

## Key Recommendations on land Issues in the Lao PDR

These key recommendations on land issues in the Lao PDR have been developed through comprehensive analysis, consultation with stakeholders and based on international best practices, aiming to enhance utilization of land for the economic, social, cultural and moral advancement of Lao people.

The present key recommendations cover **4 topics** being: recognition of customary land tenure rights, expropriation of land for public purposes (right to choose), land lease and concession, and gender equality on land tenure rights. Such recommendations are based on international standards especially the principles of **the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests of the Food and Agriculture Organization of the United Nations (FAO)**. The guidelines are international standard to promote security of land tenure rights and equitable access to natural resources which are factors for eradicating hunger and poverty.

The Guidelines also were endorsed by the Committee on World Food Security (CFS) in 2012 by 125 member states including the Lao PDR. They were subsequently endorsed by different organizations including G8, G20, Rio+20 and the UN General Assembly. In addition, references are made to laws of various countries as examples.

### Recommendation 1: Recognition of customary land tenure rights

The use of customary land refers to the long-term use of land according to rules, beliefs and structures of each local community. **Customary tenure rights over land or natural resources of individuals and communities are based on the basis of the historical and community recognition without any (land) title documents.**

Customary land use rights may arise over any plot of land where there is a customary use, including state conservation areas. The state may restrict the conditions of the customary land use rights in the conservation areas such as: restriction against surface expansion provided that such restriction is based on the relevant land use plan which takes into account the current and future need of communities for using such land or restriction against transfer of land to any person outside the relevant community, but this does not mean **that such customary land tenure rights is not recognized within the protected areas**. Customary land tenure rights should be recognized fully and equally with other acquisition forms of land tenure rights (such as land and forest allocation by the state). **Holders of customary land tenure are entitled to as full and fair compensation as for other formal land tenure rights.**

#### Why is this issue important?

The majority of land in the Lao PDR is untitled due to slow operation of the land titling program which does not cover all areas in the Lao PDR as such would require large budget to fund as well as technology, modern tools and qualified staff. Such shortcomings caused failure to meet the public demand. If their customary land tenure rights are not recognized, people risk to lose their land or not to receive fair compensation for their land, leading to poverty and food insecurity.

In the past situation, a large number of ethnic peoples lived within or around the forest and access to use customary forest land in different forests including conservation forests, protection forests and production forests. The use by such peoples of these forest land types is to meet their daily need of livelihood and is a motivation for them to sustainably protect and live with the forests which have been practiced several generations, mostly long before those forests are declared as conservation or reservation areas. The absolute restriction against the rights of peoples to use their usual forest land would affect the livelihood of such peoples who represent the majority of the country's population. This would affect the national poverty reduction efforts and would potentially cause negative social phenomena. **(Customary land tenure is recognized in many countries including Cambodia, India and Brazil)<sup>1</sup>**

## **Recommendation 2: Clear defining of principles for expropriation of land for public purposes**

Land expropriation is the case where the state needs to use such land for a purpose and where the state can withdraw the land use rights from any individuals, entities, collectives and organizations on the basis that **the state can expropriate such land use rights from individuals, entities, collectives and organizations only for public purposes such as: use of land for the development of public health, education, communication, national defense and public security**, for which the notion of public purposes need to be clearly defined, **any expropriation will be considered as “for public purposes” only if their benefits to the public are higher than their impacts to peoples to-be-affected.** Expropriation requires full and just compensation either by allocating appropriate and sufficient living areas or by providing monetary compensation for the loss of land and attached natural resources.

To ensure land tenure rights of people (not limited to those having land titles , but also including other rights such as land use documents or customary land use rights) in case of expropriation, legislation should require key steps: study on potential impacts of expropriation, type of rights for the use of such land, study on alternatives with lower impacts, consultation with land use right holders who would be potentially affected by such expropriation as well as the mechanism for adequate notification to land right owners before exercising such expropriation.

### **Why is this issue important?**

**Land is necessary for growing food. There is important evidence showing that the security of land tenure is necessary for food security<sup>2</sup>.** As stated in the 8<sup>th</sup> NSEDP that: “policy for promoting land use along with the protection to ensure that Lao citizens have land use rights for their living, residence and production according to laws”<sup>3</sup>.

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<sup>1</sup> Customary land tenure – Examples of provisions and laws from various countries. Shearman & Sterling LLP (2012).

<sup>2</sup> Development in the Lao PDR – The Food Security Paradox. SDC (2010).

<sup>3</sup> The 8<sup>th</sup> Five-Year National Socio-Economic Development Plan (2016-2020) Point 3.6.1. regarding work focus on environment protection and sustainable use of natural resources. Page 136 (Lao version).

