

Proceedings



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Vientiane, Lao PDR

The National Assembly of Lao PDR

RECOFTC – The Center for People and Forests

Rights and Resources Initiative (RRI)



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Acronyms and Abbreviations

ASEAN	Association of Southeast Asian Nations
CBD	Convention on Biological Diversity
CDEA	Community Development and Environment Association
CDM	Clean Development Mechanism (UN)
DoLA	Department of Land Administration (MoNRE)
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
Ha	hectare
ILO	International Labour Organization (UN)
Lao PDR	Lao People's Democratic Republic
LDC	Least Developed Country (UN classification)
LEAF	Lowering Emissions from Asia's Forests (regional USAID program)
MAF	Ministry of Agriculture and Forestry (Lao PDR)
MFSC	Ministry of Forestry and Soil Conservation (Nepal)
MoNRE	Ministry of Natural Resources and Environment (Lao PDR)
NA	National Assembly of Lao PDR
NASA	National Aeronautic and Space Administration (United States)
NLP	National Land Policy (Lao PDR)
Norad	Norwegian Agency for Development Cooperation
NRM	natural resource management
NSEDP	National Social and Economic Development Plan (Lao PDR)
NTFP	non-timber forest product
RECOFTC	Regional Community Forestry Training Center for Asia and the Pacific (also known as The Center for People and Forests)
REDD+	Reducing Emissions for Deforestation and forest Degradation in Developing Countries; the "+" includes the roles of Conservation, Sustainable Management of Forests, and Enhancement of Forest Carbon Stocks
RRG	Rights and Resources Group (RRI secretariat)
RRI	Rights and Resources Initiative
SDC	Swiss Agency for Development and Cooperation
SFE	state forest enterprise
SUFORD	Sustainable Forestry and Rural Development (World Bank project)
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
USAID	United State Agency for International Development
VFI	Village Focus International

Proceedings of the International Knowledge Sharing and Learning Workshop on Forest and Land Tenure Reform

28–29 August 2012

Vientiane, Lao PDR

Overview

An international workshop on **Forest and Land Tenure Reform** was held in Vientiane on 28-29 August, 2012. The workshop was hosted by the National Assembly of Lao PDR, with support from RECOFTC – The Center for People and Forests through the Rights and Resources Initiatives (RRI). The key objectives of the workshop were:

- To learn from the experience of other countries how they have dealt with the question of state, private and community ownership over land and forest resources;
- To distil lessons from international experience relevant to the ongoing land and forest policy revision process unfolding in Lao PDR; and
- To create a deeper understanding of land and forest tenure issues amongst a broad segment of policy-makers and other stakeholders of Lao PDR.

The workshop was attended by 106 participants representing the National Assembly (NA), different government ministries and agencies, civil society groups, and international organizations working in Lao PDR. To share experiences of land and forest reforms from other countries, resource persons came from 11 countries – Brazil, China, Estonia, Mexico, Myanmar, Nepal, Norway, the Philippines, Sweden, Uganda, and Vietnam. Recurring key messages from their presentations include:

- State-centered ‘command and control’ approaches have generally failed to bring positive social, economic and environmental changes in forest landscapes.
- When local people are given a secure and wide ‘bundle’ of tenure rights to forest land, they are incentivized to invest in sustainable forest management and able to draw significant livelihood benefits from these natural assets.
- Constitutional protection of land acquisition and compensation (the ‘social contract’ between state and citizens) should serve as a foundation for people’s rights.
- Formal rules and the legal basis for land use need to match local traditions and customary practices.
- The rule of law must be respected by all stakeholders, including the government.
- It is important to clarify the roles, responsibilities, and jurisdiction of different levels and hierarchies of relevant government institutions. A ‘reinvention’ in roles of different agencies, together with requisite capacity building, may also be necessary to ensure reform success.
- Strong, trustworthy grievance mechanisms are important to resolve disputes and conflicts that will necessarily arise in tenure reform processes.
- It is easier to improve forest cover by keeping the existing forest in place, rather than improving it through plantations.

Workshop participants also raised some key issues and challenges to be considered for the ongoing policy reform process in Lao PDR, including:

- Local people are entitled to benefit from their involvement in development and management of the country's natural resources, no matter the land type or forest classification.
- Land use definitions and classifications for each of the eight official categories of land (in particular plantations and concessions) need to be clarified.
- Land policy reform should not only consider maximizing economic benefits; long-term sustainable development, poverty alleviation and environmental concerns are also important.
- There are inadequate data and information management capacities – the lack of quality information available to policymakers has led to gaps and contradictions in policy and practice.
- The jurisdictions, roles and responsibilities of different line ministries in land-use administration need to be clarified in the revised policy.
- The national budget for the forest sector is inadequate. More funds are needed for forestry development, perhaps through revenues generated from hydropower, mining, and other concessions.
- The rule of law needs to be respected and properly enforced by relevant authorities.
- Local people need to be made better aware of the law and have their tenure rights recognized through land titling at the community level.
- Local people should retain access to local natural resources and land-based livelihoods when granting concessions or in the village consolidation process.
- Appropriate grievance mechanisms for redressing conflict need to be developed.

A workshop agenda, a list of participants, and copies of the presentations in the Lao and English languages are available on the RECOFTC and RRI websites.¹

¹ <http://www.recoftc.org/site/resources/Proceedings-of-the-International-Knowledge-Sharing-and-Learning-Workshop-on-Forest-and-Land-Tenure-Reform.php> and <http://www.rightsandresources.org/events.php?id=648>.

Opening Session

Welcome Address

Dr. Souvanpeng Boupphanouvong

President, Committee on Economic Planning and Finance, National Assembly of Lao PDR

Dr. Souvanpeng welcomed participants from all sectors in Lao PDR and the resource persons from other countries on behalf of the NA Standing Committee, and thanked the event co-organizers, RECOFTC and RRI, for their support. She emphasized that the workshop would be an important event for helping the Lao PDR government to reform the policies, laws, and mechanisms governing forests and land management in order to help boost the country's economic development, and encouraged the participants – particularly the NA members in attendance – to take heed of the experiences, challenges and best practices that would be presented in the workshop.

Dr. Souvanpeng noted that Lao PDR is enjoying a good pace of economic development and has a goal to 'graduate' from Least Development Country (LDC) status by 2020. A primary strategy is to make productive and sustainable use of the country's natural resources to boost economic development and the welfare of the Lao people. The NA, which has a guidance and oversight role in the process, is facing many challenges in introducing an effective legal framework for sustainable natural resource management which would also adhere to international protocols and agreements that the Government of Lao PDR has ratified. She closed her welcome address by encouraging participants to use insights gained from the workshop to inform the ongoing process of developing and improving the legal framework.

Opening Address

Dr. Xaysomphone Phomvihanh

Vice President, National Assembly of Lao PDR

Dr. Xaysomphone also welcomed all the workshop participants and resource persons, saying it was an honor to officially open the event on behalf of the NA Standing Committee. He also expressed his appreciation to RECOFTC and RRI for their coordination and facilitation of the event.

He began his remarks by noting that the land and forest law reform process is being held during implementation of the 7th National Social and Economic Development Plan (NSED), approved by a resolution of the 9th Party Congress. He emphasized that the productive and sustainable use of land and natural resources is a primary approach to achieving the NSED goals of 8% economic growth and LDC graduation by 2020. To ensure confidence in this sector – particularly for Foreign Direct Investment (FDI) – it would be necessary to minimize externalities, address current gaps and challenges, and secure and improve local livelihoods through the ongoing reform process. One key outcome from the process is to ensure an optimum balance in social, economic, and environmental benefits for all stakeholders. The knowledge and lessons shared from other countries' experiences at this workshop would be useful in this regard.

Vote of Thanks

Mr. James Bampton

Program Coordinator, RECOFTC – The Center for People and Forests

Mr. Bampton reiterated a welcome to all participants by noting that the good turnout demonstrated the importance of land and forest tenure issues to Lao PDR citizens. He also welcomed the international resource persons, noting that tenure reform experiences from other countries could provide some basic principles applicable to the Lao PDR context to help produce a “win : win : win” scenario – for rural people and their livelihoods; for the forests, biodiversity and environmental services; and for government revenues, service provision and overall national economic growth.

He explained the principles shared by RRI coalition partners (of which RECOFTC is one) – that poverty reduction can be achieved through empowerment of rural people and their asset-based development, premised on national policies providing enabling conditions, one of the most important and fundamental being security of tenure to access and use natural resources – and summarized RECOFTC and RRI involvement in Lao PDR. He noted many of the issues surrounding land and forest policy reform in Lao PDR, including complications in land categorization and tenure and the growth in competing interests over natural resources between large-scale investors and rural communities, which have become increasingly raised in public debate and have instigated the current policy reform process.

He closed by expressing his hope that the knowledge and experiences shared in the workshop would stimulate discussion on different forest land tenure options for Lao PDR, contributing towards securing the sustainable management of the country’s natural resources both for the benefit of the rural population and the nation as a whole.

Session 2 – Review the current status of land and forest tenure policies, laws, and management structure in Lao PDR

Co-chairs: **Dr. Souvanpeng Boupphanouvong** (replaced by **Khaminy Intharak**, *National Assembly Member, Savannakhet Province*, for second half of session)
Mr. Arvind Khare, *Executive Director, Rights and Resources Group (RRG)*

Expert Panel:

Current status of land and forest tenure policies and laws in Lao PDR

Mr. Siphandone Sihavong

Director General, Department of Land Administration (DoLA), Ministry of Natural Resources and the Environment (MoNRE)

In his presentation, Mr. Siphandone outlined the previous activities, current status and issues, and next steps in Lao PDR's land and forest policy and law reform process. A policy was produced in 2010 under the National Land Management Authority, but not endorsed by the Government. Work then restarted in early 2012 as follows:

Step 1 (March 2012):	Policy Review Committee (PRC) and specialists begin reviewing drafts (1–5) of the proposed revised National Land Policy (NLP)
Step 2 (April – June 2012):	PRC (in four teams) undertook consultations with local authorities from 17 provinces
Step 3 (May – June 2012):	Review and analysis of consultations (some still ongoing); produced draft 6 of (NLP)
Steps 4 & 5 (June 2012):	Continued provincial consultations; produced NLP drafts 7 and 8; presented Draft 8 to NA and NA workshop in Thalath
Step 6 (July 2012):	Consulted with international experts; incorporated comments to produce NLP draft 9; workshop held on 27 July.

At present, there remain a number of primary issues:

1. Information gaps and allocation of future data management responsibilities between different line ministries (e.g. MAF and MoNRE). A stakeholder meeting in September will examine this.
2. Land classification and tenure (particularly agriculture vs. forest) – a consultation workshops in September will look into this.
3. Coordination and jurisdiction between line ministries. Stakeholder consultations will be held.
4. Roles and responsibilities of line ministries. Consultation workshops will be held with stakeholders to clarify institutional structures and procedures for administration over different land classifications.
5. Mechanisms for approval and oversight of different types of state and private lands (e.g. concessions, different types of forest land, mines, protected areas, etc). There remain inconsistencies over approval between different line ministries as well as between authorities at national and provincial levels. Consultation workshops will be held with line ministries to discuss organizational structure and mechanisms for land administration and management.
6. Revision of the land policy and land law being undertaken at the same time – can give rise to overlaps and gaps. What should be the priority?

Mr. Siphandone also noted that land reform must be in line with Article 17 of the Lao PDR Constitution, which guarantees land tenure security of local people.²

Next steps include feedback through further consultations and workshops by key stakeholders, particularly responsible line agencies (including the Ministry of Justice), implementing agencies and international organizations in the sector. The National Assembly would also retain oversight in the process to ensure all outstanding issues – particularly political ones such as land tenure and titling, use and management, and valuation – are appropriately reconciled. It is hoped that the NLP and Land Law would be approved by the end of 2012, after which subsequent instructions for implementation would be produced.

