



SUMMARY **REPORT**



LAND TENURE IN MEKONG FOREST LANDSCAPES:
ADVANCING THE RECOGNITION OF CUSTOMARY RIGHTS
AND RESPONSIBLE INVESTMENT PRACTICES

SUMMARY REPORT OF THE THIRD MEKONG REGIONAL LAND FORUM

LAND TENURE IN MEKONG FOREST LANDSCAPES:
ADVANCING THE RECOGNITION OF CUSTOMARY RIGHTS AND
RESPONSIBLE INVESTMENT PRACTICES

Online and in Chiang Mai (Thailand), Hanoi (Viet Nam), Phnom Penh (Cambodia),
Vientiane (Lao People's Democratic Republic) and Yangon (Myanmar)

26–27 May 2021



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Contents

Abbreviations	7
Forum overview	8
Setting the Scene for Day 1: Strengthening the land rights of local communities and women in forest areas	9
Session 1: Approaches to recognize customary tenure in Mekong forest landscapes	12
Framing the session	14
Presentation 1: Introduction: Key initiatives in terms of forest allocation and customary tenure documentation in Mekong countries	14
Presentation 2: Lao PDR: Experiences in the statutory recognition of forest tenure rights	15
Presentation 3: Viet Nam: Forest allocation for community-based forest management.....	16
Panel discussion	17
Breakout sessions.....	17
Key takeaways.....	18
Key challenges	18
Further readings	19
Session 2: Trends in customary forest tenure recognition throughout the Mekong region and globally: Leveraging regional platforms	20
Framing the session	22
Presentation 1: Global and regional forest tenure trends: Opportunities and continuing challenges for communities and smallholders.....	22
Presentation 2: A regional platform working towards more sustainable and inclusive forestry practices: Experience from the ASEAN Working Group on Social Forestry and the ASEAN-Swiss Partnership on Social Forestry and Climate Change	23
Presentation 3: Increasing customary and collective forest tenure in the Mekong through a customary forestry tenure regional policy framework.....	24
Panel discussion	25
Breakout sessions.....	25
Key takeaways.....	26
Key Challenges.....	26
Further readings	27

Setting the Scene for Day 2: Responsible agricultural investment (RAI): Where from, where to go?.....	29
Session 3: Demystifying FPIC: Tools to support development, avoid conflict and respect community rights	32
Framing the session	34
Presentation 1: FPIC: Concept, approaches, and recommendations.....	34
Presentation 2: The CAFÉ-REDD project in Viet Nam.....	35
Presentation 3: Establishing plantations in production forest areas in Lao PDR: Learnings from community consultations in Phou Yeuy PFA ...	36
Panel discussion	36
Breakout sessions.....	37
Key takeaways.....	37
Key challenges	38
Further reading.....	39
Session 4: Responsible agricultural investment in Mekong forest landscapes: What challenges do responsible investors face in applying RAI, and how can they be supported through policy and practice?	40
Framing the session	42
Presentation 1: The ASEAN Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry (ASEAN-RAI) and Mekong forest landscapes.....	42
Presentation 2: Towards more responsible rubber in Cambodia, Laos and Viet Nam	43
Presentation 3: New forests commitments to responsible investment and perspectives from the timber sector in Lao PDR	44
Panel discussion	45
Breakout sessions.....	46
Key Takeaways	46
Key challenges	47
Further reading.....	48
Closing session	49
Agenda	51
List of partner organizations who contributed to the Forum.....	59

Abbreviations¹

ASEAN	The Association of Southeast Asian Nations
ASEAN-RAI	The ASEAN Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry
CFS-RAI	The Principles for Responsible Investment in Agriculture and Food Systems from the Committee on World Food Security
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
IFC	International Finance Corporation
Lao PDR	The Lao People's Democratic Republic
MRLG	Mekong Region Land Governance
NGO	Non-Governmental Organization
RAI	Responsible Agricultural Investment
REDD	Reducing Emissions from Deforestation and Forest Degradation
UNDRIP	The United Nations Declaration on the Rights of Indigenous Peoples
VGGT	The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

¹ The full names of partner organizations whose acronym is cited in the document can be found in the Annex.