**Clear principles on expropriation for public purposes are also required for building investor confidence.**

Investors including communities who will invest in their land will be confident to do such investment if they know that their land will be expropriated only in case the state has the highest necessity to use such land for a public purpose.

In addition, they need to be assured that their invested land will receive full and just compensation in case of expropriation. **Most countries have policy on principles for expropriation of land for public purposes such as: Vietnam, Thailand, Germany, and Finland among others**<sup>4</sup>.

**Land in the Lao PDR belongs to the national community  
[Constitution of the Lao PDR,  
Article 17]**

*Therefore, land use rights may be withdrawn from any members of national community only if such land is to be used for common benefits of all members in the nation.*

### **Recommendation 3: Clear defining of principles for land lease and concession**

Lease and concession is part of a form of turning land to capital. The state promotes turning land to capital through granting of land lease and concession in compliance with the land use master plan and national and local socio-economic development plans of each period<sup>5</sup>.

**The lease and concession of state land** refers to the granting of lease and concession by the state over a land area which is under the direct management and use by the state. To ensure transparency and state interests, the lease and concession of state land should be subject to a transparent bidding process with the public accessibility to related information.

To ensure the security of land tenure rights of people, the land under direct management and use by the state must be clearly defined in a legislation to avoid the situation where such lease and concession cover any land area being used by a community. In case of the lease and concession of a state land which is being used by people as well as by a customary land use practice, consultation and negotiation must be conducted on the basis of reasons and according to laws. An appropriate mean of communication must also be used according to local particularity, understandable for communities with the support to include all community members especially, women. **Decision to grant such lease and concession must ensure that communities are consented through Free Prior and Informed Consent (FPIC) process**<sup>6</sup>.

It must however be acknowledged that the lease includes lease directly made by individuals, entities, organizations and collectives as lessors, in which case the state plays a role of supervising the operation to ensure justice for all parties and in compliance with laws and regulations.

**Granting land lease and concession in all cases must ensure that there is no or least negative impact on environment, society and livelihood of peoples of all ethnic groups.**

<sup>4</sup> Expropriation – Examples of Constitutional provisions and laws from various countries. Shearman & Sterling LLP (2012).

<sup>5</sup> Resolution of Party's Central Committee on the Enhancement of Land management and Development in New Period (2017).

<sup>6</sup> Free Prior and Informed Consent (FPIC) is defined in the United Nations Declaration on the Rights of Indigenous Peoples (2007) with favorable votes from 144 countries including Laos. Laws of some countries such as the Philippines also defines the Free Prior and Informed Consent (FPIC).

## Why is this issue important?

Turning land to capital is a priority of national economic development, leading to investment growth in relation to land through different forms including lease and concession. Such investment has provided some benefits to the Lao PDR notably creation of jobs for local people, in the meantime there is also concern about negative impacts on the environment, society and livelihood of people. Therefore, there must be a proper Environmental and Social Impact Assessment (ESIA) , monitoring and evaluation assessment of the use of land by development projects, which such information must be published to the public to ensure the effective land management as well as to raise awareness and obtain public consensus and ensure transparency. In addition, the mitigation measure of negative impacts must be established to minimize the impacts, ensuring livelihood of people and dispute resolution.

## Recommendation 4: Ensuring gender equality on land tenure rights

The Constitution of the Lao PDR states that all Lao citizens **regardless their gender, social status, level of education, belief and ethnic group shall be equal in front of the law (Article 35), and Lao citizens men and women have equal rights to politics, economy, culture, society and family (Article 37).**

Strengthening women rights to access to land is a necessity. Women should have equal access, tenure rights and right to make decisions on matters related to land being used by them. There is evidence that strong land tenure rights of women are connected to food security, nutrition, health, education and livelihood in general.

The state should promote the creation of legislation and measures to ensure gender equality by clearly defining equal land tenure rights between men and women such as the issuance of land title certificate in the name of husband and wife as their matrimonial property, gender equality in terms of inheritance and the making of joint decision between husband and wife in relation to land issues in all cases.

## Why is this issue important?

Women face higher risk of losing their land tenure rights than men, because in most cases, the name of women is not mentioned in land title certificates; such would affect food security at the level of family and community. Despite women’s important role in the agricultural, food production and livelihood, the current recognition system of land tenure rights (such as: land allocation, registration and issuance of land title certificates), the focus is mostly at the family level, meaning that the land tenure rights are mostly registered in the name of the “family heads” who are mostly men. Since their land tenure rights are not formally recognized (with no name in the land title certificates), women do not receive any benefits and supports such as: agricultural support, obtaining of compensation, request for financial credit and participation in the decision-making process regarding to land use. In addition, they also face the higher risk of losing benefits in case of divorce or death of their spouse **(Vietnamese land law also requires the name of husband and wife in the land title certificate).**