Land allocation process and status

Mr. Vinh Phengduong

Deputy Director General, Land Planning and Development Department, MoNRE

(In lieu of Mr. Vongdeuane Vongsiharath, Director General, Land Planning and Development Department, MoNRE)

Mr. Vinh's presentation focused on the government's land allocation process to date. He began by giving a brief historical background of land policies and laws, noting that the government has, since the gradual opening of the country in 1980s, recognized that appropriate land allocation was a necessary foundation for the country's overall economic development, as well as a necessary means for resolving land disputes.

Mr. Vinh stated that the current national master plan for land survey and allocation was in the final stages of implementation and the results would soon be ready for endorsement by the NA and line ministries. The master plan goal is to classify and allocate land in balance with the desired outcomes of national economic development and environmental protection outlined in government policies. The master plan covers classification and demarcation at four levels – national, provincial, district, and *kumban* (village cluster). Land plans would be reviewed once every year at the *kumban* level, every three years at the district level, and every five years at the provincial level; the national master plan would be reviewed once every ten years.

Mr. Vinh noted the following ongoing challenges, among others:

1. Inconsistencies in land and forest classification (linked with unsustainable 'slash and burn' practices)
2. Inadequate data and information management (e.g. at the village level, there is typically only one signboard with a rough diagram of allocated land; at provincial and national levels, there are issues with the merging and triangulation of maps provided by different agencies and institutions)
3. Budget constraints (government budget of 2 million kip per village not enough)
4. Time constraints – in planning, five days was allocated per village, but in practice the process typically takes longer

² "The State protects the property rights (such as the rights of possession, use, usufruct and disposition) and the inheritance rights of organizations and individuals. Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws." (from www.na.gov.la).

Mr. Vinh also noted a number of key findings from work to date:

1. The actual jurisdictions of some village and districts are different than what is on the maps. This is primarily due to recent changes, such as the mergers of villages under single clusters, the establishment of new districts, etc. In some cases there may be a need to redo land allocation.
2. Definitions of slopes and different land classifications are still inconsistent.
3. Data from different sectors is often still not aligned.

He noted that clarification on these topics is a key priority to tackling the issue of land disputes.

Preliminary economic analysis of land use policies in Lao PDR

Mr. Tony Zola and Dr. Alastair Fraser

Independent Consultants

Mr. Zola and Dr. Fraser provided preliminary findings of their analysis of alternative economic models for the use of land and forest resources in Lao PDR, under a study commissioned by RECOFTC through support from RRI. The three projected scenarios up to 2020 being analyzed are 1) if current trends of land use continue on same track; 2) if a target of 70% forest cover is achieved; and 3) if land use is optimized for social, economic, and environmental benefits. Major land uses to be evaluated include agriculture, forestry, mining, hydropower, and infrastructure. Mr. Zola noted that the quality of the analysis depended on the quality of the base data, and thanked all national stakeholders who had already shared data and information for the analysis. Final results of the analysis would be presented to the NA in October.

Dr. Fraser began by giving an overview of current land use in Lao PDR, based on a synthesis of data from various government databases. He noted that the official data show that approximately 570,000 ha of the 2.3 million ha under commercial use is under company tenure, an average of almost 1,000 ha per company, compared with an average of 1.5 ha per rural household.

If land use were to continue under current trends, Dr. Fraser predicts that by 2020 agricultural land would expand by 1 million ha, with land for mining and expansion of roads and infrastructure also increasing. Virtually all of this expansion would come at the expense of forestland. Dr. Fraser noted that the question for policymakers to consider is if this would be an appropriate use of land considering current government policies and goals.

Due to time limitations, Dr. Fraser could not present predicted trends for the other two scenarios. However, he estimated that to achieve the government's stated goal of 70% forest cover by 2020, 8 million ha of degraded and unstocked forest would need to be restored, requiring an estimated investment of up to US\$ 2.5 billion. He noted that his definition of forest did not cover rubber plantations, which he considered in his analysis as agricultural land.

The fact that 70% of land in Lao PDR is on slopes of greater than 20 degrees has a very important bearing on the economics of land use. Dr. Fraser's preliminary findings indicate that for many agricultural land uses on sloping land – such as upland rice – the cost of labor and the risk of soil erosion and sedimentation into waterways would rise with the steepness of the slope, without a concurrent rise in income yield. Hence the overall costs of farming on sloped lands of over 20 degrees are very high. However, if slope land were forested, the data indicates that both environmental service benefits (such as water, soil stability, and carbon storage) and commercial benefits from timber or non-timber forest products (NTFPs) would be stable or increase with the steepness of the slope. Hence forests have higher economic benefits on steeper slopes.

For returns to labor, the available data for rubber and irrigated rice indicates that smallholders generally earn a higher rate of return than wage laborers. Hence promoting smallholder ownership might be a favorable policy option to consider from a poverty alleviation perspective. Distance to roads (and hence market accessibility) also had implications for smallholder rubber, with the return to labor significantly higher when holdings were located closer to roads. For NTFPs, one study showed that good-quality forests could provide a return of over 76,000 kip (almost US\$10) per day; however Dr. Fraser cautioned that value of NTFPs can be variable by season and market.

Discussants

Dr. Phouang Parisak Pravongviengkham

Vice Minister, Ministry of Agriculture and Forestry (MAF)

Dr. Phouang noted that in land allocation, MAF followed similar principles to the Land Development and Allocation Department. However, differences in data sets may be due to differences in definitions of forest land (e.g. the percentage of tree cover and inclusion of plantations) and other land uses. For example, by Lao PDR definitions of 20% forest cover, by 2015 MAF estimates forest coverage would be 46%; if using FAO definitions of 10% and the inclusion of plantations, by 2015 forest coverage might be up to 70%.

Dr. Phouang agreed that besides clarifying land use definitions and classifications, a subsequent issue for consideration was whether the goal of 70% forest cover should be revisited, particularly in light of where other land uses and concessions would fit in terms of achieving national socioeconomic and environmental goals under a reformed Land Policy and Law. The consideration of slope steepness noted by Dr. Fraser is pertinent in this regard; Dr. Phouang pointed out that many plantations and concessions are already located on slopes greater than 20 degrees.

Ms. Anne-Sophie Gindroz

Country Program Director, HELVETAS – Swiss Intercooperation Lao PDR

Ms. Gindroz noted that many discussions on land and natural resources have focused on the economic value of land-use options, in line with national policies of turning land into capital for national economic development. She wondered if this was too narrow a perspective – does it provide enough elements to make informed decisions on land policy and law reforms? Land use should not only consider maximizing economic benefits; long-term sustainable development, poverty alleviation and environmental concerns are also important.

Ms. Gindroz noted that if smallholder plots are replaced by large-scale concessions, the initial economic returns might look good for the GDP, but this hides the social, economic and environmental costs for local communities. One-time compensation for displacing local people's livelihoods can never replace the values provided by natural resources in the long term. People become poor when they become landless and are left with few options.

Ms. Gindroz proposed that the reason why rubber smallholders gained higher returns vs. wage laborers (as noted in Mr. Zola and Dr. Fraser's presentation) was due to their retaining sovereignty and control over natural resources. While FDI is a necessary priority for Lao PDR's national economic development, it is important to take a balanced approach to ensure rural people are still left with options for their own local initiatives. She noted that two conditions are important – 1) that after a concession is made, locals should retain access to local natural resources (particularly as relates to food security) and 2) that such arrangements be made for future generations too.

Mr. Hongthong Sirivath

Village Focus International (VFI)

Mr. Hongthong concurred with Ms. Gindroz's comments. He expressed his appreciation for the NLP process to date, particularly for its participatory nature in providing opportunities for different stakeholders to express their needs and interests and to provide inputs. However, he suggested that the process still focused too narrowly on the public sector, and less so for private sector and civil society. He expressed his hope that greater coordination with civil society would allow two primary concerns – 1) tenure security for local people and 2) enforcement of the law – to be captured in the policy review. Without addressing these issues, the reformed policies and laws would show little success.

Mr. Hongthong then expressed his support for the land allocation process, as aims to provide them with access to local natural resources. He noted that the meaningful participation of local participation is the key to making the allocation a success – but this can take a lot of time, which as Mr. Vinh acknowledged was a challenge. Another issue is the length of time currently given to local people under land certificates – three years – which offers virtually no security to the certificate-holder. Communal land titling in rural areas is a possible solution to improved tenure security.

He echoed Dr. Fraser and Dr. Phouang's observations that potential contradictions also remain between forest cover policy and land allocation and need to be reconciled. For land and forest policy and law reform to succeed, coordination is crucial between stakeholders at different levels – national policy needs to be linked to practice at local levels – otherwise conflicts of interest might arise.

Mr. Zola and Dr. Fraser

(Additional comments in response to observations by discussants):

Mr. Zola and Dr. Fraser noted that their analysis identifies vast areas of 'potential' forest – i.e. wide savannah, grazing, scrub land, etc. One question is whether there are overlaps in the data between land cleared for shifting cultivation and forest. The risk is that if bush area is defined as potential forest under the reformed NLP, then shifting cultivators can no longer engage in their practices. Another question is whether plantations – i.e. rubber, eucalyptus, etc – will be covered under a revised forest definition. Decisions on these two issues will have impacts on the livelihoods options for local people.

Dr. Fraser also supported Ms. Gindroz's assertion that by keeping tenure security and control in the hands of local people, these people can earn more. Large-scale concessions have so far generally provided little to no security. Tenure security provides a safety net if smallholder economies suffer a dip, as rights-holders have more livelihoods options than those with no rights.

Question and Answer

1. Dr. Sysalio Savangseuksa, National Assembly Member, Vientiane Capital

Dr. Sysalio agreed with many of the comments of the presenters and discussants. He iterated that what lay at the heart of the land and forest policy and tenure reform is the question, "Development of what, for whom?" He noted that the wellbeing of citizens should be at the center of reform concerns, not just boosting national economic development.

2. Prof. Dr. Khamlek Xaydala, National Assembly Member, Luangnamtha Province

Dr. Khamlek began by echoing a comment from Mr. Hongthong: that once the policy is set, enforcement effectiveness should be a priority, particularly in catchment and biodiversity protection areas. Forest

cover stipulations near catchment areas also need to be clearly defined after the policy is enacted, to ensure the best protection of NTFPs and other environmental values.

Dr. Khamlek noted that in Luangnamtha, no vegetative clearance is allowed in riverbank areas. This has resulted in rich supplies of NTFPs and small wildlife species in these areas. He suggested that it would be useful if the government were to define parameters for different zones in its policies.

Dr. Khamlek then noted that one problem is that subsequent development doesn't always follow land allocation plans. In Luangnamtha, clear plans are in place but some districts cannot adhere to these as smallholders have right to plant whatever they want. He suggested that once allocation plans are in place, pilot projects should be introduced to encourage local people's adherence to these. Support is needed after allocation processes are completed at local levels, otherwise it may be difficult to stick to plans.

3. Mr. Khampha Keomanychanh, President, Community Development and Environment Association (CDEA)

Mr. Khampha stated that a key necessity is to translate government policy into action at grassroots level. Key challenges remain over land use, especially along streams and rivers, due to agricultural expansion. One issue is when land belongs to someone who is not local (as typically in the case of concession); this can affect access for local people and give rise to disputes. Non-local landowners may also not consider the effects of their land use on local people; in one CDEA project site (Huayka village), pesticide from maize cultivation is contaminating local water sources, affecting the health of local people. Hence turning land into capital is sensitive in this regard – initiatives undertaken in one area can have a greater effect far afield. To reverse or contain undesirable impacts from large-scale concessions, environmental protection safeguards must be instilled as plantation management regulations. The NA should work together with civil society to address these issues for the benefit of rural people.

4. Prof. Dr. Phonethep Phonsena, National Assembly Member and President of Cultural and Social Committee of the National Assembly

Dr. Phonethep began by commending the inputs made by presenters and discussants so far, and suggested that a set of recommendations be drafted after the workshop. He noted that Lao PDR is a small country, with 70% sloping land area, leaving little available for agriculture and other purposes. However, the country is rich in forest cover (for carbon sequestration and oxygen) and has 30% of the Mekong river's volume. The question is, how can the government help raise the awareness of its citizens to safeguard these resources?

