recognition presented here reflect some of the complexities of the existing multilayered governance arrangements that customary tenure recognition faces.

Also, customary tenure recognition does not always arise through a consensual approach. It may be the result of claims formulated by communities or even arise as a result of conflicts. Depending on the tools and approaches used to obtain recognition, such as a private or customary complaint mechanism, advocacy or a judicial court, these cases may fit within one or more of the pathways presented here.

Identifying these pathways is useful to determine the current level of recognition of customary tenure and possible improvements. While the level of formality of the mechanism in question can affect the strength of recognition, it is not the only factor that determines tenure security. The period over which tenure rights are recognized is another important element because tenure may be recognized temporarily or indefinitely. Other factors relating to the context and, in particular, the amount of pressure on land and forest resources are also important.

The analytical framework presented here also provides a guide for assessing tenure-recognition mechanisms by analysing six elements. This approach was used to conduct the legal analyses presented in this report. It can also serve others who want to assess customary tenure recognition mechanisms.

Because communities are not homogenous groups, it is important to understand the dynamics of customary forest tenure recognition within communities. For example, formal recognition may alter traditional structures and internal community relations with respect to land and resources because the process can have differential impacts on different members of the community. For that reason, the analytical framework examines communities' traditional governance systems, including their structure, hierarchy and processes. The framework also seeks to understand how men and women in communities can access and mediate their rights in relation to customary forest tenure.

Figure 2 : Analysis of six aspects of customary tenure and questions guiding the assessment

The analysis focused on six key aspects of the different mechanisms for recognizing customary tenure. The following questions were used to guide the assessment.

Rights

Which of the bundle of rights defined by Schlager and Ostrom (1992) do communities have, according to the mechanism: right of access, right of withdrawal, right of management, right of exclusion and/or right of alienation? Where and how are these rights recognized, for example, in the law, by oral tradition, in a community map or by another means? Who recognizes customary forest tenure according to this mechanism? Is it the community, the State, outsiders, operators or someone else? How is the scope of rights and responsibilities decided and through what process?

Livelihoods

Does the mechanism contribute to improved community livelihoods and well-being? How might the recognition of customary forest tenure impact livelihood options, including using products and services from the forest, such as non-timber forest products or the promotion of ecotourism? Conversely, in what ways are livelihoods restricted, including restrictions on land use for farming?

Governance

What process is in place for the recognition of customary forest tenure according to the mechanism? How do stakeholders participate and engage? How have different members of the community or group been involved in decision-making? Does the mechanism provide for an adequate governance structure that is inclusive of diverse community members and clearly identifies roles and responsibilities? Does the mechanism recognize and include local institutions, and how can these institutions interact with state institutions and others?

Gender equity and social inclusion

Do the mechanism and decisions leading to its establishment address power imbalances and allow for the inclusion of all community members, including women and minorities? What process is set up for this?

Customary and traditional practices

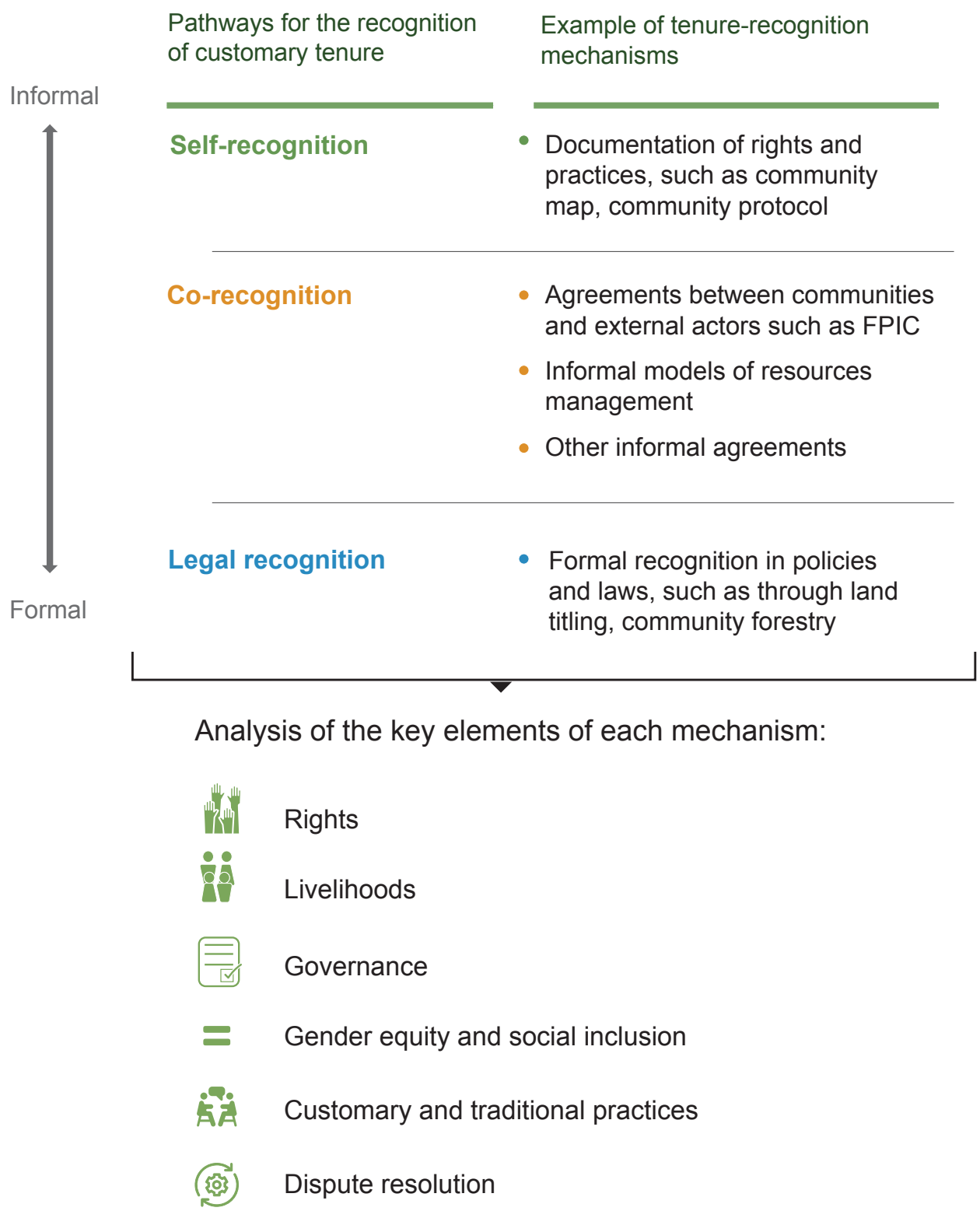
How does the mechanism recognize the customary and traditional practices of the community? To what extent does the mechanism recognize these practices, including cultural practices, beliefs, land and resource use, management practices and the community decision-making processes and institutions?

Dispute resolution

Does the mechanism offer a tool or approach to resolve potential conflicts over customary forest tenure? Is this tool designed to resolve conflicts within the community, between communities or between a community and other external stakeholders?

In addition to these aspects, it is also important to consider the implementation of such mechanisms in practice. When doing so, particular questions should be: What are the constraints and challenges to the mechanism's implementation? What are the strengths and weaknesses? What are the benefits arising from using the mechanism?

Figure 3: Conceptual framework for categorizing and analysing mechanisms that recognize customary forest tenure



How is customary tenure recognized in the Mekong region?

Members of the Mekong Region Land Governance Project's Regional Customary Tenure Alliance have collaborated to provide national governments and other actors in the region with evidence-based analysis to improve their understanding of customary tenure systems. The project has identified diverse options for the recognition of customary tenure and offered strategic policy recommendations to better secure tenure for local communities and Indigenous Peoples. It has also created spaces for dialogue and learning across Member States of the Association of Southeast Asian Nations, which include the countries of the Mekong region covered in this report.

Using the framework presented in the first chapter, the Alliance members assessed the levels of recognition of customary tenure in the legal frameworks and on-the-ground practices in Cambodia, Lao PDR, Myanmar and Viet Nam and in some local practices in Thailand. Table 1 provides an overview of some mechanisms used for recognizing customary tenure in these countries and of the case studies and legal analyses that follow in this chapter. The case studies provide examples and reflections on the use of the various mechanisms. This report does not cover all possible options but offers an overview of some of them. While the background of the case studies is succinctly described, the context is essential to further understand and fully assess options for customary tenure recognition and their effectiveness.

Table 1. Overview of mechanisms for recognizing customary tenure in the Mekong region and the respective case studies and legal analyses

Mechanisms	Case studies and legal analyses
Pathway 1: Self-recognition	
Inheritance practices	Lao PDR: The recognition of customary tenure through inheritance practices by communities in Naom Village, Oudomxay Province (see case study 1)
A community's internal practices and governance	Cambodia: Strong internal governance as a way to secure tenure: the case of the indigenous Bunang community in Kbal Romeas Village, Stung Treng Province (see case study 2)
Community mapping	Myanmar: The use of community mapping to secure customary lands under threat of acquisition or confiscation in Tanintharyi Region (see case study 3)
Women-led recognition of customary tenure	Thailand: How indigenous women's roles and knowledge of natural resources secure tenure in northern Thailand (see case study 4)
Pathway 2: Co-recognition	
Agreement between a community and a government agency, with the community's free, prior and informed consent	Lao PDR: Use of a free, prior and informed consent process by the Ministry of Planning and Investment to identify areas under customary tenure when allocating land for development projects (see case study 5)
Agreement between a community and a private company, with the community's free, prior and informed consent	Lao PDR: A private company's efforts to obtain a community's free, prior and informed consent for its operations (see case study 6)
Informal models of resource management	Cambodia: Agreement between a community and provincial authorities over the customary management of the Yeak Laom sacred forest landscape (see case study 7)
Community regulation	Viet Nam: The establishment of a community regulation by the Ma Lieng community to preserve customs and regulate resource use in Ban Ke, Quang Binh Province (see case study 8)
Combination of a community regulation and a land-use certificate	Viet Nam: The Thai community of Ban Lieng used a combination of formal rights and a community regulation to solve land-use conflicts in Dien Bien Province (see case study 9)
Conflict resolution mechanism	Thailand: The use of participatory mapping as a mechanism to resolve conflicts and recognize communities' land use rights in Nan Province (see case study 10)
Pathway 3: Legal recognition	
Formal recognition in laws and policies	Cambodia, Lao PDR, Myanmar and Viet Nam: Bundle-of-rights legal analysis (see the section "Legal recognition")

Self-recognition

There is no thorough mapping of the extent to which communities in the Mekong region have documented their customary tenure rights and practices. The Regional Customary Tenure Alliance developed the following four case studies as examples of approaches that communities have used to further recognize their customary tenure.

These cases show how inheritance practices, internal governance, mapping and community regulations allow communities to secure customary tenure (see case studies 1, 2 and 3). One of them also highlights the important roles women have in maintaining and documenting traditional forest management practices (see case study 4).