Forum overview

The Mekong Region Land Governance project (MRLG) successfully organized the first Mekong Regional Land Forum in Hanoi in 2016 and co-organized the [second](#) with the Food and Agriculture Organization of the United Nations (FAO) in Bangkok in 2018. The 3rd Mekong Regional Land Forum (hereafter the Forum) took place on 26 and 27 May 2021 and was organized by MRLG, FAO and the Land Portal. The focus of the Forum was **on advancing the recognition of customary rights and responsible investment practices in Mekong forest landscapes**.

Recent global disruptions associated with the COVID-19 pandemic have highlighted the dependence of Mekong region communities on land and forest resources. More widely recognized than ever, secure tenure and access to land and forests are preconditions for the sustainable management of resources. The Forum brought together reform-minded actors within and beyond the region to engage in in-depth, interactive debate on issues that cut to the core of local tenure security and community resource management.

Day 1 of the Forum focused on **advancing customary and collective forest tenure rights**. The first session compared and examined experiences and approaches within national tenure regimes in Mekong countries. The second session situated these experiences within global trends, emphasizing the potential for regional platforms such as the Association of Southeast Asian Nations (ASEAN) to foster more inclusive and grounded policies for the sustainable management of forests – with diverse benefits including securing tenure rights, local livelihoods, gender equity, and contributions to national commitments on biodiversity and climate change.

Day 2 of the Forum focused on **how to manage and respond to patterns and practices of investment in Mekong forest landscapes**, which is a key issue for smallholder tenure security within Mekong countries. The third

session aimed at demystifying the principles of free, prior and informed consent (FPIC) – principles that are designed to protect the rights of communities to land and resources and also to protect investments by avoiding land conflicts. The fourth session highlighted the potential effectiveness of tools such as the ASEAN Guidelines for Responsible Agricultural Investment in Food, Agriculture and Forestry (ASEAN-RAI) in steering agribusiness investments in Mekong forest landscapes towards a more sustainable future.

Each Forum session was organized in four parts:

- a) An expert review of the topic, complemented by two case study presentations.
- b) A panel discussion with experts and representatives from government and civil society, followed by questions from the public to the speakers and panellists.
- c) In-person and online breakout groups for debate among participants around a specific experience, topic or question.
- d) A sum-up of key takeaways from the sessions to stimulate further action.

The goal of the Forum was to provide a multi-stakeholder platform for cross-country dialogue on major policy reforms and programmatic initiatives in Cambodia, Lao PDR, Myanmar and Viet Nam relating to land and forest tenure governance.

We hope that this summary of the Forum reflects the quality of the presentations and discussions and provides inspiration for the participants to continue promoting the land rights of forest communities across the region. We also intend for this summary to provide a comprehensive review of the key messages from the event for those who could not join. Enjoy the reading.

Please find [key information about the event](#), [online summaries](#) and more on [the Land Portal website](#).



SETTING THE SCENE FOR DAY 1:
STRENGTHENING THE LAND RIGHTS OF LOCAL
COMMUNITIES AND WOMEN IN FOREST AREAS



By Mr Jean-François Cuenod (Regional Director of Cooperation, Swiss Agency for Development and Cooperation (SDC)), Dr Micah Ingalls (Team Leader, MRLG) and Dr Louisa Jansen (Land Tenure Officer, FAO)

“

“Economic growth over recent decades has brought many out of poverty. More than ever, smallholder farmers have been brought into the mainstream of global market systems, finding new opportunities. But at the same time, many are being left behind.”

Three keynote speeches set the scene for the Forum, laying out a clear call for change and a challenge to Forum participants. Mr Jean-François Cuenod opened the Forum by highlighting the current situation. The opportunities and challenges that the Mekong region is facing are substantial. The gap between the wealthy and the poor is ever widening and inequality runs rampant, affecting smallholders across the board, but ethnic minorities, women and female-headed households more acutely. Priorities for SDC in the Mekong region focus on narrowing this gap through strategic emphases on governance and citizen participation, climate action, and inclusive economic development. While great progress has been made, threats are substantial and growing. In particular, the rapid rise in land-based investments has presented mounting challenges for smallholders who seek to defend their resource claims. *“Switzerland is committed to supporting land and forest tenure in the Mekong region, ensuring that smallholders’ rights to land and forest resources are recognized in policy and protected in practice”*, Mr Cuenod said.