Dr. Phonethep suggested that what was needed is a clear survey of national land to get broad overview of the country in terms of settlement, natural resources, etc. Results from this would feed into clear policy options, particularly for allocation, forest conservation, economic development, and urban and infrastructure planning for long-term scenarios. The government should also invest in land titling to ensure tenure security; communal land titles would help ensure that there is justice and proper compensation for local people in cases of concessions and infrastructure development.

Dr. Phonethep reiterated concerns raised by Ms. Gindroz and Dr. Fraser on the lack of security for hired laborers with no land tenure, noting that if a laborer becomes unable to work through injury or illness, he or she would have no options to earn a livelihood. He suggested that there should be a policy to promote and ensure social benefits are available to all Lao citizens.

He ended his comments by saying that a proper comprehensive survey would provide an overview to ensure proper development program planning for the country – otherwise there is a risk of little coordination between different sectors, giving rise to contradictions in development policy and practices.

5. Unidentified National Assembly member

This participant stated that the objective of government here is to improve forest and land management policy. There are many weaknesses with the policies, laws, and regulations introduced in the past, as well as with the land-use classification and allocation processes, and the lack of social safeguards for local people in the case of concessions. One reason for these shortcomings is the lack of quality data available to policymakers, leading to gaps and contradictions in policy and practice. He ended by expressing his hope that the NLP process would clarify points of contention in data and policy in order to improve tenure security for rural people.

6. Mr. Eddie Nsamba-Gayiiya, Executive Director, Consultant Surveyors and Planners (Uganda)

Mr. Nsamba-Gayiiya responded to a question raised by Mr. Siphandone in his presentation regarding the order of priority in revising the land policy and land law. From his experience in Uganda, the policy reform should precede law reform, so the policy can inform the development of law.

He also agreed with Mr. Hongthong's point that the revised national land policy should address and articulate well the key 'burning' issues and concerns over land in the country. It may be a tedious process, but well worthwhile – this is the purpose of having a policy.

He also echoed concerns raised by Ms. Gindroz and others on balancing the place of FDI in developing a country's natural resources, in order to maximize those benefits and minimize the risks posed by FDI to achieve an overall 'win : win : win' scenario. He noted that Africa's experience with FDI has been problematic, as governments have rushed to take advantage of the opportunities provided by FDI, leading to many challenges due to irresponsible FDI implementation at local levels.

7. Mr. Khamphanh Nanthavong, Director General of the Forest Resources Management Department, MoNRE

Mr. Khamphanh expressed his opinion that the key issue was not in whether the 70% forest cover by 2020 target is realistic and should be amended, but rather that attention and effort should be shifted towards pooling together resources and cooperation from all sectors and stakeholders in order to achieve this goal. The biggest risk for land and forest reform is for different sectors and ministries to continue having their own strategies and roles in isolation from one another. Synergy and consensus in revising the NLP is needed, and adherence to it once it is enacted so a practical legal framework can subsequently be designed to administer and develop land for different sectors.

Mr. Khamphanh also stated that the national budget for biodiversity conservation (e.g. to run national parks) is woefully inadequate. He suggested that a greater share of revenues generated from other sectors – e.g. concessions and mining – should contribute to forest land protection.

Session 3 – Understanding global tenure trends in regional contexts

Co-chairs: Dr. Souvanpeng Boupphanouvong
Mr. Arvind Khare

Panelist:

Overview on tenure transformations in Asia, Africa, and Latin America, and drivers behind changes in tenure

Dr. Augusta Molnar

Senior Director, Country and Regional Programs, RRI

Dr. Molnar presented a summary of research and information from the RRI coalition on trends in changes in tenure in forest sector. Her presentation focused on three areas: 1) global trends and regional difference; 2) drivers of change in Africa, Asia, and Latin America; and 3) impacts of tenure reform to date. Her presentation ended with a summary of lessons learned from tenure reform processes in other countries.

Dr. Molnar began by saying that since the Rio Convention in 1992, forests designated and/or owned by local people around the world had tripled from 5% to 15% of total forest area in 2012. Most of this change has happened in developing countries (from 21% in 2002 to 31% in 2012), as many began (and continue) implementing radical reforms in the forest sector – RRI data shows that 56 new legal community forest tenure regimes have been established since 1992. However, closer analysis indicates that very few of these regimes actually hand over a full ‘bundle of rights’ to local communities. There remains very little evidence of what people will do with resources when/if rights are secured.

Dr. Molnar noted that the drivers of change for tenure reform fall into four broad categories. First, governments have begun responding to national aspirations and needs of their constituents. Second, governments have endorsed and begun to incorporate international commitments relating to forests and forest-dependent people (e.g. UNDRIP, CBD, ILO 169, etc.) into national policies and legislation. Third, governments have begun to recognize devolution of forest rights as a practical vehicle for achieving economic and livelihood goals – successful examples include China and Mexico. Fourth, governments have also begun recognizing tenure reform as a means to achieve environmental goals.

Dr. Molnar then gave some examples from recent studies that indicate that tenure reforms have had positive impacts on the environment and local livelihoods in a number of countries. Data from East Africa, South Asia, and Latin America indicates that community-owned forests with strong local governance retain high carbon sequestration and conservation values, and are more effective in fire protection than government-administered protected areas. Impacts for livelihoods are harder to assess, as different stakeholders may hold different values and perspectives regarding what constitutes an ‘economic return’. Nonetheless, data indicates that devolving forest tenure has had multiple impacts on local economy and wellbeing – for example, bringing women into enterprises and differentiating markets. NTFPs are also being increasingly recognized for their contributions to national GDP (these contributions were unrecognized before).

Dr. Molnar closed her presentation by presenting some lessons learned from reform processes from other countries. First, tenure reform requires political will from governments, and tenure reform

implementation requires their sustained political will over an extended period of time. The key to making tenure reform a success is to provide clarity on land and forest ownership, and clarity on who has authority to determine ownership and rights. For this, three issues need to be made clear in the process:

1. Who has jurisdiction: State, province, local governments or a combination? Sorting out the roles between different levels/hierarchies of government is key.
2. Where should the rightsholder go to clarify their land/resource rights? Which ministry or agency?
3. Grievance mechanisms – where to go if your right is not upheld? This is important to resolve disputes and conflicts that are bound to arise in the tenure reform process.

Discussants

Dr. Sysalio Savangseuksa

National Assembly Member, Vientiane Capital

Dr. Sysalio began by noting that forests contain a richness and value beyond imagination. While the use of land and forest has close linkages to Lao PDR's socioeconomic development, right now it remains necessary that revenues from the development of other sectors – e.g. hydropower and mining – be used to subsidize forest management and protection. He noted that due to Lao PDR's limitations as a landlocked and mountainous country, it would be difficult to rely on an export economy and compete with other regional countries in this regard. Hence Lao PDR should focus on developing its strengths – for example, the country is geostrategically positioned to become the 'battery' of the Greater Mekong Subregion, supplying hydropower to other countries – and use this as an engine to explore the development of niche industries in the agricultural and forest sectors suitable to the country; for example, organic foods.

He noted that Lao PDR could learn many lessons in tenure reform for local people from other countries in order to ensure that the same mistakes are not repeated here. For example, Brazil and Mexico could provide lessons in resolving issues and conflicts concerning rural farmers with no land.

Mr. Peter Jipp

Senior Natural Resource Management Specialist, World Bank

Mr. Jipp began by stating that the dialogue on improving tenure and allocating land in Lao PDR has been going on for years, and that it is great to see the impetus taken by the NA and the line ministries to accelerate the process and learn from experiences around the world facilitated through partnership with RECOFTC and RRI. That the dialogue is becoming evidence-based and focusing not only environmental concerns but also on the livelihoods and rights of local people is also very encouraging.

Mr. Jipp quoted the economist Joseph Stiglitz in saying the issue for Lao PDR was whether the country could turn its natural resources into a "blessing" – i.e. an engine for national development benefiting all sectors and citizens – or whether these natural resources would become a "curse," extracted by outsiders but leaving little of benefit behind for the country. He also concurred with Mr. Hongthong and Mr. Nsamba-Gayiya in that NLP reform should understand the big questions on land and forests facing Lao PDR, and address these issues and questions to lead to the best possible outcomes.

Mr. Jipp ended by raising a couple of questions for consideration:

1. How can the government improve the process for concession allocation in order to make it

more transparent? This is important as FDI is a major engine for Lao PDR's growth – indeed it is expected to contribute to more than half of current annual GDP growth – and it is based in sectors that would drastically affect land use options in different areas.

2. How can the transfer of titles to local communities be expedited? The land allocation has been implemented for quite some time but progress still needs to be made in transforming these allocations into entitlements (i.e. bundle of rights).
3. How can the goals of delivering services to remote communities be accomplished in a way that is supportive of their broader livelihoods? The village consolidation program is premised on the goal of improving education and health service delivery by the state to its rural constituents, but there seems to still be a significant disconnect between this and the access of communities to land-based livelihoods. The challenge remains to maintain the connections to land-based livelihoods for villages that are being relocated. This is an important issue to resolve if Lao PDR is to see LDC graduation.

Mr. Somchay Ounchith

National Assembly Member, Salavan Province

Mr. Somchay agreed with Mr. Nsamba-Gayiiya's earlier comment that policy reform should be the priority but noted that law reform also remained very important as there were many gaps to keep up with the pace of Lao PDR's economic development. He noted that, in particular, land use needed to be better defined in the current eight classifications of land.

He mentioned that there existed a ministerial decree for forest land, but not for other land uses – is this an issue due to current and future land-use challenges Lao PDR might face? The conversion of forest and agricultural land to plantations and other uses poses risks to the country's food security. Clear measures should be put in place to prevent unnecessary and inappropriate land-use changes that exacerbate these risks.

He also observed that though there may be clear provisions for land-use rights in law, better enforcement is needed to ensure that people have more equitable access to land. Land titling should be expedited to ensure land tenure security – the NA and the line ministries need to secure adequate funding for this.

Mr. Somchay noted that while land allocation has been successful at the micro level in the country's 47 poorest districts and it is expanding now to other districts, what is important for the future is to think systematically and connect different districts/regions through a landscape-level approach, as what happens in one locale is interlinked and impacts other locales. Hence there is a need to ensure proper monitoring and enforcement of implementation after allocation.

Ms. Hanna Saarinen

Coordinator, Land Issues Working Group

Ms. Saarinen began by saying that the models for forest tenure and NRM from different countries presented at the workshop can and should not be directly copied in the Lao PDR context, they can provide principles for land and forest reform.

She observed that development processes are taking place at a fast pace in the country, and that the NA review of the country's development trajectory was timely. Lots of emphasis is being placed on land, forest, minerals, and water resources – however, the country's most valuable resource is its people. She

encouraged the NA to strongly consider the role of Lao citizens in national development and its goals beyond just the role of employment and labor. In this regard, the NA has a key role in voicing the aspirations, concerns, needs, expectations and interests of the Lao people.

She also noted that land-use development in Lao PDR has generally occurred in an unplanned manner to date; the Land Issues Working Group therefore supports the current moratorium on concessions and the revision of ongoing concessions through a review of progress to stated and new goals.

Ms. Saarinen also mentioned that customary rights remained extremely weak in Laos PDR, leading to negative impacts and conflicts with concessions. Better NRM can only take place if there are better/clearer tenure rights for local people and if they have secure control over their resources.

She closed by encouraging the NA to help Lao PDR choose its own development goals and model suitable to its context – but that GDP growth should not be the only goal.

Question and Answer

1. **Mr. Tony Zola**, *Independent consultant*

Mr. Zola iterated that the three final points made at the end of Dr. Molnar's presentation have to do with **rule of law**, which the government has made a commitment to improving. These three were:

1. Who has jurisdiction: State, province, local governments or a combination? Sorting out the roles between different levels/hierarchies of government is key.
2. Where should the rightsholder go to clarify their land/resource rights? Which ministry or agency?
3. Grievance mechanism – where to go if your right is not upheld? This is important to resolve disputes and conflict that are bound to arise in the tenure reform process.