Case study 1 highlights how stakeholders can differ in their perceptions of how to recognize customary tenure. For instance, a worker at a non-governmental organization who has worked on land issues in Lao PDR and was interviewed for the case study said, "Communities recognize their tenure based on what rights they have, while government staff are too focused on 'official documents' as a way of recognition."

It is important to explore self-recognition mechanisms. They can provide powerful evidence of customary practices relating to land and they place communities at the centre of approaches for recognizing their rights. These locally led mechanisms can also have an important role in advocacy towards further recognition of communities' rights by the State or external actors.

Conversely, the prospect of legal recognition can sometimes incentivize or guide communities to strengthen their self-recognition of tenure. This is the case with the Kbal Romeas community in Cambodia (see case study 2). The community strengthened its internal management rules while engaging in the formal process to acquire a collective land title. While the community led its own efforts to capitalize on its internal rules, it also benefited from the Ministry of Rural Development's recognition of the group as Indigenous Peoples in 2019. The community is now in the process of receiving recognition as a legal entity from the Ministry of Interior so it can then obtain a collective land title. This case shows how different mechanisms and incentives for customary tenure recognition may overlap and influence each other, as highlighted in the first chapter. The community initiated the process of self-recognition by developing internal rules in anticipation of receiving a collective land title. But the recognition as a legal entity by the Ministry of Interior also requires that the group develops its internal rules. Self-recognition therefore did not occur in a legal vacuum, and the process of establishing internal rules was influenced by both the community and the State.

Similarly, the two examples from Myanmar (see case study 3) show the use of community mapping as a mechanism for self-recognition of customary tenure. The maps produced were used to oppose economic interests over community land in one case and to secure formal community forestry rights in the other. In both cases, self-recognition was used in combination with efforts to obtain administrative or legal protection over customary land.

Case study 1

The recognition of customary tenure through inheritance practices by communities in Naom Village, Oudomxay Province, Lao PDR

By Lao Farmer Network (LFN)

Naom Village, where a Khmu ethnic community lives, is located in the Xay District of Lao PDR's Oudomxay Province. It is a rural area where people's livelihoods depend on upland agriculture and forests. The landscape of the village is mountainous, and most of the villagers are farmers who have practised customary tenure for generations.

The community manages land and natural resources on their territory, including forests, agricultural areas and water sources, and in their residential areas. The villagers are well aware of both their individual and collective customary rights to land and property, which they recognize through the inheritance system.

Community members use collective agricultural land for shifting cultivation of rice and other crops, which they rely on for a living. Villagers also recently started commercial farming of crops such as corn. Most land used for shifting cultivation is under customary use. In contrast with land inherited by families, tenure over collective agricultural land is insecure because the 2019 Land Law does not recognize shifting cultivation practices or collective land rights.

Within each family, land is passed down from generation to generation. Parents allocate the land into plots and transfer it to their sons or daughters. This inherited land is then continually used, developed and protected by family members according to its previous use, for example as agricultural or residential land. This practice is well recognized and used within the community. The village committee also guarantees the protection of tenure rights obtained through the land inheritance system. This strong practice results in the villagers' customary rights being recognized by all community members without formal or legal documents. Neighbouring communities also recognize the villagers' customary tenure rights.

This is important because formal recognition of individual customary rights through individual land titles is difficult due to the Land Law, which requires people to prove they have used the land continuously over a 20-year period. And yet, the legal framework is unclear about the evidence needed to meet this condition. The question of how the State will recognize occupation for a shorter period of time is unresolved.

The Naom community's strong inheritance practices enable individuals and families to continue enjoying their customary rights over land. But while formal recognition of individual rights is possible, even if challenging to obtain, there is no possibility of the formal recognition of collective use of agricultural land, which is the main source of the village's subsistence and income.

Case study 2

Strong internal governance as a way to secure tenure: the case of the Indigenous Bunang community in Kbal Romeas Village, Stung Treng Province, Cambodia

By Farmer and Nature Net Association (FNN)

Kbal Romeas is an indigenous Bunong village with 252 inhabitants. It is located along a tributary of the Mekong River in the Sesan District of Cambodia's Stung Treng Province. The community has its own mechanism for self-recognition of customary tenure. It has been using customary land and practising sustainable natural resource management for many generations. There is a tradition of collective land use, while individual households use or own pieces of land within the territories claimed by the community as a whole.

The Bunong people have various collective practices for different types of land, including residential areas, burial sites, sacred forests or sites, reserved land, grazing lands, shifting cultivation areas and forest areas. Community members know their land boundaries and which areas should be used for different purposes, according to their customary rules and practices.

In 2019, the community obtained official recognition as an indigenous community from the Ministry of Rural Development, but it does not yet have official recognition of its customary tenure. Even so, the community can continue to practise customary land and natural resource management.

The community's traditional governance structure is crucial. All villagers participate in the community committee, which is their executive body. A traditional elders group is also equally important because they help to address any conflict in the community and they lead the ceremonies and festivals, among other roles. Although this governance system is only self-recognized, it is powerful. Factors that allow consensus-building among villagers on issues affecting their community include their collective use of customary rules and practices, the self-recognition of their boundaries and a well-defined, accepted and inclusive decision-making process.

This case shows that securing customary tenure is not only dependent on official recognition by the Government but also requires self-recognition among the Indigenous community members. Strong solidarity, participation and commitment among the community members to uphold, respect and protect their customary land and natural resources for sustainable use have allowed the villagers to strengthen their self-recognition of customary tenure.

Case study 3

The use of community mapping to secure customary lands under threat of acquisition or confiscation in Tanintharyi Region, Myanmar

By Myanmar Environmental Rehabilitation-conservation Network (MERN)

Myanmar lacks legal measures for the recognition of customary tenure. This means that vast amounts of land are unregistered and remain at the disposal of the State, although communities claim them legitimately as customary lands. Land grabbing, acquisitions and appropriations have inevitably led to land conflicts. Participatory community mapping can help to overcome these conflicts by providing evidence for a community's grievances and their customary tenure rights.

In the Tanintharyi Region, for example, a community was able to protect customary lands from land grabbing by a shrimp farming company. The company had leased 400 acres from the Government in 2011. But in 2016 it tried to expand its area for shrimp ponds by demarcating an additional 700 acres area of mangrove forests in the village's customary land. The villagers relied on these mangroves for food, fuelwood and other livelihood purposes. The community consulted with a local civil society organization and submitted a complaint letter, signed by 200 villagers, to the regional and national governments. The complaint included the village boundary maps that community members had developed jointly for their village development plan. Government officials led by a regional Parliament representative inspected the case and prohibited the company from expanding its operations onto the customary land.

In another case in Tanintharyi, a company intended to establish coconut plantations in an area of village-owned coastal forest in 2017. These villagers also contacted a local civil society organization for help securing their lands. Through a series of consultation meetings, the villagers decided to apply for a Community Forestry Certificate from the Forest Department. The community identified its customary rights in the forest as a basis for its application by mapping the use of its forest area. After the Forest Department issued the certificate to the community, the company ceased its activities because the villagers had obtained legal protection under the Forest Law. In this case, the community was able to secure customary lands under threat of acquisition through legal protection.

These cases show how communities were able to secure their customary tenure through community mapping as a self-recognition mechanism. In the second case, the community used the mapping to also obtain legal rights to forest management through community forestry.

Case study 4

How indigenous women's roles and knowledge of natural resources secure tenure in northern Thailand

By Asia Indigenous Peoples Pact (AIPP)

The Asia Indigenous Peoples Pact conducted in-depth interviews with indigenous Karen, Lahu and Tin women in three matrilineal and semi-matrilineal communities in northern Thailand. The interviews revealed how women view their traditional ability to access the land and resources as necessary to secure the physical and spiritual well-being of their communities.

All three communities traditionally manage and use land, forest and water resources collectively through community-based governance, ancestral knowledge and territorial management practices. The women have a central role in achieving balance between their communities and the surrounding environment through spiritual beliefs, rituals and ceremonies. The women lay the moral groundwork for this system through their teachings, which instil a sense of shared responsibility for maintaining natural resources for successive generations.

"For every grain of rice that we eat, we ask permission and forgiveness. We believe that everything has an owner, or spirit, thus we require permission before using," said Naw Eh Po, from Huay I Khang Village.

The women in these communities enjoy relatively secure access to land and have decision-making power over its use, despite the lack of legal recognition of their land rights. However, exclusion and alienation occur because national parks and conservation areas overlap with ancestral land, eroding the women's access to their land and threatening food sovereignty.

Indigenous women are at the front lines of popular movements to gain legal recognition of customary land tenure and to secure community land rights under Thai law. A key advocacy strategy is to raise public awareness by translating indigenous knowledge, beliefs and management systems into language that policy-makers and the Thai public can understand. In 2020, for example, Karen women from Huay I Khang Village donated rice to city dwellers during the COVID-19 lockdown and explained on national television the importance of protecting indigenous rice and other seed varieties for use in times of crisis.

Providing the new generation of indigenous women leaders with opportunities to study the laws and engage in policy advocacy will be crucial to their efforts to promote legal recognition of their customary land tenure and territorial management practices.

Co-recognition

Communities and other stakeholders, in particular the State, have used various initiatives and tools to jointly recognize a community's customary tenure rights. While the main purposes of such interventions might be something other than the recognition of customary rights, such as forest conservation, these approaches can also enable stakeholders to discuss and agree to protect certain land-use areas and customary practices.

The formally recognized land titling and forest management schemes, such as community forestry, village forestry or collective land titles, are covered in the section "Legal recognition", which describes formal recognition mechanisms.

Joint recognition mechanisms are generally informal but may have a degree of formality. They can take the form of an agreement, a contract, a negotiation or simply ongoing discussions among stakeholders. They may develop in or be linked to contexts in which a State uses other approaches for formalizing recognition of tenure. In these cases, the State has an important role in finding suitable, locally adapted mechanisms.

Several State-led and co-designed approaches present options for the recognition of customary tenure. An example is Lao PDR's participatory land-use planning process, which communities and local governments carry out together following an approach that the Ministry of Natural Resources and Environment and the Ministry of Agriculture and Forestry defined in 2009. The process allows the identification of communal land-use areas at the village and *kumban* (village cluster) levels. It also demarcates the village boundary and zones all of the land uses within the village territory. In 2022, the Lao Farmer Network estimated that about 470 villages had land-use plans (LFN, 2022). The process has the potential to set rules that are negotiated between communities and the local government, based on a mix of customary and state regulation. It can enable greater community participation, ownership and unity. This may also further result in collective land titling.

Although participatory land-use planning is a promising mechanism, it remains an interim measure for customary tenure recognition in Lao PDR. And while the process offers increased security to individuals and households, it could weaken collective claims in some cases. Another challenge is that community land titling is still being piloted in Lao PDR, so the number of communities with communal land titles remains small. Communal titles are also distributed unequally across the country, with fewer in the upland and forest areas where communities practise customary tenure.