Highlighting the accomplishments of SDC-supported actions in the region – including the work of MRLG alliances, the ASEAN-Swiss Partnership on Social Forestry and Climate Change (ASFCC), and land-investment research through the Centre for Development and Environment of the University of Bern – he concluded his remarks with encouragement to regional governments who have committed themselves to public accountability and the rule of law in the administration of land and forest resources. *“[T]he challenge of fulfilling these commitments is daunting, but so is the reward: a more sustainable, equitable and inclusive future for the people of the Mekong region.”*

In the second keynote address, Dr Micah Ingalls took up this challenge, emphasizing the crucial issue of addressing tenure security in Mekong forest areas – areas that are foundational to the lives and livelihoods of some 70 million people. Dr Ingalls explained that, amid these changes, we risk losing sight of the fact that smallholder farmers collectively represent by far the largest private

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“The rapid acceleration of land-based investments and the expansion of commercial agriculture has pushed the Mekong region to a tipping point. Natural forest areas have receded and agricultural diversity has rapidly diminished such that 80 per cent of agricultural land in the region is now devoted to just six crops – five of which are closely tied to global export markets wherein the Mekong region plays an outsized role in the global economy.”

sector investors in the region and are the principal engines of economic growth for the rural majority. Political priorities that privilege agribusiness companies at the expense of these smallholders thus emerge as both ineffective and wrong-headed. *“We are at a critical moment in history, with implications not only for this region but also for the world. We simply do not have the luxury of time to be idle.”* Dr Ingalls calls for urgent cooperation and effective action: *“More than ever, constructive debate and dialogue are needed to address our shared concerns. These discussions should not be held behind closed doors, in silos, or in the echo chambers of positional politics that have divided us.”* The Forum provides just such an opportunity for advancing this mission by bridging the gap

– bringing diverse stakeholders onto a common platform for meaningful and transformative dialogue.

Dr Louisa Jansen wrapped up the opening session, welcoming the Forum as an opportunity to build bridges for dialogue and exchange on land and forest governance challenges. In particular, she emphasized the need to include vulnerable groups such as smallholder farmers, ethnic minorities and women in these discussions. Southeast Asia was highlighted as a major global hotspot for agro-industrial investments. Dr Jansen suggested that there will be a new surge in investments as COVID-related restrictions ease. This presents both new opportunities for local land users to share in the benefits of land-based investments but also risks that those with insecure tenure will lose access to their land.

In the Mekong region, the agriculture, forest and fisheries sector employs over 43 percent of the population, representing an important access point for investment. If this investment can be conducted responsibly it can contribute to economic growth, the enhancement of food security and nutrition, and the alleviation of poverty in alignment with the Sustainable Development Goals. Never has the question of who can access, control and use land been more pertinent. *“Welcoming and facilitating the meaningful and inclusive participation of users in forest landscapes, and to fully involve them in a participatory process of tenure governance includes their incorporation in the formulation and implementation of policies and laws and their incorpo-*

ration in decisions on balanced and sustainable territorial development and spatial planning to achieve inclusive rural transformation.” While agribusiness investments have been promoted to achieve transformation and sustainable development, Dr Jansen asked what form such investments may take – whether large-scale plantations, concessions, or support to smallholder farming families and communities in forest landscapes to access, control and use land and forest resources in order to produce more and better. *“To be able to make informed and timely choices, governments, civil society and the private sector need to be presented with the full scale of options on forest and land governance for the benefit of all, with an emphasis on vulnerable and marginalized people.”*

Having set the scene by describing the challenges and opportunities facing smallholder farmers in the Mekong region, the Forum commenced with the introduction of the first of its four main plenary sessions.

A photograph of a dense, multi-layered forest landscape. The foreground is filled with various green plants and trees. The middle ground shows a thick canopy of tall trees, with some taller, thinner trees standing out. The background features rolling hills covered in forest, with a few peaks visible under a sky filled with large, white and grey clouds. A dark red, semi-transparent rectangular box is positioned in the lower-left quadrant of the image, containing white text.