2. **Mr. Khampha Keomanychanh**, *President, CDEA*

Mr. Khampha noted that the new reforms should enable indigenous people to become legally engaged in forest management. He echoed Mr. Jipp's point that the consolidation of village clusters, and other development initiatives such as rural electrification, had presented significant challenges to local people's livelihoods, particularly to village forests and community forests.

He wondered if it was necessary to speed up hydropower development megaprojects in the face of other, perhaps more pressing issues. He noted that some risks might not yet be adequately assessed – for example, an earthquake just happened the previous year. Other, smaller-scale alternatives (such as mini-dams etc) should also be explored.

He noted that there has been lots of discussion to make Laos the 'battery' of ASEAN, and suggested an alternative would be for the country to be the 'lung' of ASEAN, due to its high forest-centered development potential. He encouraged the government to explore such alternatives to large-scale development that could fit with a forest-centered development approach.

Session 4 – European Experiences: Comparing drivers determining tenure change in Europe

Co-chairs: Dr. Souvanpeng Boupphanouvong
Mr. Arvind Khare

Panelists:

Family Forestry: Local control for better sustainability – The Swedish Case

Dr. Lennart Ackzell

Senior Advisor, International Affairs: Federation of Swedish Family Forest Owners

Dr. Ackzell began by noting that every country has its own context – it is good to learn from others but policies and practices have to be specific to context. Sweden today is a forested country; forests, mostly managed by local farmers, are a pillar of local and national economies. However, 100 years ago the country was among the poorest in Europe, and hunger for wood had created a vast deforestation and forest degradation crisis. In response, the government passed a Forest Act – the land tenure system already in place was recognized in the Act, which also established a State Forest Service to facilitate forest development.

Unfortunately, these government initiatives were not enough. The expansion of markets created local vulnerabilities, as foreign buyers came in and tricked local smallholders into signing agreements they did not understand. This marked the beginning of a Swedish family forest movement – spontaneous reactions among villages around the country to join into local associations and cooperatives with the prime aim of keeping wood value with the grower. When this reached a critical mass, the regulatory and support frameworks (i.e. tenure act and Forest Service) were already in place for industry to take off and for reforestation and afforestation to be successful. Sweden has doubled its forest cover over the last 80 years and reached an annual harvest rate of 6 billion cubic meters in 2006. Sweden's forest turnaround is one of the reasons why the country has the national wealth it has today.

Swedish forests are typically managed on 80–100 year cycles; hence a farmer does not just plan for himself but for future generations of his family. This makes tenure not only a legal issue, but also *moral* one now. This also has implications in the sale of timber – a general principle is that 90% of the cost should stay with growers.

Dr. Ackzell also shared his experiences of working with other countries on forest reform. In Kenya, he helped initiate a farm forestry program, under which farmers would be able to sell trees grown on their land. The main issue here was that middlemen took the biggest chunk of the profits, as opposed to the growers. Mr. Ackzell noted this was not fair nor conducive to sustainable forest management. He emphasized that experience – not only in Sweden but also, for example, in China – shows that local people will take care of their forests when they know it is a secure asset. With the right incentives for engagement, more trees will grow, contributing to the local forestry sector and the green economy and producing a win : win : win scenario.

Dr. Ackzell then offered four components contributing to long-term sustainability in forest management and local livelihoods:

1. Secure property rights and tenure for local people
2. Market access – local people should be allowed to extract and sell timber and other forest

products from their land

3. Support services – the role of the forest service covers education, training, and technical advice. It should also ensure that additional responsibilities are not foisted onto local people.
4. Associations(local, regional, national) – platform for people to come together to defend rights

He closed by emphasizing that the Swedish experience demonstrates that significant changes can be made in forest cover and local livelihoods when the right incentives are in place.

How can land tenure in Norway inform tenure debates in developing countries?

Mr. Ivar Jørgensen

Senior Advisor, Department for Climate, Environment and Natural Resources: Norwegian Agency for Development Cooperation (Norad)

Mr. Jørgensen began by taking stock of some of the similarities that exist between Norway and Lao PDR – both are small countries – 340,000 sq km vs. 240,000 sq km; 5 million vs. 6 million people; mountainous; not a lot of arable, flat land available for agriculture. He then noted that Norway's forestry history has followed a similar trajectory as Sweden – massive deforestation a century ago, with a turnaround driven by farm forestry.

He continued by presenting the different land tenure types in Norway. Private land (under individuals or companies) has the biggest share of land in Norway. Other tenure types are land owned by municipalities and institutions, church land, parish land (community-owned), state common land and public land in northern Norway where the rights of the local indigenous people (Saami) dominate. He emphasized that good conflict-solving mechanisms were key to maintaining tenure classifications.

In terms of rights over forest land, private forest ownership has monopoly of all rights except access (which is open to everyone) and withdrawal (open to all for some historically non-commercial resources e.g. berries and mushrooms). Other resources on forest land are subject to exclusive rights – sometimes different ownerships overlapping different resources on the forest land. Land-use changes and sales of private lands need to be approved by the titleholder. There are restrictions in sale of common land. While mining is state controlled, all surface work needs the landowner's permission. What is important to note is that all rights are *permanent* – this is a key factor to making the system work.

Common lands remain an important part of the land tenure system in Norway, and may be of interest for Lao PDR and other developing countries. There are two main types of common land – state commons and parish commons – mostly in non-arable lands. Power is shared between three groups of local stakeholders: 1) the municipal authority remains vested with land-use planning power, the land owner (the central government on state land, elected committees on parish commons) has land management rights, and local users have rights of resource withdrawal. All three need to agree – and all three have veto power – for serious land-use changes. The main implications for this system to managing common lands are that free, prior, and informed consent (FPIC) for local resource users is mandatory, forcing local and central governments to work with local communities; and that conservation is the default common land-use arrangement on common land as all three parties have to agree for land-use change to take place.

Lessons from the Norwegian experience include:

1. Models should not be 'transplanted' from one country to another – solutions need to be country specific.

2. Management of common lands can be successful and contribute to citizens' wellbeing.
3. Individualization of land rights is not the only way forward – a mix of tenure categories is best.
4. Clear procedures and mechanisms (e.g. judicial commissions, etc) for establishing rights are an important factor to mitigating the incidence of conflicts over ownership.
5. Formal rules and legal basis need to match local tradition
6. Individual rights in common land must be defined
7. Clear powers to local groups enhance responsible management decisions and participation – this has a big impact on overall ability of communities to take part in political processes
8. Recognition in policies and regulations that the poor/landless depend more on common lands – important for poverty alleviation
9. Community forestry legal frameworks need to give greater bundles of rights to user groups

Land and tenure distribution in Estonia: Evolution of policies and implementation

Dr. Aigar Kallas

Director General, Estonian State Forest Enterprise

Mr. Kallas's presentation focused on relevant points to be learned from Estonian modern forestry experience, particularly on property rights, the timber industry, and public forestry administration.

He began by noting although Estonia was a relatively small country in land area (4.5 million ha), forest industry exports account for over 18% of GDP and is the single largest contributor to the country's foreign trade balance. The state is the country's largest land owner at 1.5 million ha, 1.2 million of which is managed by RMK – the State Forest Management (and Nature Conservation) Enterprise. Private forests account for half (50%) of the country's total forest area.

He then explained how Estonian forestry has been shaped by the political history of the country. In particular, the country's forest cover has continued to increase as the state modernized and the area under private ownership increased through land reforms, which are still being implemented. One immediate impact was that as land rights were granted to private individuals and companies, national harvest volumes grew, as the new owners quickly began utilizing the resources they had rights to. He also emphasized that the opening of the market had helped competition, distributed revenues more broadly among producers, and stabilized the industry, and creating 30,000 jobs – a key hallmark of the reform.

He noted that forestry administration restructuring after the Soviet era has split the government forestry administration into five separate institutions, with specific roles and responsibilities. The system has worked – enforcement has reduced illegal logging incidences to a negligible figure – due to cooperation between these different agencies.

Discussants

Mr. Esa Puustjärvi

Sustainable Forestry and Rural Development Project (SUFORD) / World Bank

Mr. Puustjärvi made comments on a number of points related to the presentations on the Nordic countries:

1. In all the countries presented, private ownership is significant. Rural people in Nordic countries have few assets – forests being one. The value of these forests was not much when they were handed over many decades ago, but the values have grown over time due the management of

rural people and has influenced how national wealth has been distributed. It is always easier for rural people to negotiate as asset owners than vice versa – hence people have been able to draw significant benefits from these natural assets under their control. This may also be valid for Lao PDR.

2. Forest reform transitions were not easy and smooth in the Nordic countries. When resource-poor people acquired legal rights to assets that take a long time to mature, there is a temptation to ‘cash in’ on short-term benefits, as in the case of Estonia where harvest volumes grew as forests were legally handed over. The problem is that sometimes these practices have not been sustainable. This issue may also be of relevance for tenure reform in the Lao PDR context. In such situations, there are two ways to ensure forest protection: 1) make ownership conditional (i.e. the asset base has to be maintained, cannot be handed over to a third party, and that others should be able to share in benefits) – this has been applied successfully in Nepal; 2) make sustainable management more attractive through incentives – for example, by allowing a wider range of species (e.g. fruit trees and exotic species) in forest management – this has been successfully applied in China, but environmental impacts may be a problem. The bottom line is that there must be some incentive for people to manage that resource sustainably – otherwise there is temptation to cash-in quickly.
3. Organizations/associations of forest owners have had tremendous impact in improving their bargaining power. During the transition of state to private ownerships, owners were generally ignorant and taken advantage of by industry. Today, forest owners possess significant bargaining power – they are considered as an equal business partner by industry. To ensure tenure reforms result in positive livelihoods impacts, owners must be encouraged to organize themselves into associations.
4. Private ownership that has been a success story in the Nordic countries – management of state lands can also be qualified as a success in financial and corporate social responsibility (CSR) terms. The key has been that commercial production forest management has been managed as a business enterprise (but with key government oversight for social and environmental safeguards) – i.e. companies have been given the freedom to manage themselves. The more difficult part is for the state to ‘self-regulate’ by maintaining oversight over the state forest enterprises (SFEs). The Nordic model might also be relevant to Lao PDR but oversight/enforcement here has been a weak point – this has to be addressed before such models are applied here.

Mr. Bounthien Thongkeo

National Assembly Member, Champasak Province

Mr. Bounthien provided comments on three key topics:

1. It is essential that Lao PDR continue to improve land and forest use through policy and legal reforms. Many regulations and laws have been passed since 1975. We are on the right track – the fundamental principles are in place, such as the classification of land categories, but there are still areas to improve. In particular, there are shortcomings in land use criteria – i.e. data is lacking to define how land (and its uses) fits into categories. In Champasak, a lot of land is classified as conservation zones, but in reality much of it has been under productive and other uses before demarcation. This issue is particularly relevant for concessions. Poor information management leads to undesirable consequences – this is an area for serious improvement.
2. Right now the granting of concessions sometimes happens at the central level, sometimes from

the provincial governments, and even sometimes from local authorities. This issue needs to be addressed. Local people also need to become aware of their rights to lessen land use overlaps and conflicts. Rights, regulations and incentives need to be formulated to sustainably manage forests.

3. Monitoring – once land use has been clearly demarcated, annual monitoring should take place to ensure land use is in line with legal classifications. There is a need to ensure that there is no abuse of power (i.e. in changing land use) – if there is, that means there are gaps in the law that allow some in society to commit wrongdoings.

Ms. Lillian C. Ortega

Deputy Country Director, Swiss Agency for Development and Cooperation (SDC)

Ms. Ortega asked Dr. Lennart, Mr. Jørgensen, and Dr. Kallas to answer questions pertaining to how the following conditions came about in their respective countries:

1. Political will to recognize people's rights and fight abuse of rights
2. Price of timber (commercial assets) – recognition that it belongs to tree owner
3. Local power issues – first providing enabling conditions (e.g. local committees, associations)

What were the preconditions leading to these? And how were corruption and abuse of power in the sector managed?