Other interventions include those where communities jointly identify their customary rights with other stakeholders according to less formalized approaches, including safeguard mechanisms and locally negotiated approaches. For example, this includes the use of a free, prior and informed consent process whereby a government agency allocates an area of land for a development project (see case study 5) or before a private company starts its operations (see case study 6).

Where a community customarily manages an area's natural resources, its practices and knowledge can form the basis for further informal or formal recognition by local and national authorities (see case study 7).

In Viet Nam, the Ma Lieng community has codified its customs on natural resource management in a community regulation (see case study 8). This allowed the community to later obtain legal forest management rights. Here as well, the initiation of recognizing customary norms resided within the community while the role of the State was complementary in recognizing customary tenure through community forestry.

In other cases, there may already be a partial recognition of a community's customary tenure by the State, for example, through individual land-use rights. When such a situation created conflict, the local people advocated to transfer those individual rights to a community forest. By doing this, the community gained legal recognition of its tenure and management of the forest according to its customary practices (see case study 9).

Finally, communities have also been partnering with other entities, such as non-governmental organizations, to map their customary land rights (see case study 10). Where this is done collaboratively with local authorities, it has the potential to address previous conflicts and reinforce multi-stakeholder dialogue. Such collaboration can also be a starting point for processes through which the government formally recognizes community maps.

Case study 5

Use of a free, prior and informed consent process by the Ministry of Planning and Investment in Lao PDR to identify areas under customary tenure when allocating land for development projects

By Lao Development of Human Resources in Rural Areas Association (Lao DHRRA)

The Ministry of Planning and Investment (MPI) works with the Ministry of Natural Resources and Environment, the Ministry of Agriculture and the Ministry of Energy and Mines when allocating land to large-scale economic development projects in Lao PDR.

The MPI compiles information from investors and submits it to the relevant ministries for their consideration and approval. It also provides government officials at the provincial, district and village levels with information on concession agreements and relevant legislation and regulations. When a concession agreement is signed with an operator, the MPI focuses on promoting local benefits and interests, such as employment, infrastructure development funds and capacity-building for communities.

In some cases, the MPI has used a process for obtaining a community's free, prior and informed consent before allocating areas to economic projects. For example, in the case of the Luang Prabang Tourism Concession Project, the local authorities, the company and a community discussed the community's rights in the concession area and, in particular, an area with sacred caves. The three parties reached an agreement, with the community's consent, that the sacred area must remain protected and could not be allocated to the company.

In another case in Oudomxay Province, villagers raised concerns with the MPI because a planned hydropower project would cover a culturally important cave site. After discussing the situation with the community, the MPI decided to exclude the area from the project.

In both cases, the MPI considered communities' customary tenure during the allocation of economic concessions and engaged the communities in the decision-making process.

Seeking free, prior and informed consent is still a new approach for the MPI. In the past, it has instead used community consultation methods, such as discussions, videos and posters. While the promising cases described here show political will, the MPI may need to set up mechanisms to ensure a shift from a consultative, informational process to a process that seeks the consent of communities for the use of their customary land.

Case study 6

A private company's efforts to obtain a community's free, prior and informed consent for its operations in Lao PDR

By Lao Development of Human Resources in Rural Areas Association (Lao DHRRA)

Burapha Agro-Forestry Company Ltd is the oldest company in Lao PDR receiving foreign direct investment. It produces agricultural goods and exports plywood to international markets. The company says it is committed to managing and developing the business in a sustainable manner and to respecting international regulations. It has received an international award for good social and environmental practices.

The company has committed to obtain the free, prior and informed consent of communities in areas where it operates. Phonemong Village in Vientiane Province is one of these areas. The village's 720 inhabitants rely mostly on agriculture for their livelihoods. Since 2013, the company has been renting more than 300 hectares of village and individual lands there. To use the land, the company signed a contract with the Government (for state lands) and with landowners (villagers' lands).

Before this happened, the District Agriculture and Forestry Office, the District Office of Natural Resources and Environment, company staff and other stakeholders visited Phonemong twice to provide information about the benefits the village would get from the company. The company staff also introduced the company's objectives and principles to the community members. For example, they said that the company would only use degraded land and forest, that villagers would get big benefits, including jobs, and that there would be no negative impacts on the environment. The majority of villagers agreed to allocate their land to the company, which has since developed plantations in degraded forest areas.

This case shows how the company engaged with Phonemong village to provide information about the plantation before the company's operations started. Most information provided concerned the lack of environmental damage of the operations and the job opportunities it would provide. However, the company provided no information on the project's potential positive or negative impacts on the community's livelihoods, as well as other environmental and social aspects.

The process of information-sharing was not co-designed with the community and it aimed at providing information to the village rather than engaging community members in discussions about the project and its impacts and obtaining their consent on this basis.

The impacts of the company's operations in Phonemong Village are mixed. On one hand, community members have received job opportunities with the company. Women have received the

same benefits as men, including holding senior positions in the company. The village's infrastructure has also improved, and villagers are allowed to continue collecting wild vegetables and raising animals in the plantation.

On the other hand, the community noticed that the water supply had been diminishing in the village since the company began operating there. Some community members said that they do not see real benefits of the company working on their land because it has not improved their situation overall. They say that their main concern is to keep and protect their land for future generations. They mentioned their lack of access to land certificates and the restrictions that apply on their land use as major impediments to improving their livelihoods.

Case study 7

Agreement between a community and provincial authorities over the customary management of the Yeak Laom sacred forest landscape in Cambodia

By RECOFTC Cambodia

The community of Boeung Yeak Laom includes 3,721 people in 855 families living in five villages around Yeak Laom Lake, in Ratanakiri Province in north-eastern Cambodia. Most of the community members are indigenous Tampuan people who traditionally believe that spirits inhabit forests, lands and lakes. They consider Boeung Yeak Laom a sacred place and a symbol of their ancestral heritage. They believe that their well-being is linked to protecting trees in which spirits dwell.

Elected elders are in charge of the community's internal governance according to traditional rules. They decide on the organization of the village rituals and the education of the younger generation on Tampuan religion, culture and traditions. They also help resolve issues in the villages related to traditions and customs.

The community has sustainably managed and used the land and resources in the Boeung Yeak Laom area according to its traditions for generations. The area, which is rich in biodiversity, was declared a protected forest and overseen by the Ministry of Agriculture, Forestry and Fisheries until 2018, when its status changed. Under the new Protected Areas Law, the Cambodian Government re-designated the Yak Laom Lake and surrounding forest as a multiple-use area and transferred responsibility for the area's management to the Ministry of Environment.

The primary goal of the multiple-use area is nature conservation to drive local economic development and ensure sustainable access to water resources, forests, wildlife, grasslands and recreation. The main economic activities in Boeung Yeak Laom are production of cashew nuts, beans, rice and other agricultural products. Tourism is a secondary source of income.

In 2019, the five Tampuan villages approved a community agreement that determined how they would manage and conserve natural resources in the multiple-use area and created a structure to do so. The community worked with the authorities, non-governmental organizations and the Ratanakiri Provincial Department of Environment to request the establishment of the Boeung Yeak Laom Community-Protected Area (CPA). The Ministry of Environment declared the community-protected area in April 2019.

As a result, the authority and responsibility over the protected area are now shared between the Tampuan community institutions overseeing the community protected area and the government institutions responsible for the core zone. The Tampuan people manage and use 225 hectares of land, corresponding to their traditional land-use area. The community-protected area generates income for the community through ecotourism. It is administered by a conservation committee, composed

of community members in charge of financial planning and accounting, community-based natural resource management and the development of cultural and environmental education activities.

The community still needs to obtain a management agreement, co-signed with the Ministry of Environment, to officially have management rights over the community-protected area for 15 years. The signing of this agreement was scheduled for early 2021 but has been put on hold due to the COVID-19 pandemic.

The community hopes to obtain the agreement in 2023. In the meantime, the community's informal arrangement with the Ratanakiri Provincial Department of Environment allows the villagers to continue to benefit from the natural resources in their area and to undertake their traditional practices.

Case study 8

The establishment of a community regulation by the Ma Lieng community to preserve customs and regulate resource use in Ban Ke, Viet Nam

By Consultative Institute for Socio-Economic Development of Rural and Mountainous Areas (CISDOMA)

In 1993, the Ma Lieng community was resettled in Quang Binh Province. This ended the community's nomadic lifestyle and use of shifting cultivation. In the new location, areas of forest were assigned to individuals, contrary to the community's customary practices. Since then, community members and other local people have cleared forest to grow crops, and this has caused erosion and landslides, threatening the villagers' safety. It reduced the availability of non-timber forest products that community members traditionally harvested for their livelihoods. The community also faced difficulties conducting spiritual rituals in the forest.

The severity of deforestation and the risks to community livelihoods led non-governmental organizations to pilot a project on community forest management in 2012. The community's efforts had positive impacts on the forest, and this led to the Government re-allocating 4.7 hectares of forest to the village for community management in 2015. An elected community forest management board is responsible for patrolling, monitoring, managing and protecting the forest and its resources. The community forest management board, in consultation with villagers, developed a community regulation on forest management that combines customary norms and legal requirements. The regulation includes a mechanism to impose sanctions in the case of rule-breaking within the community or report serious violations to the Government. The district authority endorsed this regulation as part of the requirements for allocating the forest to the community.

This combination of community and state regulation and enforcement has resulted in good management of the natural resources and the protection and development of the forest. In particular, the villagers have improved their income from the harvesting and processing of non-timber products, such as young bamboo shoots. Community members respect and comply with the community regulation. Local authorities and people living near the Ma Lieng community forest also respect their customs.

Case study 9

The Thai community of Ban Lieng used a combination of formal rights and a community regulation to solve land-use conflicts in Dien Bien Province, Viet Nam

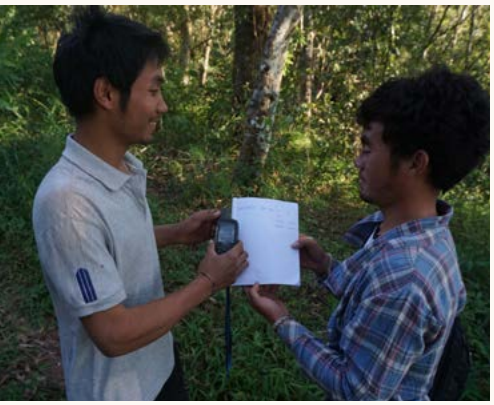
By Consultative Institute for Socio-Economic Development of Rural and Mountainous Areas (CISDOMA)

As with most local communities, water resources are crucial to the lives of ethnic Thai people in the Ban Lieng community in Viet Nam's Dien Bien Province. A small stream provides just enough water for the villagers to use in their daily activities and for their fishponds and rice fields.

In 2002, the Government allocated all of the upstream forest area to individual households. This created conflicts among families over the uneven quality of forest allocated, the type and size of trees and the lack of clear boundaries. More importantly, individual management disrupted the customary use of the forest and land and had serious impacts on water sources. The community members discussed these issues and decided to jointly manage the forest according to customary norms, even though the certificates had been issued to individual households.