**Session 1: Approaches to recognize
customary tenure in Mekong forest
landscapes**



SESSION 1

Customary and Collective Forest Tenure in the Mekong Region



RIGHTS NEED TO TAKE ROOT

APPLY ON THE GROUND

NOT ONLY ON PAPER

TAKE-AWAYS

WITH SECURE CUSTOMARY TENURE COMMUNITIES MAINTAIN A BETTER RELATIONSHIP WITH THE LAND



PROTECT the FOREST through COLLABORATION WITH THE LOCAL MANAGEMENT BOARD



MEKONG REGIONAL LAND FORUM 2021

VISUAL BY **TAK-TIK**
visual solutions

Framing the session

The first session of the Forum aimed to clarify our understanding of customary land tenure systems and bring a focus to communities living in and around forestland areas of the Mekong region. The session reviewed experiences from Lao PDR and Viet Nam that could lead to greater recognition of customary tenure and land security for community members within national tenure regimes in Mekong countries. The session highlighted that, however necessary, land tenure security is in itself insufficient to ensure livelihood generation – to manage forests sustainably and productively, communities need to be able to benefit from them economically.

Presentation 1: Introduction: Key initiatives in terms of forest allocation and customary tenure documentation in Mekong countries

By Ms Natalie Y. Campbell (Regional Customary Tenure and Gender Adviser, MRLG)

Please find [the link to the presentation here](#).

In the Mekong region, over 200 ethnic groups and over 70 million people depend on customary land tenure systems.² Highlighting the complexity of the concept, Ms. Campbell introduced a definition of

“

“There are no communities without customary tenure and no customary tenure without communities.”

customary land tenure as ‘a set of rules, norms, institutions, practices and procedures created by communities that have evolved over time. These rules and norms govern the allocation, use, access, and transfer of land and other natural resources’.

Customary tenure often involves both individual and collective parcels across many types of land uses, including agricultural land, forest, spiritual areas and residential zones. A common land use type involves rotational agroforestry systems often referred to as shifting cultivation. Customary tenure also incorporates different types of rights such as access, duration, exclusion, management, alienation, withdrawal and the right to due process, which can be placed in different combinations in what we call a ‘bundle of rights’. These tenure arrangements are not static, but undergo changes due to socioeconomic, environmental and political factors. Customary rules are often very adaptable, as are the communities themselves.

In the region, many forest-dependent communities are facing increasing pressure and competition for land due to public and private investment and conservation interests. The right to benefit from their land is critical for communities. Therefore, land tenure security requires clarification of the status of customary rights in relation to statutory tenure. The Mekong countries have all approached this issue in different ways within their specific political context.

- **Cambodia** is the only country in the Mekong region with a law allowing indigenous communities to access Community Land Titles, though the application process is rather cumbersome. Forest communities can also access land as a Community Protected Area or Community Forest, but with limited rights.
- **Lao PDR** adopted new Land and Forest Laws in 2019 that offer opportunities to recognize customary forest tenure rights. However, the practical modalities to those rights are still under discussion. To date, land use planning has been the main tool to identify and, in part, protect community land rights in forest areas, although these encompass a limited bundle of rights.
- In **Myanmar**, the National Land Use Policy (2016) recognizes customary land rights for ethnic communities. However, the policy lacks a legal framework for its application

² International Work Group for Indigenous Affairs. (2021). [The Indigenous World 2021](#). [70 million forest-dependent people is a modest estimate]. See also <https://archive.recoftc.org/project/voices-mekong-forests>