Responses by the presenters:

Mr. Jørgensen

Historically, corruption primarily consisted of the forest guards accepting bribes from foreign logging teams. The decisive moment came when the government and local people decided together that this was unacceptable – laws were passed and power and rights over land management were granted to local people. The key is finding the appropriate legal rights and conflict solving mechanisms. Legislation, enforcement of legislation, and divestment of power to local people are the three fundamentals for this.

Dr. Ackzell

Popular movements (such as trade unions and adult education) allowed people to come together to try to tackle key issues. Cheating smallholders (by tricking them into signing unfair agreements) is also another form of corruption, particularly when elites use their position to force smallholders to agree to things without their sincere consent. One point of note in tackling corruption is that when local people have user rights and a stake in the asset, they can become more effective watchdogs than the forest service alone.

Dr. Kallas

Dr. Kallas concurred with the Mr. Jørgensen and Dr. Lennart's points. He noted that reforms leading to private ownership rights are the biggest reason Estonia has been successful in reducing illegal logging, as evidenced by the graph on slide 14 in his presentation.

Question and Answer

1. **Prof. Dr. Phonethep Phonsena**, *National Assembly Member and President of Cultural and Social Committee of the National Assembly*

Dr. Phonethep voiced his concern about international and regional corruption in all the sectors. He asked the presenters that if other countries knowingly buy timber illegally extracted from Lao PDR through international trade, would this also be considered corruption? He was concerned if there was an international market for a timber species with harvest restrictions in Lao PDR law; he wondered if the harvest restrictions could be considered as ‘institutional corruption’ (in not allowing rural people to benefit from the sale of local timber) and that therefore changes should be made in the law.

He also asked the presenters if a foreigner can buy/own land in their countries.

Responses by the presenters:

Dr. Ackzell

Foreigners are allowed to buy land in Sweden. However, there is a cap on company ownership of land – 25% of Sweden’s total land area – meaning that companies can only buy land from other companies. Property rights included trees, hunting, and the soil down to two meters.

Dr. Kallas

Foreigners are allowed to buy land in Estonia. The only restrictions are that company owners have to prove their competence.

Question and Answer

2. Ms. Lillian C. Ortega, Deputy Country Director, SDC)

One concern in Lao PDR is about double standards. Local people have to go through a lot of legal procedures before being granted legal access to the land. Should there also not be similar prerequisites for granting concessions?

3. Unidentified National Assembly member

The NA member agreed with the shared point of the presenters that making land a private entity would help lower the risk of corruption. He also noted that rural folk who traditionally practiced shifting cultivation in Lao PDR currently had little incentive to plant trees, because their rights to benefit from these assets are insecure. He also posed the question of whether to consider eucalyptus or rubber as forest plantations or agriculture?

Responses by the presenters:

Dr. Lennart

In Sweden, there are only a few tree species – there is not really any scope to sustainably grow exotic trees in the country. Spruce plantations (for Christmas trees) are considered agriculture in Sweden. He also noted from his experience in Kenya, it was local corruption that created obstacles to local people benefiting from trees on their land – farmers had to pay off local officials before they could harvest trees. The Nordic examples demonstrate that corruption can be countered by giving different responsibilities to different government agencies – for example, SFEs and private companies are monitored by an independent government agency.

Mr. Jørgensen

In Norway, the possibility of abuse of ownership is the same for private owners vs. companies. Therefore the Forest Act applies to everybody – it requires compliance for forests to be managed in sustainable manner. Similar to Dr. Lennart's observation, points of approval (e.g. transport of timber) can still be 'points of risk' for corruption.

Dr. Kallas

Dr. Kallas agreed with the Dr. Lennart and Mr. Jørgensen that all – government entities, private individuals, and companies – should be held to the same standards under the law.

Day 1 Conclusions and Wrap-up

Mr. Arvind Khare

Executive Director, RRG

Mr. Khare began by noting that the question raised by Dr. Xaysomphone in his opening address – how land and forest reform could help achieve an optimum balance in social, economic, and environmental benefits for all stakeholders – lay at the crux of many of the questions and comments posed in the day's discussions.

He then asked workshop participants to consider five questions that would need to be addressed in the context of land and forest reform in Lao PDR:

1. Who owns the resource?
2. Who uses the resource?
3. Who manages the resources?
4. Who regulates the resources?
5. Who adjudicates the resources?

To answer each of these, he noted three necessities:

1. First, that it is necessary to look at who has traditionally used the resources in questions, and the reasons why. Longstanding traditions and customs of rural people deserve respect in any land and forest reform process.
2. National objectives and aspirations should be deeply considered. Is natural resource management for collective national wealth or different for different groups of citizens? Will all citizens and sectors benefit?
3. Finally, what is the social contract that a government wants to have with its own people? What should the state deliver for its people, and vice versa?

Session 5 – Asian and African Experiences: Comparing drivers determining tenure change in Asia

Co-chairs: Dr. Souvanpeng Boupphanouvong
Mr. Arvind Khare

Panelists:

Land tenure reform in China

Dr. Xu Jintao

Professor, Peking University

Dr. Xu began his presentation by noting that, like Lao PDR, China is a country that has undertaken reforms to develop its markets and private sector, improve rule of law, and open up the country. In the process, lots of government decisions were made without good information, often leading to less than desirable results. However, forest and land tenure reform was a right decision – evidenced in significant improvements to rural people's welfare.

Rural land reform in China began during the late 1970s; the country's tremendous economic development during that time – reaching full food self-sufficiency in three years – was based on these reforms. More recently, reforms have focused on forest land, which covers more area than agricultural land (167 million ha to 120 million ha). New countryside initiatives – in particular, improving local elections and transferring financial power – were also enacted to enhance rural village government's abilities to build infrastructure and improve services in rural areas. These reforms are expected to improve forest management – in terms of balancing better protection with higher productivity to meet domestic demand – and local livelihoods by giving incentives for farmer and private sector investment. Social and political stability is also a hoped-for outcome. Conflicts in rural areas primarily center on issues concerning equity and village governance (i.e. relationships between local governments and populations).

Forest land reforms initially focused on devolving forests from central to collective management at village levels. This has only had mixed success; issues regarding distribution of benefits to villagers in forests under collective ownership remain. Hence since 2003, devolution has continued towards household levels, providing individual owners with longer (70-year) contracts and a richer set of rights. Devolution to household levels is determined at the village level.

Early indications from these reforms indicate that (similar to Estonia) harvest rates increased in many provinces as farmers gained rights to forest lands, contributing to increases in forest income. In correlation, afforestation rates have also gone up at a greater rate in villages with forests devolved to households than in villages where forest management remains collective. One final trend to watch is that some farmers (typically ones with a better educational background) are now starting to use forest land as collateral to improve capital base for enterprise development.

Land tenure and allocation of land in Viet Nam

Mr. Tran Manh Long

Expert, Forest Protection Department, Ministry of Agriculture and Rural Development

Mr. Tran gave an overview of Vietnam's forest history and current status. Almost 50% of the country's land (14.24 million ha) is set aside as forest land, over 10 million of which comprises natural forest area

and the rest plantations. While all forest land in Vietnam is legally owned by the people in the State's trust, the policy of transferring formal land and forest tenure from the State to different land managers was initiated in the 1960s. To date, many organizations, households, and individuals have received land, forest to invest in forest production, improving living standards, practical contribution to poverty alleviation and socialization in forest management protection process. Of note, households and communities manage some 3.7 million ha of forestland, equivalent to almost 27.5% of the country's forest land. One issue recognized the Vietnam government is that the rights of forest managers in gaining benefits from their forests remain unclear, leaving room for some to take advantages of Vietnam law for forest destruction and forest exploitation.

New policies enacted by the Vietnam government concern payments for environmental services (PES). In 2009 the Vietnam government started to collect fees from hydropower and water plants on a national scale to pay for people coordinating in forest protection. The amount that a person receives is calculated according to the forest area that the person manages. In June 2012, the government also issued a decision approving the National Action Program for reducing emissions from deforestation and forest degradation (REDD). In the decision, the Vietnam government emphasized continuing the transfer of forests to local people, while conducting a forest inventory at the national scale.

Forest tenure reform in Nepal

Mr. Ram Prasad Lamsal

Joint Secretary, Ministry of Forests and Soil Conservation (MFSC)

Mr. Lamsal's presentation covered the key impacts and lessons learned from Nepal's 30 years of community forestry, and in particular how government institutions and community forest user groups have worked together to reduce poverty, stop deforestation and forest degradation, and stimulate local-level rural development. He noted that Nepal shares many similarities to Lao PDR – both countries are mountainous, landlocked, with lots of forest and critical watershed areas, and issues with soil erosion.

The first lesson from Nepal's experience was that inappropriate and top-down policy is a driver of forest degradation – state-centered “command and control” approaches have failed to bring positive outcomes in forest landscapes. On the other hand, community forestry and autonomous community-based institutions have been effective tools for forest landscape restoration, as it provides a supportive legal framework that promotes the active participation of local people in forest management.

Another lesson is that the most effective role of the government has been to support and facilitate communities in the community forest management process, not to lead it.

Community-based forestry institutions also have contributed significantly to local community development beyond the local forest sector, providing goods and services necessary to support local livelihoods. It is important to note that the contributions made by community forest user groups (in terms of labor and income) to local community development is on a level much greater than the government and international donors.

Current issues in Nepal's community forest management concern local governance and long-term implementation. Elites can dominate the decision making within user groups at the expense of marginalized community members; conflict resolution processes are also lacking at local levels. Sustainable forest management also requires a long-term commitment of support and extension from many different stakeholders, which can be hard to engineer at times. Also, much community forestry in Nepal remains conservation-oriented – more emphasis needs to be placed on poverty alleviation and income generation.

Discussants

Professor Dr. Khamlek Xaydala

National Assembly Member, Luangnamtha Province

Dr. Khamlek began by posing three questions for the presenters:

1. For China – What are the primary lessons learned for forest livelihoods improvement from Yunnan province (where there are more collective forests than individually managed forests)?
2. For China – are there public land concessions in china – and if so, how much is the fee per hectare (for international companies)?
3. For Vietnam – are wood-processing cooperatives still maintained?

Dr. Khamlek also shared experiences in forest protection and land management from his home province of Luangnamtha. A conservation zone straddles a 200km border with Yunnan, and there is success process of cooperation with Chinese authorities to manage border areas. The issue here is how to implementation forest conservation while balancing the needs of local villages and road development? He believes it is through the implementation of the law and involving local people by devolving responsibility and allowing them to gain benefits for their forest management contributions. The government's role should be on supervision and monitoring, while the villagers should take the initiative in most of the activities. For this to happen though, the capacity of villagers in forest management needs to be improved, and there is also a need for more effective monitoring and evaluation of activities progress. In this vein, he noted that provincial agricultural departments should provide better information on land use to provincial governors and the central government, and that provincial governments need to take ownership of forest and land-use processes. The only way to manage forests sustainably is to work with people at the grassroots level.

Responses by the presenters to Dr. Khamlek's questions:

Dr. Xu

Yunnan has all the 55 ethnic groups recognized by the Chinese government living in the province, so there are many special policies. Yunnan is also considered a state forest province – here the natural forest protection program designed for state forests was applied to collective owned forests, which takes away harvesting rights in the forest. Hence it does not make sense for forests to be devolved to individuals and households in the province – since owners only have the rights to harvest NTFPs, which are better managed collectively, there is a reverse trend of many household forests being re-collectivized.

Regarding concessions, such as for Asian Pulp and Paper, there are two kinds for public forest land. One is where collectives could get concessions from state forests, the second is for companies. Concession rates are determined by the market.

Mr. Tran

In Vietnam, wood-processing cooperatives are being operated and are generally managed by government economic organizations. The government also specifies areas where to plant different species for factory manufacturing needs.