To oversee the collective management of the forest, the villagers elected a community-based forest management board consisting of the village elder, village head and the secretary of the Communist Party. The community regulation to manage the forest, developed by the board and in consultation with the community, combines both legal provisions and customary norms. Any decision relating to harvesting or the management of the forest needs to be carefully discussed and must gain the consensus of villagers. This is achieved through village meetings that most people attend, and decisions are based on the established community regulation and legal provisions. People are only allowed to cut trees for purposes that are agreed to by the community. They must also get permission from local authorities.

After 20 years of regeneration under the community's management, the forest in the Ban Lieng community is well preserved, and water continues to flow in the stream. The community also enjoys solidarity, maintaining their culture and responsibility to protect the forest. The villagers believe that their customary practices have helped to build a good life, improve management of natural resources and ensure compliance with forest protection laws and state regulations. The Government recently acknowledged these positive impacts. It legally recognized the community's tenure by reissuing the land-use rights certificate to Ban Lieng village as a community forest.



Case study 10

The use of participatory mapping as a mechanism to resolve conflicts and recognize communities' land-use rights in Nan Province, Thailand

By RECOFTC

The creation of the Pha Daeng reserved forest in 1988 and the Doi Phukha national park in 1999, in Thailand's Nan Province, created severe conflicts between the forest conservation officers and communities holding customary tenure rights in those areas. Some of the activities the communities previously carried, such as practising shifting cultivation, were no longer allowed, and their relationship with the forest conservation officers and local government deteriorated.

In 2005, the non-governmental organization Raks Thai Foundation started to work with those communities to map and protect their land-use rights. They undertook a process of participatory geographic information system (GIS) mapping with the communities and involved the local authorities and neighbouring communities.

The mapping was based on the communities' traditional land-use rights and included all land-use types defined by them. They started by mapping collective-use rights in farming areas and fallow lands, settlement areas, burial and spiritual sites, cattle grazing areas, watersheds and so on. The mapping later included individual farming plots. It also identified rules for managing natural resources, based on communities' traditions and cultural beliefs. The process took one to two years to complete, depending on the village.

The communities' identified rights were added to maps with global positioning system (GPS) coordinates to show land-use boundaries and identify the owners of plots of land. The maps, signed by the local government and communities, constitute informal agreements between the two parties. Although the maps do not have official value, they could contribute to the legal recognition of tenure.

The participatory mapping resulted in the communities securing peaceful access to and use of important forest resources, which has improved their well-being. They can, for example, resume traditional practices in the national park, such as shifting cultivation. The maps also helped to manage conflicts due to overlapping land tenure among community members and with neighbouring communities.

The process helped rebuild trust and dialogue between the communities and the local government, thanks to the intervention of Raks Thai Foundation as an intermediary. This was possible because of the involvement of all stakeholders. They included women, leaders, elders and other community members, governmental bodies and non-governmental organizations, local authorities at the subdistrict and district levels and other government offices, such as the army and the Royal Project. The National Park Office and the Forestry Office now also use the land-use map database as a tool for managing natural resources in the protected area.

The mapping has been a powerful approach for securing customary tenure beyond the type and scope of recognition provided for under the law because it identified all the customary use areas of communities and their traditional practices through a highly inclusive process.

Legal recognition

Legal provisions for recognizing customary tenure vary considerably across the Mekong countries, both in their coverage and in the level of protection they provide to communities. The coherence, applicability and implementation of these provisions also vary greatly. The relevant legal provisions are mostly found in land and forest laws, although other laws must also be considered to generate a full picture of the level of rights protection.

All countries covered in this report have provisions enabling communities to use and manage forests and natural resources. While these provisions focus primarily on the sustainable management of resources, they allow for the recognition of certain customary rights. In most cases, however, these provisions do not fully recognize customary rights and practices. Restrictions still apply to the scope of rights, the geographical area, the land-use types and the duration over which rights are granted.

Regional commonalities and differences

- All countries covered in this report have at least one formal model of community forest management through which certain customary rights may be recognized. However, in most cases, these rights are not fully recognized and restrictions still apply.
- Governments have differing motivations for devolving forest management to communities. These include the sustainable management, protection and rehabilitation of forest areas and, in fewer countries, improved rural livelihoods (RECOFTC, 2013).
- Most legal frameworks allow communities the rights to access, use and manage forest resources, but only some allow the right of communities to exclude others from forest areas. All of them allow communities to benefit economically through the sale of certain forest products or services.
- Mechanisms formalizing community rights rarely cover the full range of customary lands or resources that communities claim and use. Some models of community-based forest management align with customary tenure rights, particularly those that are based on specific traditions. Examples include sacred forests in Lao PDR and religious and traditional forests in Viet Nam. Other models, like community-protected areas in Cambodia, align partly with customary tenure. Community-protected area agreements, for example, provide for the recognition of sacred forests and other customary areas. However, the objectives of community-protected areas focus primarily on conservation and may not integrate livelihood improvement or the community's economic development.
- An important commonality in the region is the preference of States to allocate individual rather than collective rights. Only Cambodia allows for the collective ownership of customary land by indigenous communities. But the process for acquiring a collective land title is long, costly and complicated because it involves multiple ministries. It also requires official recognition that

the community is indigenous, the first step of the process. Customary land ownership is not available to non-indigenous communities in Cambodia.

- Countries in the region use different words in relation to Indigenous Peoples. This also impacts the way in which states recognize customary tenure. The term “ethnic groups” is used in Lao PDR and Myanmar. “Ethnic minorities”, “ethnic nationalities” and “Indigenous Peoples” are also used in Myanmar, sometimes interchangeably. Viet Nam recognizes indigenous knowledge but does not use the term Indigenous Peoples. It refers to “ethnic minority people” or “ethnic groups”.
- The legal frameworks of Myanmar, Thailand and Viet Nam do not recognize the ownership of customary land. In Lao PDR, Myanmar and Viet Nam, individuals, families or communities on customary land can apply for a land-use certificate, but there is no community-level land titling.
- In all the countries in the region, communities can use, although often only partially, their customary land, provided they demonstrate they have lived there and have association with the land for a certain period of time.
- In the region, States own the land and allocate it to communities through complicated processes rather than having legal frameworks that recognize pre-existing customary rights. A common challenge is the need to use policies and plans to determine clear boundaries so that areas under customary tenure are available for formal recognition and are not allocated to other economic interests.

As table 2 shows, there are two main routes for formal recognition of communities’ customary tenure rights in the region: through laws covering the management and use of land and forest resources and through laws covering the control including ownership of land and forest resources. As the table also indicates, there are great disparities in the level of recognition of communities’ rights with, currently, little legal recognition of customary rights through land ownership and partial recognition of these rights through the use and management of resources.

Table 2. Legal recognition of customary tenure in the Mekong region

	Community use and management of forest resources	Control and ownership of customary land
Cambodia	Community forestry and community protected areas ▪ Rights to access, to use, to manage, to exclude and to benefit from forest resources (Forestry Law 2002, Protected Areas Law 2008)	Collective land titles ▪ Collective land ownership for indigenous communities only, through collective titling (Land Law 2001)
Lao PDR	Village forestry, communal tree plantations and sacred forests, village forest management and conservation contracts ▪ Rights to manage and use forest, including customarily, and rights to sell planted trees and non-timber forest products (Forestry Law 2019)	Land titles and land-use certificates ▪ Land titles are not available for forestland, which the State owns entirely; instead, individuals or families can acquire land-use certificates (Land Law 2019) ▪ On land other than forestland, individual land titles require proof that the applicant has occupied the land for 20 years ▪ There is no community land titling
Myanmar	Community forestry ▪ Rights to use, to manage, to exclude and to sell products and the right to inherit (Forest Law 2018, Community Forestry Instructions 2019)	No formal recognition of customary land*
Thailand	Community forestry ▪ Rights to use, to manage, to exclude and to sell products (Community Forestry Act 2019)	No formal recognition of customary land
Viet Nam	Community forest management ▪ Rights to use, to manage, to exclude and to sell products (Forestry Law 2017) Reserve forests ▪ Right to use natural forests traditionally used and managed by communities (Forestry Law 2017) Planted production forests ▪ Communities can own planted production forests (Forestry Law 2017)	No formal recognition of customary land**

Note: * In Myanmar, customary land cannot be owned. Individuals can acquire a land-use certificate called Form 7 for farmland but not for forestland. These certificates can be transferred, inherited or mortgaged (Farmland Law 2012). ** In Viet Nam, customary land cannot be owned. Individuals, households and communities can acquire a land-use rights certificate. These are indefinite for residential land and last up to 50 years in the case of forestland and agricultural land (Land Law, 2013).

Cambodia

Cambodia is the only country in the region with legislation that fully acknowledges the rights of Indigenous Peoples to customary tenure. Three schemes recognize customary forest tenure of indigenous or non-ethnic communities: collective land titles, community forestry and community-protected areas.[1] The main legal instruments covering these schemes are, respectively, the 2001 Land Law, the 2002 Forestry Law and the 2008 Protected Areas Law.

Some provisions in the Constitution are also relevant to customary tenure recognition, in particular those providing equality before the law regardless of race, sex or language (article 31) and prohibiting discrimination against women (article 45). Cambodia is also a signatory to international treaties that can support customary tenure rights through a commitment to respect basic human rights as well as the rights of women, children and ethnic minorities.[2] The country has endorsed the United Nations Declaration on the Rights of Indigenous Peoples, which contains specific articles to protect the lands, territories, customs and traditions of Indigenous Peoples.

The ministries in charge of issues relating to the recognition of customary tenure are: the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Environment, the Ministry of Interior, the Ministry of Land Management, Urban Planning and Construction and the Ministry of Rural Development.

The 2001 Land Law recognizes collective land titles, allowing indigenous communities to be land owners on the basis of their traditional land uses. Collective land titles can encompass residential land and permanent agricultural land (private land) as well as traditional agriculture, spiritual forestland, burial grounds and cemeteries and reserved land necessary for shifting cultivation (collectively managed land). Sub-decree No. 83 on Procedures of Registration of Land of Indigenous Communities defines the conditions for accessing collective land titles.

Once obtained, a collective land title is indefinite. However, the legal process for applying for a collective land title is long, complex and costly. It requires indigenous communities to register as legal entities, to self-identify as an Indigenous Peoples and have this status officially recognized and to obtain the land title. The process involves three ministries. This makes it difficult for these communities to obtain land ownership.

As a result, between 2011 and 2020, the Ministry of Land Management, Urban Planning and Construction granted collective land titles to just 33 villages, covering 33,898 hectares.[3] To give context, there are approximately 14,000 villages in Cambodia, although not all of them are indigenous communities.[4] Recognition of collective customary tenure rights therefore remains highly fragmented.