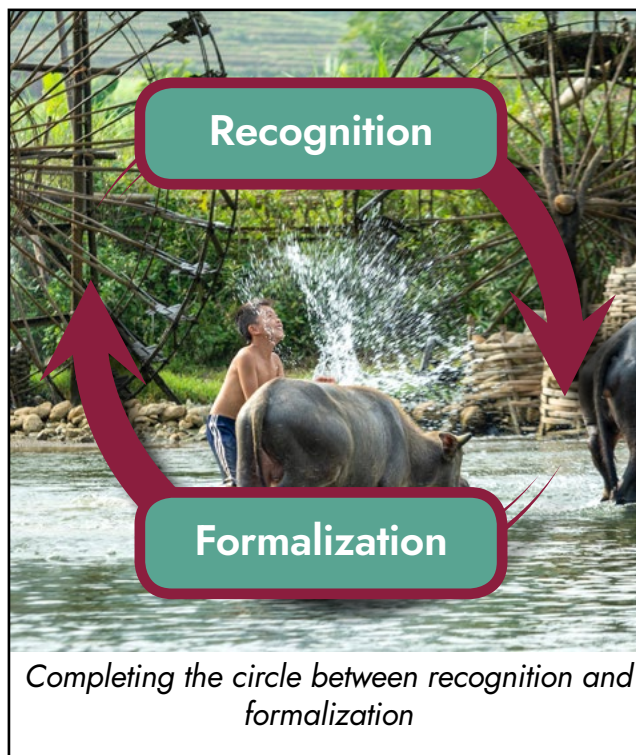
which was under discussion until the military take-over in February 2021. This is a highly debated issue connected to broader political claims by ethnic minority groups. The current legal frame work does not provide any form of protection of customary tenure rights, except in limited form through Community Forests and Community Protected Areas.

- Since the 1990s, **Viet Nam** has been reforming its forestry sector, progressively transferring forests from state enterprises to local communities and private companies for management and use. By 2016, around 26 per cent of forest land had been allocated to individual households, but only 2 per cent to collective community management through forest and forest land allocation policies. The 2017 Forest Law is the first piece of legislation to acknowledge communities as forest owners as the previous Law only acknowledged communities as forest users.

Recognition of customary tenure rights is as varied as the spectrum of overlapping rights within these systems. Recognition does not necessarily imply formalization (although it can be part of the process) and ranges from documentation of customary tenure systems to informal arrangements between local communities or local authorities based on agreements. Conversely, formalization or statutory tenure rights – i.e. the issuance of a legal document by the state authorities proving the rights of the community – can take many forms from land titling to

In 2019, MRLG and FAO co-published a set of policy briefs that provide more detailed information about the challenges and opportunities of recognizing and protecting customary tenure systems in [Cambodia](#), [Lao PDR](#), [Myanmar](#) and [Viet Nam](#).

registration or co-management agreements with local authorities.



However, even if formalization does take place, there may be further risks to the security of community lands. It is critical to go beyond formalization to full recognition and protection, as formalization itself does not ensure that rights are recognized or guaranteed on the ground. Full recognition of customary tenure rights is the combination of formalization and recognition, taking in the full spectrum of rights and implementing these on the ground, with and for communities.

Presentation 2: Experiences in the statutory recognition of forest tenure rights

By Mr Viladeth Sisoulath (Land Registration Component Team Leader, GIZ)

Please find [the link to the presentation here](#).

The Government of Lao PDR officially recognizes 49 ethnic groups. However, there are no official records or assessments of land under customary tenure regimes. The 2018 National Master Plan on Land Allocation affirms [the Party policy to zone 70 per cent of the country as State Forestland](#) with ambitious targets for forest regeneration within these areas. However, approximately 3,000 villages – or 35 per cent of all villages in Lao PDR – are located inside State Forestlands. The communities have often existed in these areas for many generations, well before State Forestlands were mapped. This raises the question of how to secure access to and use of land for these communities and whether they will be able to maintain existing customary practices.

Based on the revised Land Law and the Forest Law (2019), the Ministry of Natural Resources and Environment and the Ministry of Agriculture and Forestry are jointly piloting a process to issue formal land documents in collaboration with the MRLG Customary Tenure Alliance. Examples of such documents include Land Use Certificates and Village Forest Management and Conservation Contracts for forest and agricultural land used by local villagers within State Forestland. While there is consensus within the government to recognize areas of settlement and permanent land use, it is unlikely that the full bundle of rights will be granted to communities in the near term. The recognition and status of forest land for collective use is also still unclear. Furthermore, there is not yet a pathway for the recognition of non-permanent land uses – a key issue given the prevalence of shifting cultivation in the country.

These are challenging questions, requiring policy shifts rooted in a better understanding of the customary practices of various upland communities. There is a need to develop tenure instruments within the statutory legal framework that take into consideration the diversity of land uses and tenurial arrangements that can be applied to forest areas. The Land Sub-Sector Working Group, co-chaired by development partners and the Government of Lao PDR, works to address how legal frameworks should be backed up by implementation guidelines for national and subnational line agencies.