Discussants (continued):

Mr. Khampha Keomanychanh

President, CDEA

Mr. Khampha began by reiterating his earlier point that he is not against the policy of making Lao PDR the ASEAN 'battery' in principle, but that MAF and MoNRE should explore developing the country to become the 'lungs' of ASEAN. This might be done by using FDI to develop the country's forests for ecotourism to generate income and revenue. Focusing on NTFPs and organic agriculture – small quantities of high value crops, as opposed to crops requiring high inputs and high volumes for return – might also help to solve shifting cultivation problems.

He also used an idiom to emphasize government roles in policymaking and law enforcement: "If you want to be soft, soft like silk; if you want to be strong, be strong like a tiger." Policies should be 'soft' to build up solidarity and consensus among stakeholders, but laws need to be strong and strict in terms of enforcement. He noted that effective monitoring is a key for follow-up, enforcement, and improvement.

He then noted cooperation was needed when resources were scarce. He gave an example of a village forest, where the provincial governor mobilized households to grow exotic species. The money allocated individually to households (100,000 kip) did not amount to much, but when pooled together into a village fund, it provides a substantial basis from which the project could start.

He ended by posing two questions:

1. 'White charcoal' from *mai tieuw* is a Lao forest product that costs about 112,000 kip per cubic meter to produce but is of great value to the Japanese. It only needs three years to grow. Could plantations of *mai tieuw* be sustainable as production forests at community and household levels?
2. In Vietnam, what is the role of communities in forest and land management policymaking?

Question and Answer

1. Mr. Khamphanh Nanthavong, *Director General of the Forest Resources Management Department, MoNRE*

Mr. Khamphanh responded to the question of *mai tieuw* cultivation by saying there is one company that specializes in this in many provinces. It promotes *mai tieuw* cultivation by local communities so they can stop shifting cultivation. It has also been successful in improving income for local people; it even rewards good forest management practices by offering households up to 3-5 million kip as a reward. The issue is that it is sometimes hard to ascertain whether harvested *mai tieuw* trees are from plantations or illegally extracted from protected areas.

Mr. Khamphanh also expressed his support for Dr. Khamlek's comment for people's participation – government cannot work alone in managing the country's forests.. Strict enforcement requires better awareness and understanding of the law and on the benefits of forest protection by local people, particularly regarding protected forest areas. It is also imperative that proceeds from hydropower dams benefit local people.

2. Mr. Richard Hackman, *Fellow, The Samdhana Institute*

Mr. Hackman suggested that Lao PDR might look to Nepal as an example for poverty alleviation in terms of community forestry user groups generating their own funds.

He also asked Mr. Lamsal a question – how do the Forest Act and Forest Policy in Nepal work together, particularly to ensure better governance?

3. Dr. Kirsten Ewers, Consultant, Social and Environmental Governance / Land and Forest Tenure

Dr. Ewers asked Dr. Khamlek, what are the incentives for local people to take part in forest management in Luangnamtha?

She also noted that white charcoal kilns burn for weeks, emitting a lot of carbon dioxide. She suggested it might be necessary to invest in new, greener technologies to produce charcoal.

Responses to the questions:

Mr. Lamsal (in response to Mr. Hackman's question)

Mr. Lamsal noted that in Nepal, the policy has focused too much on community forest management – there needs to now be more of a focus on enterprise establishment and the role of the private sector. There is also a need to improve economic outputs from community forests, and to look at the relationships between communities and private enterprises.

Mr. Tran (in response to Mr. Khampha's question)

After the Vietnam government transfers the forest to communities to management, the community needs to build its own agreement to manage and extract products for subsistence needs in line with government regulations.

Dr. Khamlek (in response to Dr. Ewers's question)

In the Luangnamtha example mentioned earlier, there are 48 villages in the forest zone. The government plans the forest management with the villagers, who are provided with some tenure rights to NTFPs (e.g. bamboo and cardamoms) and management responsibilities as well, which outsiders do not have. The government also maintains a seasonal monitoring role – for example to discourage opening land for shifting cultivation during the early months of the year. The example demonstrates that tenure responsibilities and benefits are entwined.

Question and answer (continued):

4. Prof. Dr. Phonethep Phonsena, National Assembly Member and President of Cultural and Social Committee of the National Assembly

Dr. Phonethep asked Dr. Xu, Mr. Lamsal, and Mr. Tran about their countries' experience and strategies on carbon credits? In particular, have their governments analyzed the costs and benefits of forest carbon sequestration?

Responses:

Dr. Xu

The Clean Development Mechanism (CDM) project on forest carbon in Guangxi is considered a success, so there are two more in the pipeline. In general, forestry is a low-cost means to carbon sequestration. China has been very successful in developing afforestation projects, so it makes sense for the country to place a high priority for forest sector to increase carbon sequestration. China noted leakage issues with

the CDM projects, so the government is currently implementing a provincial and national level framework (both in management and monitoring) for carbon sequestration. The main policy issue is ensuring this does not contradict forest tenure and decentralization reforms, as the national forest carbon sequestration strategy necessitates increasing capacity of the government to manage forest resources (such as national level monitoring and measuring standards and other regulations).

Mr. Lamsal

There are no CDM schemes in Nepal but the country is preparing for REDD+. Piloting has started at project levels in community forest sites; one landscape has already completed baseline information gathering. The government is currently preparing a REDD+ strategy. The main principle is to 'do no harm' in detracting from the overall goal of improving forest conditions and sustainably managing forests. For community forests, the primary incentive in forest management is not carbon but remains forest production; carbon benefits are seen as an additional byproduct.

Mr. Tran

In 2011, the Vietnam government initiated a REDD+ program. Only forests which are plantation forests for paper and timber industries are currently covered. The government is giving incentives (US\$100-200 per ha) to people to improve forest conditions.

Question and Answer

5. **Prof. Dr. Phonethep Phonsena**, *National Assembly Member and President of Cultural and Social Committee of the National Assembly*

Dr. Phonethep asked a follow-up question to Dr. Xu, Mr. Lamsal, and Mr. Tran. Lao PDR is 70% mountainous, with a growing population. Are people allowed to build houses on slopes in their countries? At what distance from riverbanks are people allowed to build houses?

Responses:

Dr. Xu

Dr. Xu noted that similar to Lao PDR, 70% of China's land is hilly – as flat land is very valuable, many houses are built in hilly areas and on the tops of mountains. He did not think that the government had any specific regulations on building houses on slopes, nor for building near waterways. The main policy relevant here is to convert land of over 25 degrees in slope into forest. Don't know of policy restricting building along rivers.

Mr. Lamsal

Mr. Lamsal noted that a country's laws and policies must reflect needs and aspirations of people. And must be made by looking at whether something is technically suitable and socially and environmentally acceptable to its context.

Mr. Tran

Vietnam has no policy for building on slopes, houses need to be a minimum of 100 m away from rivers.

Session 6 – Asian and African Experiences: Comparing drivers determining tenure change in Asia (continued)

Co-chairs: Dr. Souvanpeng Boupphanouvong
Mr. Arvind Khare

Panelists:

Tenure reform in the Philippine Forestlands

Ms. Mayumi Quintos-Natividad

Assistant Director, Forest Management Bureau, Department of Environment and Natural Resources (DENR)

Ms. Quintos-Natividad's presentation focused on forest tenure and policy reforms in Philippines. She began with an historical overview, noting that since colonial independence the state had gradually moved from a prescriptive forest policy framework (that was punitive for local people) to one that sought to improve socioeconomic conditions of upland farmers, enhance ecological stability, and maximize upland productivity. The reform agenda was driven by the aspiration to improve social equity. Today, the Community-Based Forest Management Program promotes cooperation and partnership in forest management, encapsulated by the slogan 'people first and sustainable forestry will follow'. Ancestral Domain/Land Claims (through the country's Indigenous Peoples Rights Act) also allow indigenous groups control over traditional forest territories.

Ms. Quintos-Natividad noted that tenure reform impacts include more options in local livelihoods and income (particularly through the development of local cooperatives), improvement in forest conditions (but not necessarily forest cover), and greater social justice and equity in natural resources for rural people and indigenous groups.

Lessons learned include:

1. The foundation of sustainable forest management is an enabling legislative policy.
2. Tenure reforms necessitate a reinvention of forestry institutions to be effective. Good working relationships with civil society need to be established.
3. Sustainable livelihoods need to be at the center of tenure reforms.
4. Capacity building is needed for all relevant government agencies, not just the local people who would be forest managers.
5. Financial support alone does not guarantee success.
6. Social processes that ensure meaningful participation by local people need to be developed and supported.

Forest and land tenure in Uganda

Mr. Eddie Nsamba-Gayiiya

Executive Director, Consultant Surveyors and Planners

Mr. Nsamba-Gayiiya presented on Uganda's recent experiences in land and forest reform. He noted a growing rural, agrarian-based population (such as Uganda's) had important implications for a country's tenure situation, as it puts pressure on land and natural resources. Most Ugandans derive livelihoods for land-use and forestry activities, but while agriculture employs 66% of Uganda's total labor force, it contributes only 23% to GDP. Most constraints driving low agricultural productivity are tenure-based.

In Uganda, two property systems (customary property law and statutory property law) and legal pluralism (customary law, statutory law and Islamic law) also presents some contradictions and conflict flashpoints regarding land tenure. Land-use conflicts occur between agriculturalists and pastoralists, conservation and agriculture / development (particularly driven by FDI). Deforestation is a serious concern due to forest land conversion to other land uses. Women generally have insecure land rights, as the marriage and succession law is discriminatory towards women. All of these issues have a land tenure dimension.

The 1995 Constitution and the 1998 Land Act are two fundamental bases for land tenure reform in Uganda. The fact that the Constitution vests national lands in the country's citizens (as opposed to the state, or the president) ensures that there is a legal basis at the highest level to protect citizens from property deprivation. Customary tenure is also recognized in the Land Act as legal freehold in perpetuity – this is important as up to 80% of land in Uganda can be claimed under customary tenure. Provisions in the 2003 National Forest and Tree Planting Act were developed specifically to address disincentives associated with the preceding protectionist approach to forest management, and the destructive practices associated with open access to forest resources.

Lessons from the Ugandan land and forest reform experience relevant to Lao PDR include:

1. Avoid creating too many institutions – hard to manage human and financial capacities
2. Land governance is the key issue to resolve – everything hinges on this. If you get governance rights, a lot of things will fall into place.
3. The enactment of laws and policies need to be matched by appropriate implementation and regular monitoring.
4. FDI can be beneficial or engender negative outcomes for local people and ecosystems. Safeguards are necessary to protect local rights and the environment.
5. Collaborative management and sector-wide approaches – if done right – can yield positive results.
6. Constitutional protection of land acquisition and compensation (the 'social contract' between state and citizens) should serve as a foundation for people's rights.
7. Legalizing and protecting customary tenure is a way to build trust between state and citizens.

Land and forest tenure challenges in the political transition in Myanmar

Dr. U Shwe Thein

Chair, Land Core Group

Dr. U Shwe's presentation gave an overview of key rights and tenure issues concerning smallholders arising with the development of new land laws and political transition in Myanmar. He began by noting that Myanmar was currently in a high-speed political transition, characterized by five major changes:

1. Change from military to civilian government.
2. Power and decision making decentralized to three pillars – executive, legislative and judiciary branches of government.
3. Emergence of new institutions – parliament, state and regional government.
4. New political stakeholders in opposition role being recognized, such as the National League for Democracy.
5. Widening role for CSOs – although many government agencies still reluctant to work with them.

Challenges exerting pressures on tenure reform include:

1. Global economic powers and FDI vying for a stake in Myanmar's development – resulting the development of megaprojects (Myitsone Dam, Dawei port, oil pipeline to China, etc) and land grab issues in rural areas
2. Ethnic conflicts are going on in some regions – e.g., Kachin and Rakhine states

Current key issues for land management in Myanmar include:

1. Four government departments have jurisdiction over different land types – complicates smallholder land tenure and rights.
2. Customary laws – i.e. the communal tenure system – remain in practical use in the uplands but not properly recognized by the government.
3. No updated land use map is available.
4. Upland farmlands under smallholders are not properly registered – leading to unfair and uncompensated dispossession through national crop promotion schemes, industrial zone development, etc.