The 2008 Protected Areas Law introduced the model of community-protected areas. This model reaffirms the State's recognition of the right to secure access to traditional uses, local customs, beliefs and religions of all local communities and Indigenous Peoples living in and adjacent to protected areas. But because the model was developed for the purpose of conservation rather than for the economic development of communities, the participating communities can derive few benefits. For example, the legal framework does not allow the sale of trees from protected areas or community-

protected areas even if they are from sustainable-use zones or planted forests on state land. The community-protected area agreements are only for 15 years and only cover small areas. This does not encourage registration and discourages investments, with implications for restoration and reforestation.

The 2002 Forestry Law recognizes some rights of communities to use forests for religious, cultural or conservation purposes. Communities retain their traditional rights to collect and use non-timber forest products from these forests but they cannot commercialize them. Communities can also be granted an area of permanent forest reserve as a community forest, with the rights to manage and use its resources in a sustainable manner over a 15-year period. Such communities can collect timber for their own use after their five-year community forest management plan has been approved. Sub-decrees further specify the rights and obligations of communities under the community forestry scheme.[5]

Lao PDR

The legal framework of Lao PDR recognizes some customary tenure rights, with some limitations. The main legal pathways for the recognition of customary tenure are the practice of village forestry, which allows communities to manage and use forests, and the control of land other than forestland through acquisition of a land-use certificate or a land title.

Article 8 of the Lao Constitution, amended in 2015, recognizes equality among ethnic groups and the preservation of their customs, and article 17 protects the right to property. But the Constitution does not explicitly mention customary or collective tenure. In 2017, however, the Government's Central Committee on Land Management and Development declared that the State must recognize and protect the land-use rights held by individuals, entities and collectives as well as peoples' customary land rights (Ironside, 2017).

Institutions involved in recognizing customary tenure are the Ministry of Agriculture and Forestry, the Ministry of Natural Resources and Environment and local administrative authorities.

Article 130 of the 2019 Land Law grants the recognition of customary land-use rights to individuals who have occupied an area of land for at least 20 years. This recognition is available through titling in all land categories except for forestland that is owned by the State.

Land-use plans are another avenue for identifying customary tenure at the village level. This process is not legally strong, and land-use plans have not effectively protected against land grabbing by concessions. However, land-use plans are a precondition for other legally stronger formalization mechanisms, including village forestry and individual land titling.

In forest areas, the law grants land-use certificates. However, these certificates have some drawbacks that limit the ability of communities to continue traditional practices and ensure food security on their land (Derbidge, 2021a and 2021b). For example, the legal framework does not specify which tenure rights communities have over land

they manage collectively, but these rights and areas are critical for rural livelihoods based on collective agriculture and village forestry. In addition, land-use certificates are only available to individuals and families but not to communities, and the process for granting those rights is unclear.[6] And although land titles give permanent rights, land-use certificates are granted for a fixed period only.[7]

Communities can be granted rights over the use of some collective areas, such as cemeteries, sacred forests, common ponds, temples, schools, health centres, village administrative offices and village markets. But the law does not mention the recognition of customary rights over agricultural land and forests, which are the main areas of collective use. In the case of necessity or for the national interest, the State can re-acquire the land-use rights from communities by paying compensation for the losses caused. The current legal texts do not describe the compensation process.

The 2019 Forestry Law recognizes the customary use of forests, timber and non-timber forest products but it does not allow communities to own forests. Under the village forestry scheme, the district administration authority grants communities the rights to use and manage forest resources on the basis of an approved village forest management plan. In addition, through the issuance of the Village Forest Management and Conservation Contracts, communities' customary rights can also have a legal basis, although this is still limited and excludes ownership.

The Land Law and the Forestry Law do not address customary tenure rights in much detail. This leaves some questions unanswered, such as the duration of the land-use certificates or whether communities can obtain a land title for customary tenure rights on state forestland (see Derbidge, 2021a). Clear provisions in the implementing decrees, regulations and guidelines are required. Capacity-building of implementing local and national institutions and improved coordination among them are also needed. Raising villagers' awareness of their statutory rights will be necessary for those whose survival depends on exercising their customary rights.

Myanmar

Myanmar has two main government ministries with major roles in land and forest governance and associated links to customary tenure. They are the Ministry of Agriculture, Livestock and Irrigation, which oversees management and registration of permanent agricultural lands, and the Ministry of Natural Resources and Environmental Conservation, which is responsible for areas with forests, mangroves, water bodies and underground mineral resources.

There is great diversity of customary practices in Myanmar, which has numerous ethnic groups, mainly in highland areas. Each group has its own religious beliefs, cultural background, livelihoods and historical context. There is no common policy position or legislative framework on customary land tenure. The 2008 Myanmar Constitution does not explicitly recognize customary tenure or communal rights, but it does not prohibit them either. Provisions in the 2018 Forest Law, the 2016 National Land Use Policy and other legislative texts provide entry points for the recognition of some customary tenure practices. There are a few policies and laws relevant to customary

tenure in Myanmar,[8] but the 2016 National Land Use Policy is the only one that explicitly mentions customary tenure.

The main legal avenue for communities to gain recognition of some of their customary forest tenure rights is Myanmar's community forestry framework. Under this framework, communities can acquire formal rights to access, use and manage natural forests and mangrove forests that they have conserved traditionally. This includes the rights to exclude non-members of the community forest, to use non-timber forest products for commercial purposes and to create community-based forest enterprises. Although community forestry can be practised on customarily owned land, the legal framework does not recognize the land as such. Communities can obtain these forest tenure rights for an initial period of 30 years by applying and going through a registration process, which can sometimes be a burden and difficult for communities to navigate without external support.

Another promising avenue for increased recognition is through the 2016 National Land Use Policy. It outlines aspects of a future Land Law that may recognize customary land-use tenure systems. The proposal is to go beyond recognizing a fixed land-use category and beyond the partial recognition of some tenure rights under the Forest Law, to the recognition of the entire customary system.

Despite significant progress in recent years towards the formal recognition of customary forest tenure in Myanmar, recent political events have created much uncertainty as to how proposed frameworks for the recognition of tenure rights will be developed in the future.[9] It is unclear, for example, what the military junta's approach to community forestry and the rights of the country's ethnic groups will be. In addition, one result of the February 2021 military coup is the significant reduction in overseas funding for programs supporting the devolved management of natural resources in the country.

Viet Nam

In Viet Nam, the state agencies most relevant to the recognition of customary tenure are the Ministry of Agriculture and Rural Development, the Ministry of Natural Resources and Environment and the Committee for Ethnic Minority Affairs.

Communities can be allocated land, forests and resources with a limited bundle of rights. The State retains ownership of land and natural forests, but under the 2013 Land Law and the 2017 Forestry Law, communities can be land and forest users and owners of forest plantations.

According to the Forestry Law, allocation of forestland for protection or production must respect the customs of communities and must give priority to ethnic minorities and other people with customs and beliefs linked to the forest. Communities can use allocated forestland for protection and development, for conservation, for ecotourism and, in the case of plantation forests, as a source of timber. They can use non-timber forest products under certain conditions.

Communities can sign forest contracts and are entitled to benefit from payments for environmental services as a compensation for their protection of the forests.

Communities can also collaborate with state forest owners, such as forest management boards or state forestry companies, to use forests under collaborative management mechanisms. The law also recognizes the rights of communities to practise their culture and beliefs in (natural) reserve forests. The law recognizes community ownership of forest plantations but not of natural forests.

The Land Law allows individuals and households to obtain land-use certificates for up to 50 years to practise agriculture on a maximum of 30 hectares of land. The certificates are also called “red books”. Under article 131, communities can be allocated land to “preserve national identities associated with their traditions and customs of the people” and to practise agriculture and aquaculture. This is possible if there is no dispute over the land and the commune-level People’s Committee has certified the land as being commonly used by the community.

The legal and institutional framework does not recognize a community as a legal entity. It also denies communities the rights to use land and forests in certain ways, such as leasing, mortgaging and using forests as collateral. This limits the roles communities can have as land users and forest owners.

Over the past decade, Viet Nam has made remarkable progress with its recognition of the traditional social structures, values and regulations of communities as well as on broader issues, such as livelihoods, gender equity and social inclusion. For example, the 2015 Civil Code recognizes the traditional practices and knowledge of Indigenous Peoples. However, these provisions have not been institutionalized, and some of them lack implementing regulations. As a result, their implementation remains limited in practice. In the next chapter of this report, the section on “National challenges and opportunities” describes challenges to the recognition of customary tenure in Viet Nam in more detail.

What are the gaps and opportunities?

Regional challenges and opportunities

The analysis of legal frameworks and the research on specific mechanisms of customary tenure recognition have identified gaps that must be addressed to ensure that communities' customary tenure is recognized in practice.

Main limitations to customary tenure recognition in the region

- In most of the region, policies and laws do not explicitly define customary tenure. Also, national governments do not recognize legal pluralism and the fact that customary practices change over time in response to changing contexts.
- Linked to the above limitation, most legal frameworks are not specifically designed to recognize customary tenure and especially not the customary governance of land by the communities themselves, but instead are designed to allocate some form of use rights. An exception is the collective land titling for indigenous communities in Cambodia.
- National governments recognize only portions of the lands, resources and territories that belong to communities, and that recognition comes with different limitations. Partial recognition of customary tenure in laws in particular remains an issue. For example, when examining the bundle of rights offered to communities, certain rights may be missing, such as the right of exclusion. This means that while a community may have access to and can use the land and resources for their customary practices, they cannot prevent outsiders from using it. This can cause tensions and also limit the benefits to communities. In addition, most States limit communities' rights to derive livelihood benefits from forestlands.
- The effective implementation of legal frameworks that grant customary rights remains an issue in the region. Policies are not always supported by implementation mechanisms that are decentralized and accessible to remote communities or by adequate budgets and monitoring systems. Laws and regulations sometimes lack clear operational instructions for the government and rights-holders.
- Laws and their provisions may be inconsistent or incomplete. Inconsistency is particularly evident between land laws that cover the allocation of land-use and land ownership rights and forestry laws that commonly grant forest-use and management rights to communities. Legal inconsistencies also relate to contradictory priorities of governments in relation to development, which undermine the devolution of rights to communities.

- A lack of clarity in the roles and responsibilities of government agencies often creates conflicting initiatives, with resulting inefficiencies and tensions. The downward accountability and representativeness of local institutions responsible for governing customary tenure is another limitation.
- The lack of clear hierarchies of regulations and the top-down attitudes and perceptions of officials also hinder the recognition of customary tenure.

The main opportunities to address these gaps include ongoing legal reforms, through which customary tenure could be better integrated into legal frameworks. Some regional and national-level initiatives described here, such as platforms for dialogues, may be useful entry points for improving the understanding of customary tenure and addressing the shortcomings.

Regional opportunities to address some of these gaps include spaces for cross-learning and exchanges and the adoption of regional standards. In 2022, the Association of Southeast Asian Nations (ASEAN) adopted a Guideline on Customary Tenure. This sent a clear signal to ASEAN Member States on the importance of recognizing communities' customary tenure and offered clear principles and standards that can be included in national policies and laws. This important framework will be particularly relevant for the numerous reforms under way in forest and land legislation in the region.