Many reform processes are being undertaken that have a tenure dimension – labor laws, a foreign investment law, etc. Two land laws and an environmental law were approved in Mar 2012, with bylaws and regulations now under development. However, consultation in the law development process has been lacking. While customary practices such as *taungya* and the rights for farmers to sell farmlands are explicit in the new laws, land disputes cannot yet be resolved in courts and freedom of crop choice for farmers remains in theory only. The challenge for civil society groups is to try to influence the development of new laws and regulations through providing evidence-based information to the policymakers as well as to improve communications and coordination among grassroots stakeholders so they can have a meaningful stake in the policymaking process. For the latter, farmer associations appear promising.

Discussants

Dr. Kirsten Ewers

Consultant, Social and Environmental Governance / Land and Forest Tenure

Dr. Ewers commented that both Uganda and the Philippines seem to be well on the road to progress in land and forest reforms. She noted that there was a correlation between community-based forest management, the securing of community rights, and the decline of deforestation in the Philippines.

One lesson for Lao PDR to take from all the countries presented so far in the workshop is that land policy needs to be clear before laws and regulations are reformed. Three themes need to be covered in land policy for all eight land categories – jurisdiction, clarifying rights, and clarifying grievance mechanisms. Land management and land administration should also be clearly separated. Allocation is not just about giving rights to people – the land policy should articulate how administration and management is developed, and the relationship between the two.

The examples from the Philippines and Uganda also present some lessons on customary rights for Lao PDR, such as for *huay pan* customary tenure for paddy lands and the uplands. Many customary practices can be conducive to environmental sustainability if communities have a clear and secure stake. Hence customary practices should be mentioned as viable land-use systems in the revised land policy, with rights and uses clarified in management operation guidelines.

Lao PDR might also consider guidance from the recently published FAO guidelines endorsed by the FAP Food Security Committee in the preparation of the revised land policy.

Mr. Bountem Xuangsayavong

National Assembly Member, Savannakhet Province

Mr. Bountem began by stating that all the information presented at the workshop would be useful as the Lao PDR government develops policies for land use and management in order to gain the highest benefits for the country, particularly contributing to poverty eradication and LDC graduation. FDI would necessarily be a pillar of the strategy but there need to be adequate social and environmental safeguards and other mechanisms to mitigate negative impacts.

One issue of primary importance in reforming the land and forest laws concerns ensuring that guidelines for land-use conversion for plantations are clear and strictly enforced. Forest land (whether public or private) should only be converted to plantations in degraded areas – standing primary forests should not be allowed to be turned into plantations. In Savannakhet, there is a lot of abundant forest land, but 42,000 ha of it has been developed into plantation and another 45,000 ha has already been cleared but species have not yet been planted as there are still issues and disputes regarding ownership.

Mr. Richard Hackman

Fellow, The Samdhana Institute

Mr. Hackman commented that while the Philippines, Uganda, and Myanmar all present different cases of tenure reform, all demonstrated progressive change. Lao PDR is also undergoing changes at the government level, with MoNRE newly established and the revision of the land and forest laws.

He echoed Kirsten's point that recognition of customary land tenure and practices was necessary in the policy and law revisions, noting that it would contribute to LDC graduation by allowing communities to build their own way out of poverty (like in Nepal). As the forest and land laws are being revised simultaneously, he encouraged policymakers to focus on the close links between the two to ensure that there are no contradictions. One particularly important link concerns land classifications – for example in communal land titling for customary practices such as swidden cultivation and the issue of fallow forest lands – he hoped that these systems would be clearly recognized in the revised laws.

Mr. Hackman also noted that rightsholders need to be clearly defined in the revised policy and laws – rights-holding groups need to be articulated, along with the rights they hold. This clarity would set the stage for further development and cooperation between all stakeholders, as well as mitigate land dispute risks associated with FDI and private sector investment in rural areas.

He closed by emphasizing that tenure reform is about engendering change and equity in rights and power – smallholders becoming rightsholders and hence powerholders. In pursuing tenure reforms, the Lao PDR government has begun the process of shifting these rights and power by placing trust in its own people, steps for which it should be commended.

Mr. Houmpheng Soutthivong

National Assembly Member, Oudomxay Province

Mr. Houmpheng raised a number of issues on land use and NSEDP implementation in his home province of Oudomxay. Oudomxay is located in the middle of northern Lao PDR. National Road 13 runs through it as an east-west economic corridor between Thailand and Vietnam; a railway line might also be constructed from China to Thailand. There are 474 villages comprising over 300,000 people; 46% of households are identified as poor and 80% are employed in (primarily subsistence) agriculture. As it is mountainous terrain, not even one percent of land is paddy; 18% is taken up by shifting cultivation, 27%

by corn and 21% by rubber plantations. Much of the area is under permanent land titling but smallholder rights are still not strong. The provincial government has taken some steps to try to stop shifting cultivation and eradicate poverty, but no real progress can be made until land reform is successful. Taking into account Oudomxay's experience, steps the government should consider include:

1. Land allocation covering policy, land-use planning and mapping to improve information at village levels.
2. Skills and capacity development of local people to help them become self-sufficient and improve agricultural productivity on limited land plots and sloping lands. Right now many families only plant one low-yielding rice crop for year.
3. Improve agricultural technical and extension services to ensure they meet local needs.
4. Provide better access to funding and development funds – for example, the *Nayobai Bank* only provides services in the plains, not mountains.
5. Help smallholders with marketing and leverage power with buyers, particularly those from Thailand and Vietnam.

Question and Answer

1. **Prof. Dr. Phonethep Phonsena**, *National Assembly Member and President of Cultural and Social Committee of the National Assembly*

Dr. Phonethep noted that on a recent Myanmar visit, he observed that rural people are capable and self-sufficient because of their educational levels. He asked Dr. U Shwe two questions. First, is Myanmar's jatrophia crop estate grown on government or private land? How does the Myanmar government manage land and forest in conflict and border areas?

2. **Dr. Sysalio Savangseuksa**, *National Assembly Member, Vientiane Capital*

Dr. Sysalio noted that Myanmar's *taungya* policy had influenced Lao PDR's land policy in 1990, particularly the provision that states farmers have to grow trees on fallow land in swidden agriculture. He asked Dr. U Shwe about the benefits farmers gained from this.

He also asked a general question – does anyone have experiences to share regarding how to balance management for forest rights and forest quality?

3. **Mr. Khampha Keomanychanh**, *President, CDEA*

Mr. Khampha asked Mr. Nsamba-Gayiiya to clarify the impact of HIV/AIDS on forest tenure in Uganda mentioned in the latter's presentation.

He also asked Dr. U Shwe for more information about the role of CSOs role in influencing government development plans.

4. **Ms. Hanna Saarinen**, *Coordinator, Land Issues Working Group*

Ms. Saarinen asked Ms. Quintos-Natividad how the 1992 Forest Master Plan for the Philippines would be evaluated and revised when it expires in 2017.

Responses from presenters:

Dr. U Shwe Thein

Jatropha is a government-promoted program. Many national crop promotion schemes have encroached on land traditionally farmed by smallholders; the government considers this a serious issue and is looking for tenure solutions.

Taungya is officially cited by the Forest Department as a good practice. For example, the Forest Department has created a system in teak plantations, where farmers are given land to grow rice and other crops and gain immediate benefits during the first two years while they clear other land to grow teak. The Forest Department pays daily wages for service. Farmers can also move with teak plantations when they are established elsewhere.

CSOs can work closely with different departments to help draft laws by providing technical inputs and helping to move process forward. If government policy is not seen by CSOs as agreeable, CSOs try to provide evidence to stimulate change. CSOs can also provide a supplementary role to fill gaps where governments cannot.

Mr. Nsamba-Gayiiya

HIV/AIDS is a factor in tenure when husbands pass away; women can be chased from lands due to traditional inheritance practices. Statutory women's rights are not that strong in practice in Uganda to help defend against this.

Mr. Nsamba also commented on Dr. Sysalio's question regarding the balancing of forest rights vs. forest quality. He notes this distinction should be made between the roles of land administration and land management between different government agencies.

Ms. Quintos-Natividad

Ms. Quintos-Natividad noted that a 2003 review had already identified revisions for the Master Plan. The Philippines government is currently developing regional master plans based on the national master plan.

Session 7 – Latin American Experiences: Comparing drivers determining tenure change in Latin America

Co-chairs: Dr. Souvanpeng Boupphanouvong
Mr. Arvind Khare

Panelists:

Community forest rights in Mexico

Mr. Arturo de Jesus Gonzalez Ocampo

Assistant Director, Legal Affairs Unit, National Forest Commission (CONAFOR)

In Mexico, rural land comes under one of two social ownership categories (agrarian reform blocks [*ejidos*] and communities), private property or state property. Some 80% of Mexico's forests are under social ownership, constituted in 8,500 (*ejidos*) and indigenous communities, for whom forest resources are a main source of livelihood and/or income.

Mexico's commitment to the land rights, security, and decision-making autonomy of rural and indigenous populations came out of its colonial independence struggles, and is enshrined in its Constitution (although it took 80 years for rights to be implemented). National development plans and forest policies and laws have evolved from this basis, which allows rural people to express a broad view for land and forest management to encompass social, cultural, economic, and environmental goals.

The 2003 General Law for Sustainable Forest Development (last revised in 2008) has as its main goal to contribute to the social, economic, ecological and environmental issues through the sustainable management of forest resources. Its key articles of note cover:

1. Prioritizing sustainable forest development as the heart of the national forest policy.
2. Mandating and distributing powers among the three levels of government and creating an autonomous National Forest Service.
3. Establishing concrete instruments for implementing forest policy.
4. Setting up clear coordination mechanisms between center and periphery states and other agencies related to the sector, and mandating social participation in long-term planning and evaluation of the forest sector.
5. Fixing mandatory forest policy criteria for social, environmental, and economic aspects.
6. Regulating land use change decisions on forest land – particularly rationalizing approval criteria for establishing commercial forest plantations and responding to civil society demands for restricting logging in natural forests.
7. Formalizing economic instruments and incentives for forestry development – e.g. creating a Mexican Forest Fund to promote environmental services payment mechanisms, markets, and the development of productive value chains, among others.

Mr. Ocampo closed his presentation by emphasizing that forest policy is vital part of the social contract between the government and its citizens.

Brazil's land and forest tenure: challenges and perspectives

Dr. Marcus Vinicius da Silva Alves

Director, Brazilian Forest Service

Dr. Alves gave an overview of Brazil's forest history and current status. In the 1960s, the federal

government encouraged its citizens to move from the coastal regions to develop the interior Amazon region through tax incentives. This led to large-scale deforestation, and in 2004 the federal government began to implement a new comprehensive approach in managing the Amazon forest areas, focusing on improving forest cover monitoring, strengthening environmental and forest law enforcement, reforming tenure and land-use planning (through a legal land program that secured tenure for settlers who moved into forest lands during the 1960s and 1970s), and expanding protected areas in the form of indigenous lands and conservation units. These reforms have been a great success in slowing deforestation.

Reforming the public forestry administration from a strict environmental agenda to a forestry development agenda also played a key role. Bringing stakeholders— from civil society, the private sector, and federal/state/municipal government – to be part of the national advisory committee on public forests, with equal representation in the committee helped to strengthen governance. Developing a fund to finance forestry activities was also an important step.

Discussants

Mr. Joost Foppes

Community REDD+ Advisor, LEAF Program, SNV

Mr. Foppes noted that Mexico and Brazil make interesting examples for Lao PDR.

For Mexico, the vast majority of the forest is under the social ownership of local communities. This has allowed for many benefits: 1) community managed forests have better biodiversity than those managed by governments; 2) community groups have strong local enterprises (timber cutting and processing) which are important for local livelihoods, creating employment, and preventing outmigration from rural areas; and 3) the Mexico government can collect considerable amounts of tax income from these local enterprises.

For Brazil, strong political will in tackling deforestation allowed the government to focus on one thing – conserving existing primary forest from land-conversion by focusing on strong law enforcement and establishing protected areas. A good monitoring system was essential in this success so the government could make informed decisions. Contracts and agreements with local communities ensured rural stakeholders had clear rights.