"Regional entry points" in the next chapter highlights other opportunities to promote and strengthen the recognition of customary tenure.

National challenges and opportunities

Cambodia

Some challenges to the recognition of communities' customary tenure relate specifically to collective land titling, community forestry and community-protected area schemes.[10]

There are also some broader limitations. One in particular is the involvement of multiple authorities in the recognition of customary tenure rights, such as three ministries for collective land titling. This causes confusion and makes it time-consuming and difficult for communities to apply for and obtain collective land titles or a community forest or community-protected area. There is a need to clarify jurisdictions and responsibilities and to enhance cooperation among ministries to make the implementation of these schemes more coherent and effective.

Moreover, communities lack knowledge of their rights to obtain a collective land title or community forest or community-protected area status. And they lack the capacity to apply for a land title according to the legal requirements. There is also a gap in the capacity of subnational administrations to support communities to go through the

process and to receive support from national ministries, especially because Cambodia is undergoing a process of decentralization.

Finally, there is a gap in funding for the recognition of customary tenure. There is therefore a need for the Government to allocate a specific budget to implement its strategic plans and actions. This will help mobilize finance to support communities' livelihoods and recognition of their customary tenure.

Legal limitations to customary tenure recognition in Cambodia

Cambodia's collective land titling, community forest and community-protected area schemes each limit the recognition of customary tenure in different ways. The following limitations are common to more than one scheme.

- Forming a legal entity
  A community must incorporate as a legal entity before it can use and manage forestland under any of the three schemes in a forest estate or a protected area's sustainable-use zone, under the Forestry Law and Protected Areas Law, respectively. The process for doing this is demanding in terms of knowledge, experience and the funds needed to prepare the necessary documents. It also requires some fieldwork that most communities cannot complete without support.
- Agreement durations and land areas covered
  The Government allocates community forests and community-protected areas for just 15 years. This makes communities' customary tenure insecure and deters investment by the tenure-holders.

The main limitations with collective land titling are:

- Partial recognition of the customary domains of Indigenous Peoples
  The 2001 Land Law recognizes Indigenous People's collective land ownership. But its Sub-decree on the Procedure for the Registration of Collective Lands only recognizes the rights of Indigenous Peoples to some types of land within their traditional boundaries. Those types mainly include residential land, permanent farmland, shifting cultivation land or reserve land, burial sites and sacred forests no larger than 7 hectares. As a result, the collective land of Indigenous Peoples is recognized in sporadic plots separated by state lands, such as forests, schools and lands for other public purposes. This partial recognition of collective land has also facilitated encroachment by outsiders.
- The complex process for obtaining collective land titles
  Indigenous communities must follow three consecutive steps to obtain a collective land title: the recognition of indigenous status by the Ministry of Rural Development, the registration as a legal entity under the Ministry of Interior and the issuance of the collective land title by the Ministry of Land Management, Urban Planning and Construction. Close coordination among the three ministries and the subnational administrations on the technical and legal aspects is essential to ensure the recognition of Indigenous Peoples' customary tenure rights. This is often a challenging task, as illustrated by the fact that only 33 collective land

titles had been issued as of June 2021, whereas 155 communities had obtained recognition of their indigenous status.

- The changing nature of land use and livelihoods
  The increasing adoption of cash crop planting is leading to the individualization of land tenure. Many people are opting for individual titles to access loans and are finding collective land titles less appealing. This also results in fragmented institutions and arrangements.

The main limitations with the community forestry scheme are:

- The long process
  The long process for applying for a community forest is due in part to the number of steps needed to process the submitted documents. By the end of 2020, there were 638 community forests allocated in Cambodia, but only 103 had developed their community forest management plan and had it approved by the authorities.
- Degraded land
  Areas allocated as community forests are often degraded land or poor-quality areas of forest.
- Encroachment
  Community forest members sometimes have difficulties in preventing outsiders or local non-members of the community forest from encroaching on their land and using its resources. This can create conflicts.

The main limitations with community-protected areas are:

- Few benefits for communities
  The community-protected areas scheme was created with a conservation focus. It does not allow communities to seek collaborative partnerships to benefit from their forest resources, especially timber. As a result, community members have received few economic returns or none at all for their involvement in community-protected area management through the support of projects operated by the Ministry of Environment and/or non-governmental organizations.
- No benefit-sharing mechanism
  Community-protected area agreements have no clear mechanism to allow for benefit-sharing between the communities and the Government.

Addressing the gaps

Opportunities to address these limitations include Cambodia's ongoing decentralization process, which will devolve more decision-making power to the provincial level. This offers an opportunity to tailor mechanisms for the recognition of customary tenure to communities' needs and realities and, in particular, to ensure simpler procedures and more local support to communities.

The ongoing revisions of the Forestry Law, the Land Law and the Protected Areas Law and the forthcoming associated regulations provide other avenues for advocating for greater consistency in the legal framework and addressing the legal limitations previously highlighted.

Strengthening multi-stakeholder dialogues among the government, communities and others is another way to improve coordination and consensus on customary tenure recognition. Different possibilities can be explored, such as setting up the Technical

Working Group on Indigenous Peoples' Development as a dedicated multi-stakeholder group for the revision of the procedures for formalizing customary tenure and the revision of the legal framework.

To increase the legal protection and recognition of customary tenure in Cambodia, the following areas would need attention:

- Improving and streamlining the collective land title process
  This can be done by simplifying and accelerating the allocation of collective land titles and by expanding the land types covered by the titles to include such areas as grazing land, grass-cutting areas, communal lakes, ponds and bamboo groves. A mechanism is needed to coordinate all relevant ministries and stakeholders, with full participation of Indigenous Peoples.
- Strengthening the recognition of customary tenure in community-protected areas
  Community-protected areas should be extended to includes parts of the conservation and core zones that are within a community's customary tenure area. The revision of the Protected Areas Law should enable a simple allocation process and allows customary users to manage and access natural resources in different zones under the zoning system for protected areas.
- Empowering communities and decentralizing the management of land and natural resources
  The Forestry Law of 2002, the Land Law of 2001 and their related sub-decrees and regulations classify all forestland in Cambodia as public state land while allowing some level of delegation to communities. New laws should integrate the collaborative management approach and allow for the full delegation of management rights to Indigenous Peoples and local communities. For community forests and community-protected areas, local communities should be provided the right to fully control natural resources, according to a comprehensive management plan.

Lao PDR

There are gaps in the legal framework that limit the recognition of customary tenure in Lao PDR highlighted here, along with suggested ways to better integrate such recognition in the legal instruments.[11]

Addressing the gaps

The forthcoming process of enacting new regulations under the recently revised Forestry Law and Land Law will provide opportunities to address some of the challenges to the legal recognition of customary tenure.

Other areas for attention are:

- Coordination
  All parties should support each other in implementing the new laws and regulations. In particular, the Ministry of Agriculture and Forestry and the Ministry of Natural Resources and Environment should work in harmony, with clear roles, to ensure that the tenure rights of local people are protected. A unified understanding and approach to customary tenure rights by these two ministries would provide the basis for increasing legal recognition. This would also improve land-use management and communication with villagers in cases of conflict over land and resources.

- Awareness-raising
  There is a need for greater awareness among communities regarding the Land Law and the Forestry Law to ensure that villagers understand and can protect their rights and can challenge laws that are unclear.
- Capacity
  It will be important to strengthen the capacity of village authorities to ensure long-term success in the implementation of their approved village forest management plans.
- Safeguards
  There is a need to develop social safeguards, such as the free, prior and informed consent process, to protect customary tenure rights before concessions are allocated or development projects are approved in village areas. This is particularly important if there is high demand for land from outsiders investing in agribusiness and forestry because there is a risk that villagers will become landless. This risk could be mitigated with a legal requirement for the Government and, where relevant, for companies to thoroughly investigate the status of land and communities' customary tenure before land near villages is allocated to outsiders. This should be accompanied by increased law enforcement to ensure compliance with these measures.
- Local land-use plans
  Such plans, approved by the district authorities, can help to identify communities' customary tenure. However, these plans are not sufficient to protect customary tenure because they are not developed consistently and depend on external support. Enhancing the legal strength of the land-use plans is an important avenue for recognizing customary tenure in Lao PDR.
- Dialogues
  Dialogues among government officials, development partners, international and local civil society organizations, village administrations and communities would help to improve the recognition of customary tenure rights. They would highlight the need to safeguard the customary rights of villagers living in the three categories of designated state forestland.

Legal gaps in Lao PDR

It is unclear how customary rights to collective areas can be recognized because the laws are open to interpretation and mostly cover individual rights to customary tenure.

Article 130 of the Land Law requires that land must have been under customary use for at least 20 years for customary tenure to be recognized through a land title. This threatens customary systems, such as shifting cultivation. The Forestry Law also restricts the use of shifting cultivation. It is essential for the Government to clarify how land titling registration will be accessible and what elements will be considered in the process, especially in relation to communities' cultural beliefs and customary practices. New regulations are needed, for example, to clarify how local people can participate in managing state forestland and to set the conditions under which communities can use certain areas, such as protection forests, conservation forests or buffer zones, and production forests.

There is a need to mainstream gender-responsiveness into the implementing decrees and regulations because the current land and forestry laws are silent on women's right to tenure.

Myanmar

There are no laws in Myanmar that formally and fully recognize customary tenure rights. The Forest Law is the main entry point, but there are limitations in that law as well as the wider legal framework and with implementation.[12]

Limitations include:

- The National Land Use Policy supports recognizing customary tenure, but the Government would need to amend the following laws to make them consistent with the policy: the Farmland Law; the Vacant, Fallow and Virgin Land Management Law; the Forest Law; and the Land Acquisition Law. For consistency, the Government would also need to amend the corresponding rules and standing orders.
- The legal framework is incomplete because the national Land Law needs to be enacted and some regulations under current laws are still being drafted. Examples include the amended Forest Rules and the Biodiversity and Conservation of Protected Areas Rules.
- The community forestry scheme only grants limited tenure rights that do not align fully with customary practices in terms of scope and geographical area.
- The partial recognition of customary tenure through the community forestry scheme is only available in forestland, thus limiting scope for the recognition of the customary tenure of communities in other areas.
- Communities are often given tenure rights over community forests in degraded forest areas that will provide limited short-term benefits, especially from timber. Too often, the lack of short-term benefits reduces the commitment of community forest user groups to their forests (RECOFTC, 2018). There are limited income opportunities, and wherever community forest management plans consider support to sustainable livelihoods, they do not always include the specifics of that support.
- Weak cooperation among government departments and infrastructure development programs (such as road-building programs) can lead to sudden adverse effects on community forests. In this context, insecure land tenure and a weak rule of law can lead to conflict and to elite capture of land and resources.

There are also challenges related to conflicting views among stakeholders about what customary tenure is and how policies and legislative instruments should recognize it. There are concerns over the potential for increased conflict, particularly as boundary conflicts continue between ethnic groups. Gender equity and the transfer of land also remain poorly understood. This complex mix of perceptions poses significant challenges to the further recognition of customary tenure.

Customary practices in Myanmar are inherently diverse. This poses the difficult question of how to translate those complex systems into a legislative framework that provides equity and self-determination while recognizing diversity.

Addressing the gaps

Opportunities for addressing the challenges included here depend largely on the restoration of peace and democracy. National dialogues and cooperation among stakeholders, in various forms, are some of the essential elements.

The land reform process in Myanmar between 2015 and 2021 had started to address the challenge of incorporating customary tenure systems into the formal legal system. The National Land Use Committee set up before the 2021 coup had established a process to develop a national land law that would incorporate the recognition of customary tenure. The process had shown that it is crucial that ethnic groups come together through shared platforms. If the process resumes, it is likely to provide the most important pathway for communities across the country to obtain secure recognition of their customary tenure.

Any future land reform should take account of the nature and causes of tenure insecurities and land conflicts while providing legislative security and a framework that recognizes the rights of ethnic groups within Myanmar's evolving political climate.

What is needed to improve the recognition of customary tenure in Myanmar?

The recognition of customary tenure in Myanmar can be improved in the following ways :

- A common understanding of the different customary tenure regimes operating in Myanmar and of the implications of the country's laws.
- More accurate framing and categorization of customary tenure regimes to better reflect local realities and to inform policy debates on land reform.
- Shared platforms that bring together actors, including ethnic armed organizations, political parties, legal experts, local civil society organizations and non-governmental organizations to build common understanding on customary tenure and its recognition
- Critical dialogue among policy-makers, civil society organizations, communities and other stakeholders to identify which policy frameworks and opportunities can be used to address the many challenges of customary tenure systems and to develop robust legislative options.
- A participatory process to record and protect customary rights, carried out in a fair and transparent way. This would help to reduce and address conflicts over land and resource ownership within and between communities as well as between communities and influential actors who may seek to undermine local rights to land. This process must be inclusive so that it reflects the customary practices of more marginalized groups, such as women or ethnic groups.
- Combining processes to map and register land uses with processes that support local stakeholders to sustainably manage natural resources. Support could include training on the different forms of land use and relevant legal obligations. This would reduce the risk that increased tenure security could encourage outside investments in agriculture and forestry practices that degrade the environment.

- Research and analysis on the allocation of forestland under different tenure systems and on how these areas are managed.
- Creation of interim measures to protect community rights in the transition period until the new Land law is enacted, including consideration of such models as participatory land-use planning and village customary management plans, with support from the authorities.
- Common definitions of terms, such as customary tenure, land, natural resources, decentralization, Indigenous Peoples, ethnic minorities and customary law.

Viet Nam

With Viet Nam's economy growing rapidly, pressure on land and forests is increasing, including in remote areas. This poses risks to communities' tenure security. The expansion of agriculture into community areas has particularly significant implications for customary tenure systems. Forest and former shifting-cultivation land is rapidly being converted to coffee, rubber, cashew and other commercial crops, thus limiting access to land by poorer minority groups and turning them into plantation labourers.

Gaps in the legal framework and its implementation also affect the recognition of customary tenure:[13]

- The legal framework does not recognize the possibility for communities to incorporate as legal entities. This poses difficulties when dealing with civil matters in forest management, such as the handling of disputes, signing documents in the name of the community or representing the community.
- Communities cannot own natural forests. They have only a limited bundle of rights to use these forests. For example, communities cannot exchange, transfer, lease, inherit, donate or mortgage forests and forest land-use rights.
- Limitations on rights hinder the abilities of communities to improve their livelihoods. For example, communities only have rights to use forests and forestlands for reforestation, collecting non-timber forest products or agroforestry. They can only sell timber from plantation forests. And they are not allowed to take any products from special-use forests, even dead trees or dry non-timber forest products.
- The legal framework does not allow communities or villages to own land. There are only two legally recognized types of land-use rights in Viet Nam: land-use right certification for state forest owners, represented by forest management boards, and land-use right certification for individuals and households. The Civil Law (2005) allows communities to use land and forests according to custom and mutual agreement for the benefit of the community, but this has not been regulated or implemented.

- The issuance of certificates of land-use and forest-use rights to communities is slow. There is little complete official data on the issuance of these certificates, but it was estimated that as of 2020, communities were managing and using 1,166,470 hectares of forest, or 8 percent of Viet Nam's total forest area (MARD, 2021). Six years earlier, use-rights certificates were issued to more than 10,000 communities, covering 524,477 hectares of forest, or 3.7 percent of the total forest area (MARD, 2014). Allocation often includes areas of poor forest quality.
- Centralized decision-making and overlapping institutional mandates also pose challenges. The result is that multiple laws and decrees prepared under different ministries are in conflict. As such, there are three tenure systems for a forest: a community's customary tenure, the tenure regulated by the Ministry of Natural Resources and Environment and the tenure regulated by the Ministry of Agriculture and Rural Development. The highly centralized administrative system poses additional challenges to recognizing customary tenure in practice, both in terms of changing the perceptions of local authorities and of issuing the required certificates to communities.

Addressing the gaps

Planned revisions to the Land Law and the development of a new law on local democracy in 2023 will provide opportunities to address gaps in the legal framework. These and other reforms will improve recognition of customary tenure, in particular by:

- Providing for the allocation of all types of forestlands to communities as forest owners
- Providing communities with the right to mortgage forest properties and use bank loans, and the right to use the value of land-use rights as collateral for investment in production activities in forests and on forestland
- Amending some provisions on land allocation to communities
- Amending and supplementing provisions of the Land Law and the Forestry Law to conform with the Civil Code with respect to the recognition and application of customary approaches

Other opportunities

In July 2021, Viet Nam's National Assembly voted to approve the National Target Program for Sustainable Poverty Reduction and the National Target Program for New Rural Development, both for the period of 2021–2025. These programs have several thematic areas related to customary tenure recognition, such as the One Commune One Product program and a project on rural tourism development associated with the preservation and promotion of traditional culture.

Other ongoing governance processes in Viet Nam, such as Reducing Emissions from Deforestation and Forest Degradation (REDD+) and the Emission Reductions Payment Agreement in six central provinces, are opportunities to ensure provision of mechanisms to recognize customary tenure, such as through the use of free, prior and informed consent.

And there are opportunities to harness existing networks to increase support for the recognition of customary tenure. These networks include the Forest Peoples Land Rights Network (LandNet), the National REDD+ network, the Vietnamese NGO FLEGT Network and many others that have contributed positively to institutional and policy development in Viet Nam's forest and land sectors.

Avenues for improving recognition of customary tenure and recommendations

Maximizing the benefits of the three pathways of recognition

Returning to the conceptual framework for categorizing and analysing mechanisms that recognize customary forest tenure, presented in the first chapter, the following are recommended areas to focus on to maximize the benefits of each of the three pathways for recognizing customary tenure.

Self-recognition

Customary tenure recognition does not only depend on official recognition by a government, but it relies on strong practices and recognition of tenure at the local level by communities. Supporting organizations, such as non-governmental organizations, and other stakeholders, such as donors and local authorities, can take on a role in helping communities to self-recognize their customary tenure. They can do this by understanding communities' customary mechanisms and reflecting them in their own approaches, as well as by engaging with communities and providing financial or technical support to them.

To support communities' self-recognition of customary tenure, all stakeholders should consider the following recommendations.

- It is essential to continue to support efforts to document communities' practices, internal rules and governance systems related to their use of land and forests. This may include the documentation of community protocols on customary tenure, which can later support a free, prior and informed consent process.
- Enhancing women's participation in the institutions and processes of natural resource management in communities is crucial. This is because it improves effectiveness and contributes to social equity, given that certain local processes can undermine women's roles. Through sensitivity training and capacity-building, it is also essential to encourage men in communities to become gender champions who support increased equity.
- Self-recognition initiatives would also benefit from considering and documenting the traditional organizational structure of the community or village, as well as documenting rights and land uses. This includes discussing and documenting the use of natural resources by clans or interest groups within a community and documenting the representation of community members through, for example, village elders, reputable people and clan or ethnic group leaders. It also includes documenting how the community or village is mobilized in cases of conflicts or disputes.

- It is also important to understand the impacts of changing contexts on customary institutions, including changes in land use and livelihoods driven by the commercialization of agriculture, land privatization, the loss of common resources and growing inequality. Increased mobility and the arrival of migrant settlers is one factor to consider with respect to how traditional institutions might appropriately represent newcomers. These aspects could be discussed internally within communities to strengthen local institutions.
- Supporting communities' unity and organizing is also essential. The recognition of customary tenure requires solidarity, participation and unity among community members to uphold, respect and protect their customary land and natural resources. This can also help to ensure that communities have strong joint positions, which they can use to negotiate agreements with outsiders or when giving their free, prior and informed consent. Assessing the level of cohesion within a community and developing initiatives to reinforce it can be a strategic way to improve customary tenure recognition.
- Supporting activities and initiatives that document, study and maintain traditional knowledge can help to improve the understanding of customary tenure. This can also mean creating space for elders and women to share their knowledge with youths.
- Educating younger generations to maintain and develop their community's culture is also an important step towards increased recognition of customary tenure. Restoring and preserving cultural activities to promote young people's understanding, knowledge and interest in customary practices is important.
- Research that documents the positive impacts of the use of traditional customs and practices on natural resources can powerfully demonstrate the value of recognizing customary tenure, whether formally or informally.

Co-recognition

Co-recognition mechanisms allow communities and other stakeholders, such as the State, to jointly recognize customary tenure. This requires certain mechanisms to be in place so these groups can discuss, negotiate and agree to the scope of tenure and the conditions under which land and natural resources can be used. Co-recognition of customary tenure can be improved in the following ways.

- All projects or interventions in community areas should involve communities and be inclusive of different members within communities. It is essential to provide communities with adequate information and time so they can learn about intervention programs and projects before giving opinions, exchanging ideas and reaching decisions. Strengthening consultation with communities and consensus-building on issues related to them are also essential.
- Clear guidance on how free, prior and informed consent can be granted or denied in practice should be provided to stakeholders engaging with communities and in particular to companies and subnational authorities. Work by non-governmental organizations, in partnership with communities, can be essential to support the development and implementation of such guidance.