Lao PDR might have political will, but different sectors must be united. One general example is that even in a single province, the Department of Forests might be implementing forest protection in one area, while another ministry is promoting sawmills and furniture factories in an adjacent area.

Mr. Foppes then proposed some considerations for Lao PDR, based on the Latin American examples:

1. Improve forest cover by keeping the existing forest in place, rather than improving it through plantations.
2. Allow local communities to take on a greater role in forest management. There are many policy options and instruments that can help with this, but a good start would be improving funding for the forest sector – Mr. Nanthavong noted earlier that there are not enough staff and funds to cover forest protection. REDD+ and carbon sequestration may be one way; establishing a forest protection fund could be another. More management delegated to the village level can also help save money and lessen the need for more government staff.
3. More piloting and experiments on communal land titling may be needed to get things right.
4. Grievance mechanisms for redressing conflict are needed – currently conflicts are mostly resolved at village levels but there is currently no recourse at higher levels except going to court.

5. Promote ways for villages to sustainably harvest local timber – this should not just be monopolized by FDI.
6. Promote stronger CSOs run and staffed by Lao nationals at local and national levels to contribute to steering forest development processes.

Mr. Khamdaeng Sylavong

National Assembly Member, Vientiane Province

Mr. Khamdaeng noted there were many things to learn from the Latin American examples. He said the Lao PDR government needs to better consider the advantages and disadvantages of concessions. Conflicts have arisen because the government lacked good information on previous land-use situations, restricting local people's traditional access. There also remained the question of which land uses would be most effective and efficient in bringing benefits for the country. Targets for forest cover, rice production, hydropower development and community land titling all have to be reconciled, as the country has very limited productive land-use areas. The development of database system would be useful for managing information, particularly for achieving the target of one million land titles by 2015.

Ms. Khamla Phousarath

Manager, Rights-LINK, VFI

Ms. Khamla started by asking a couple of questions to the presenters. For Mr. Ocampo, she noted that strong appropriate policies and laws appeared to be in place in Mexico, but has law implementation and enforcement been 100% successful in practice? What are the main challenges for local people in successfully managing forests? For Dr. Alves, she asked how strong was the systematic monitoring in Brazil.

She then commented that the right for local people to know their legal rights was extremely important in the Lao PDR context, particular in the land allocation process and for resolving conflict issues. She elaborated on Mr. Foppes point about the opening up of civil society for ethnic minorities, women's groups, and other marginalized groups, noting that NGOs working at grassroots level can help villagers realize their own rights through awareness raising and become confident on where they stand.

Question and Answer

1. Dr. Sysalio Savangseuksa, Member, National Assembly, Vientiane Province

Dr. Sysalio responded to Mr. Foppes comment on forest protection and economic exploitation happening in the same area – he noted that this doesn't necessarily mean that there is a contradiction in government strategies.

Responses from presenters (to Ms. Khamla's questions):

Mr. Ocampo

In Mexico, public policies may not be 100% successful in implementation but the government has made it a priority to improve the rights of indigenous peoples. The main challenge now is for better local governance within *ejidos* and social communities so there is equitable benefit sharing.

Dr. Alves

Law enforcement that is 100% effective is virtually impossible. Satellite monitoring has been very

effective but it still misses some gaps. Law enforcement is mostly done on the ground – the Amazon rainforest is huge area and cannot be completely covered. For these reasons, the Brazilian government is trying to strengthen forest governance via local people – if successful this would be more effective and less costly.

2. Unidentified National Assembly member

Where do funds for forest monitoring in Brazil come from?

Responses

Dr. Alves

Monitoring for all different types of vegetation is performed by a federal agency – the Institute for Special Research – Brazil’s version of NASA and a separate federal agency funded by the federal budget.

Concluding Session – Relate global experiences of land and forest tenure in the context of Lao PDR

Chair: Dr. Souvanpeng Boupphanouvong

Panelists:

Ways forward

Dr. Akhom Tounalom

Vice Minister, MoNRE

Dr. Akhom began by thanking all involved for making the workshop a successful learning event contributing to Lao PDR's efforts to undertake land reform and develop national land policy so that it is relevant and responsive to current issues and challenges, such as the quick pace of socioeconomic development, the opening of the market economy, and regional and international integration. He noted that the best way forward is to first get the policy right and have it serve as a 'guiding light' – the fact that the government has used a participatory approach and is now on its 9th and 10th drafts demonstrates policymakers' commitments to this aim and to ensuring that issues concerning poverty reduction, land use as a mechanisms for modernizing the economy, and the protection of citizens rights to these natural resources are taken into account.

He noted that the primary factor for good management of land and natural resources lies in engagement of local people. It is imperative that local people are entitled to benefit from their involvement in development and management of the country's natural resources, no matter the land type or forest classification. The government needs to secure their access to land and production means so that they will feel the privilege of protecting the properties that they own. He also noted the observation from the workshop that Lao PDR should reach its forest cover objective by conserving its remaining primary forests, rather than through afforestation.

Another observation is that once the policy and legal frameworks are set, there should be stability for the model to be implemented and for coordination to develop between different stakeholders at different levels (vertical and horizontal). The roles and responsibilities of these stakeholders should also be clear.

Mr. Akhom noted that the points raised in the workshop will be taken into consideration in the land reform process. The technical team at the central level will work with line ministries and stakeholders and colleagues at other levels to see what are the best models that will help Lao PDR to strengthen its economy, get its people out of poverty and protect its environment.

Where are the gaps in our learning?

Dr. Phouang Parisak Pravongviengkham

Vice Minister, Ministry of Agriculture and Forestry

Dr. Phouang stated it was an honor to participate in the event, noting he had never attended a workshop with so many NA members. He was happy that the NA was taking ownership and is a key body in steering the land and forest reform process.

He focused his comments and observations on some specific issues:

1. Lessons learned from other countries confirm that to have successful national land management, all sectors and social strata need to work together to achieve common societal goals. There are

many approaches to good outcomes, but as the examples from Nordic countries demonstrated, policy development and implementation is a long, difficult evolution (80+ years); Lao PDR has only just started.

2. National land management policy can serve as an umbrella to harmonize different regulations for different sectors to ensure that there are no contradictions between these.
3. Society has to learn to recognize and appreciate the high value of forests, and management them sustainably for future generations.
4. Priorities for land use need to be clearly articulated in national policy. Currently, it is not clear concerning plantation development.
5. There are initiatives to develop 'green agriculture' in some areas of the country as a vehicle for national economic development. There have also been discussions on preserving the Bolovens plateau – the water source of the southern provinces – as a 'green area'. We have to weigh the positive and negative impacts and projections between different types of land uses – mining, agriculture, forest preservation, etc – in different areas by looking not only at the economics, but also social benefits, environmental aspects, the history of the land, etc.
6. After developing the land policy, an adequate budget needs to be allocated to support its implementation. A lack of funding is one reason why previous policies didn't produce successful outcomes. The government should consider continuing to invest surplus profits from projects such as the Nam Theun 2 dam into the forest sector.

What have we learned?

Dr. Souvanpeng Boupphanouvong

President, Committee on Economic Planning and Finance, National Assembly of Lao PDR

Dr. Souvanpeng noted that many points had already been covered by others, but summarized some key points from the previous two days of discussion:

1. The experiences from different countries demonstrated different kinds of management mechanisms are suited to the particular development status and priorities of each country. Lao PDR policy reform should identify its development priorities based on its experiences and challenges.
2. Cooperation from all sectors and civil society is needed to drive the reform process – we cannot leave the people from this process. It is imperative that people know their rights and can claim them.
3. Learning from past experiences and seeing where we currently stand in land allocation and conversion, we should first revise the land policy and then move to amending the laws. The land policy should be submitted for government and National Assembly approval by December 2012 as planned and the Land Law should be submitted in June 2013 together with Master Land Use Plan and Forest Law. Policy formulation and implementation takes time. The reformed policy and legal framework will not be perfect when it is first enacted.
4. Developed countries have a good legislative system and all sectors/society know their role and rights. As the focus in Lao PDR is economic development, we should focus on developing a good land-use management plan and system to support this aim so that the most appropriate land use in different areas is prioritized. If targets in the five-year NSEDP are reached, then necessary funds should be available to manage natural resources, and lessons learned can be used to develop future NSEDPs.
5. However, it is important to account for food security and rural livelihoods improvement, as 80% of population is farmers – they need secure land and tools to improve their productivity

production. It is imperative that there are also strong environmental safeguards; in South Africa, they have ruined much of their natural environment through mining.

6. National land policy development, therefore, should address the following keys factors to find balance between the following:
 - a. Ensuring the utilization and management land to maximize economic development without depleting natural resources
 - b. Guaranteeing land for farmers and their livelihoods
 - c. Ensuring forest cover for better environment, biodiversity, food security
7. Priority areas to focus on the land policy development should address
 - a. Tenure rights –type of rights, can we change communal land titling (*laom-mu*) to collective rights (*xumxon*) or to include both in the policy? It is important that the rights for different stakeholders are clarified for each of the eight categories of land in Lao PDR. The reformed policy should provide the foundation while the rights will be detailed in the law.
 - b. Developing grievance mechanisms for conflict resolution over land – with clear defined areas of roles and responsibility for different government departments – is an urgent matter to deal with current land conflicts. If the policy drafting committee can come up with a satisfaction mechanism that can solve land issues, we can seek a government executive order for implementing it.
 - c. The next steps for National Assembly members are to assist the policy formulation process by providing necessary information from your constituency offices. We don't have much time; our common goal is to have a much better land policy by December 2012.

Wrap-up

Mr. Arvind Khare

Executive Director, RRG

Mr. Khare focused his closing remarks on some general principles learned from other countries experiences for consideration and practice in Lao PDR. He noted in each of these countries' tenure reform processes, the state sought to mediate a balance in its relationship vis-à-vis its citizens and forests and put into place a mechanism for this. The central questions are:

1. What portion of land will remain under state control, what will become a common use area, and what will be under the rights of individuals and communities?
2. Is protection provided to ownership rights?
3. What mechanisms and institutions will ensure this?

In addressing these questions, the state can arbitrarily/unilaterally choose to determine which lands will be allocated to different use and stakeholders – or it can do it through an organic decision-making process involving different stakeholders. This choice lies at the heart of the reform agenda – whether the state will retain its coercive power to enforce its will or whether it will incentivize citizens to achieve its national goals.

Mr. Khare noted that the right questions for the Lao PDR context were asked at the workshop – i.e. Who is the competent authority – MAF or MoNRE? Do line ministries have clear rules and lines of authority? Are decisions made in the interests of local people or other stakeholders? Is decision making transparent? Is service delivery to remote areas understood by local people or is it unilateral?

He ended his remarks by reiterating the five questions he posed the previous day:

1. Who owns the resource? Reforms can take a top-down approach or respect where people live and use resources – i.e. respecting what already exists.
2. Who uses the resource? Most land is already under current usage – if this to be changed there will be fundamental impacts. Again, reforms can either be top-down or done with the consent of the people using the land.
3. Who manages the resource? Is there an exclusivity of jurisdiction? Reforms have to make management clear and fit for purpose.
4. Who regulates the resource? One rule of thumb is to never make a regulation you cannot enforce –this is a primary source of corruption, as the regulator has the choice of selectively implementing it. Is it more cost-effective and beneficial to enforce a prohibitive regulation, or incentivize people to reach the same outcome?
5. Who adjudicates the resources? What kind of law is in effect, and who can use it to what ends?

Closing remarks

Dr. Souvanpeng Boupphanouvong

President, Committee on Economic Planning and Finance, National Assembly of Lao PDR

Dr. Souvanpeng brought the two-day workshop to an official close by thanking the contributions of the co-organizers and all the participants to make the event a success. She noted that the experiences shared from all the countries would provide valuable inputs in the next steps of the policy reform to ensure that a complete, comprehensive framework is developed to move the country forward and ensure prosperity for its citizens.



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