- Facilitating relations between communities and external stakeholders can be a useful way to ensure beneficial discussions. For example, when a private sector actor understands the context well and commits to working with communities, they can take on an important role in ensuring that a benefit-sharing agreement or a process of free, prior and informed consent is implemented in line with the customary tenure and the will of the community.
- Templates, guides and toolkits that enable equitable and fair discussions between communities and other actors, such as a guide to negotiation and decision-making, can support co-recognition of customary tenure. Paying attention to power dynamics and targeting marginal actors are critical in this process to ensure that formalization does not disadvantage certain groups and individuals.
- Developing local value chains of community products derived from the sustainable management of natural resources and opportunities for communities to commercialize such products can also promote the role of communities' knowledge and customary tenure. It can also unite communities in collective production models, help improve food security and restore and widen applications of local knowledge from the community.
- Women in communities should be empowered with respect to their roles, their rights to customary tenure and their capacities to participate in the identification of their tenure when negotiating or discussing with others. This should be done from the start of the co-recognition process, with adequate resources and support, to ensure women's full and appropriate participation.
- Strengthening the capacity of communities to defend their land, territories and natural resources is also essential. This can be done using various methods, such as advocacy, mediation and traditional or formal dispute resolution mechanisms.
- Monitoring how agreements between communities and others are upheld is an important part of protecting customary tenure and ensuring that any encroachments on a community's land and resources are appropriately addressed.

Legal recognition

The formal recognition of customary tenure in laws can ensure better protection of communities' rights to land and resources. However, as this report has shown, legal frameworks can also limit the scope of these rights and do not always align with customary practices. The section on "Regional challenges and opportunities" presented areas for improvements in relation to each country's legal framework.

More generally, legal frameworks should:

- Fully recognize the customary tenure of communities by providing them the full bundle of rights on their territories and by recognizing customary tenure in a country's constitution.
- Recognize and integrate communities' customary laws and institutions in the formulation of laws and policies.
- Specifically recognize and protect the customary tenure rights and practices of women, ensuring in particular their rights to access and use land and resources they depend on and ensuring they can benefit from those rights to improve their livelihoods.

- Specifically recognize and protect the customary tenure rights and practices of Indigenous Peoples, including those recognized in international law. This should include recognition of their right to self-determination and recognition of their customs, institutions, land, territories and resources.
- Allow communities to develop their livelihoods on their customary land, including through value-addition and commercial activities, by creating simple procedures and enabling provisions for such activities, such as access to loans.
- Require that all development projects follow a process of free, prior and informed consent before and during their implementation. This is particularly important for economic land concessions, special economic zones and infrastructure projects that can cause much damage to communities. They require meaningful consultation and the consent of potentially affected communities. Including such a requirement and the conditions for fulfilling the consent process in legislation could bring about a legal landscape that regulates the various sectors that may affect communities' tenure.
- Provide appropriate sanctions for the disrespect of customary tenure. Governmental institutions should also take effective enforcement action against businesses or subnational authorities that fail to fulfil their legal obligations, such as conducting impact assessments. These measures should be backed by complementary budgetary and institutional support.
- Provide grievance mechanisms to tackle disputes over customary land tenure and related land issues. These mechanisms must be accessible, with the possibility of "out of court" and other alternative dispute-resolution methods for disputes within the community and with outsiders.
- Ensure coherence among relevant pieces of sector-based legislation.
- Ensure the roles and responsibilities of government agencies are clear and provide for mechanisms for coordination among these agencies.

Regional entry points

While each country's context will determine the best avenues for increasing recognition of customary tenure, some similarities at the regional level suggest areas on which to focus. Interventions in one country might provide lessons for other countries. The following considerations and entry points are relevant to most countries in the Mekong region.

Coordination and information-sharing mechanisms:

- The creation or use of multi-stakeholder platforms—There is a need for multi-stakeholder platforms and coordinating mechanisms to enable all relevant stakeholders to discuss issues and find common ground to accommodate customary tenure systems within the forest, land, agriculture and other sectors. This emerged as an important need in each of the Mekong region countries during the legal assessment. In countries where legal reforms are under way or forthcoming, these platforms can also be used to discuss and collect contributions on aspects of the legal frameworks to amend.

- Increased institutional coordination—Cooperation mechanisms can improve coordination among the ministries responsible for different sectors and among the local, provincial and national administrations.

Awareness-raising and capacity-building:

- Awareness- and capacity-development of communities—Increasing the capacity of communities to understand and use laws, regulations and policies would enable them to jointly uphold their customary tenure rights so that outsiders, government agencies and other parties respect those rights.
- Awareness-raising of policy-makers about international commitments—It is important that people at all levels of government are aware of national and international obligations and understand the government's roles and responsibilities in protecting customary tenure. Raising awareness should help to ensure that national policies and laws reflect those commitments.
- Laws and policies must be made more accessible and be explained at the local level—There is a need, in particular, for communities and local government officials to have access to and understand their rights and obligations deriving from the legal framework, which can be addressed with targeted capacity-building. This remains a challenge, however, where laws are inconsistent, unclear or lack implementing regulations.
- Improving understanding of customary tenure among policy—makers Government agencies and policy-makers need to better understand the uniqueness of the customary tenure systems of communities so that they can consider these aspects when designing policies and implementing them. This may include a better understanding of what customary tenure is and the benefits that secure tenure brings for livelihood generation, sustainable forest management and inclusive development. This will vary among countries and local contexts.

Improving legal frameworks and their implementation:

- The use of legal reforms—Reforms of laws relating to forests, land and other sectors provide important opportunities to address the gaps in legal frameworks and their implementation that limit the recognition of customary tenure. Here, too, additional knowledge of customary practices will be instrumental in developing sound and appropriate laws. The use of inclusive and contextually adapted processes for communities and other stakeholders to participate in the legal reforms is crucial for this. Legal consultations must ensure that reforms incorporate the feedback and contributions from these groups.
- Dissemination of laws to all local actors—This includes private stakeholders and investors who, as shown in some of the case studies, do not understand customary tenure (see for example, Lao DHRRA, 2022).
- Ensuring the recognition of communities' governing institutions and laws—Beyond recognizing communities' bundle of rights, legal frameworks and government agencies responsible for natural resource management should do more to consider and integrate community governing institutions and customary law.

Documentation, testing and safeguards:

- Developing and testing pilot cases—Testing possible mechanisms for the recognition of customary tenure to grant land and forest customary rights to communities can identify what works. This is particularly useful before new laws or regulations are adopted or developed. It allows the future framework to take into account the realities on the ground and to involve communities and other local actors in its design. This approach was used successfully in Lao PDR to test the implementation of the Village Forestry Management Plans and the Conservation Agreements with communities. This can also include the development and implementation of toolkits as a basis for state agencies to recognize customary practices.
- Documentation of customary tenure practices—Governments should do more to survey, define and document customary tenure and practices. This includes the need to strengthen and update national databases of land tenure arrangements and to make those publicly available because there is considerable scarcity of data in the region on customary lands and tenure-recognition arrangements. This information should be well-reflected in land and forest information systems and should be considered during zoning, land-use planning and the allocation of land. Finally, the use of technology, such as GIS mapping, can be an efficient way to help communities, governments and other stakeholders to recognize and document customary tenure practices.
- Safeguards—When customary tenure is not documented or registered, the government should provide a mechanism to protect communities from the risk of their customary tenure being violated due to conflicts, such as unfair land-use change or acquisition.

Endnotes

1. Community fisheries is another model of community-based natural resources management that could be an avenue for recognition of customary tenure in watershed or coastal areas.
2. These include the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights.
3. These villages received a total of 856 collective land titles. Because titles are issued for different categories of land, the number of titles issued does not represent the number of communities who benefit. One community may receive 30 or 40 titles covering different land categories.
4. Data from the National Committee for Sub-National Democratic Development's online gazetteer database, http://db.ncdd.gov.kh/gazetteer/view/index.castle.
5. Sub-Decree No. 79 on Community Forestry Management, 2003; Sub-Decree No. 53 on Procedure for the Establishment Classification and Registration of Permanent Forest Estate, 2005; and Sub-Decree No. 26 on Rules for Granting User Rights to Plant Trees Within State Forest Lands.
6. Although there is a government instruction (0500) to issue land-use certificates, there is no official manual on how to do this, so, effectively, none are being issued.
7. The 2019 Land Law does not specify the period for the land-use certificate, which the forthcoming regulation should define. The previous Land Law specified a three-year duration.
8. These include the 2015 Ethnic Rights Protection Law, the 2017 Farmland Amendment Law, the 2018 Law Amending the Vacant, Fallow and Virgin Lands Management Law and the 2018 Forest Law and its associated rules and Community Forest Instructions.
9. The legal analysis of customary tenure recognition in Myanmar focuses on the policies and legislative frameworks that existed before the military coup of 1 February 2021.
10. For a more thorough account of the legal gaps and inconsistencies, see FAO and MRLG, 2019a.
11. For a more thorough account of the legal gaps and inconsistencies, see FAO and MRLG, 2019b and FAO and LIWG, 2021.
12. For a more thorough account of the legal gaps and inconsistencies, see FAO and MRLG 2019c.
13. For a more thorough account of the legal gaps and inconsistencies, see FAO and MRLG, 2019d.

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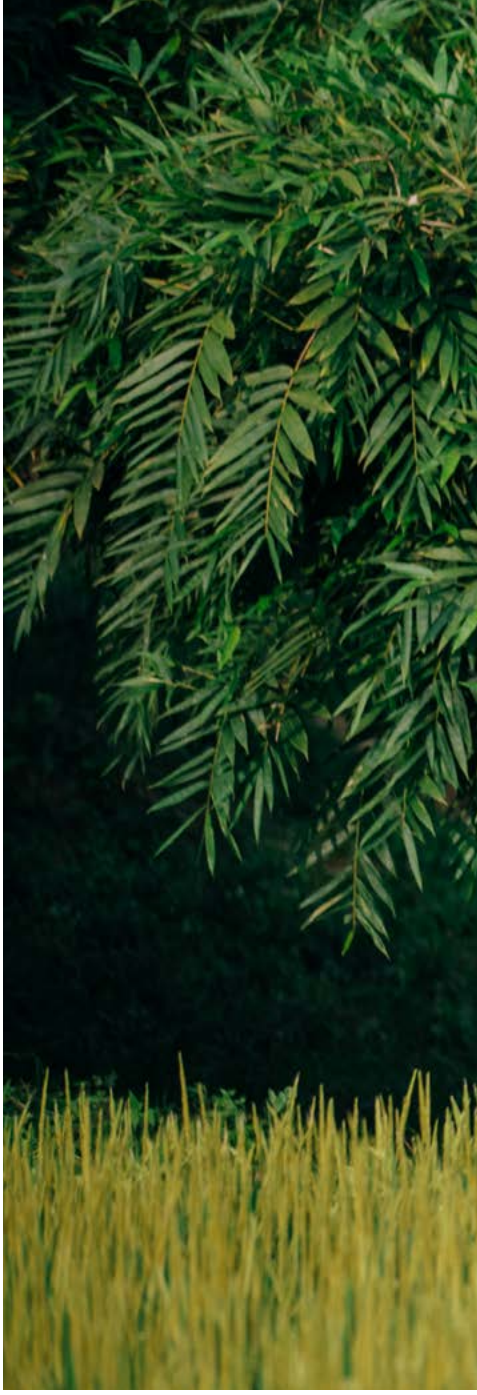

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