“

“A lot of areas here in Laos have been categorized as forest lands on the map but if you actually travel there, there might not even be trees but rice fields or villages. (...) what happens to villagers who have their villages or agricultural land in areas that are now supposed to be forest land?”

**Lena Vilayphet,
LIFE Project Manager, Lao PDR**

Presentation 3: Viet Nam: Forest allocation for community-based forest management

By Mr Ngô Văn Hồng (Director, Center for Highland Natural Resource Governance Research - CEGORN)

Please find [the link to the presentation here](#).

Of the approximately 15 million hectares of forest land in Viet Nam (46 per cent of the total land area of the country³), 1.26 million hectares are under the management of 12,100 Community Forest Management groups. Many of these groups are ethnic communities who depend on the forest and its resources for daily livelihoods and spiritual needs.

Since 2004, in an attempt to shift from state to social

forestry, the Government of Viet Nam has allowed community use and management of forests. The new Forestry Law 2017 (which replaced the Law on Forest Protection and Development) goes a step further by legally recognizing that communities can be forest owners and not just users. The new government priority is to allocate forest to ethnic communities and recognize customary practices.

The main challenge now is to make the policy work on the ground and really benefit communities. Key issues include a lack of clarity and some restrictions in present legislation, weak relationships between ethnic communities and local authorities, limited understanding within Government of indigenous knowledge and customary practices, and a lack of adequate resources to implement and scale up the policy.

Mr. Hong gave two examples (discussed in detail in the breakout sessions) of models for inclusive and effective forest allocation that demonstrate that, with stronger rights, communities are able to increase the economic benefits they receive from forests.

- In Quang Binh Province, a cooperative for the Ma Lieng ethnic group has been established with support from CEGORN for marketing dried bamboo shoots. It has created a viable connection with local markets, providing much needed income to the community while increasing land tenure security.

³ According to FAOSTAT 2021, www.fao.org/faostat/en

- In Hoa Binh Province, a Muong community has established the Shan Tea Cooperative for processing and marketing their wild tree tea crop with support from RIC. This work sets a precedent for community-based forest enterprise development in a protection forest through collaboration with the local management board.

These community-based forest enterprises which support community livelihoods provide strong incentives for the sustainable management of timber and non-timber resources. Ecosystem services provided by the forests are also protected. However, scaling up these initiatives is still a challenge, as is reaching wider markets. The government plays an important role in supporting and promoting the work shown by the two case studies.

Panel discussion

In a short panel discussion, **Dr Antoine Deligne (Deputy Team Leader, MRLG)** asked two government officials how they assess efforts in their country to recognize and formalize customary forest tenure rights.

Mr Bounpone Sengthong (Acting Director General, Department of Forestry, Ministry of Agriculture and Forestry, Lao PDR) explained how the Government of Lao PDR is looking to the experiences of Viet Nam in forest management and hoping for more opportunities for cross-border



Representatives from Shan Tea Cooperative showcase their products at the trade fair in Hanoi, Vietnam. Credit: RIC

sharing. He also restated the commitment of the Department of Forestry to recognize the customary practices of forest communities.

Mr Tuyen Dinh (Officer of the Forest Protection Department, Ministry of Agriculture and Rural Development, Viet Nam) highlighted how his organization is developing a handbook of guidelines on community forest management in partnership with MRLG.

Breakout sessions

The breakout sessions offered opportunities to further discuss customary tenure issues both in policy and practice.

- In **Cambodia**, WCS explained the importance of documenting customary tenure to inform the process of zoning protected areas. Zoning plans need to be coherent with the actual practices of the communities if they

are to be enforced. RECOFTC discussed an analysis of the legal constraints to greater participation of local communities in forest management.

- In **Lao PDR**, MRLG presented a comparison of the new Forest Law and Land Law to identify new opportunities for customary tenure recognition in forestland areas. In parallel, the World Bank Lao PDR team explained the new initiative for forest tenure reform under the Lao Livelihoods and Landscapes Project. Village Focus International shared lessons from the experience of developing collective agricultural land management plans as an instrument to recognize collective use of agricultural lands.
- In **Myanmar**, the Indigenous Peoples Partnership presented the tool developed with MRLG to document customary tenure – a process that is seen as an important interim protection measure in the absence of a legal avenue for the formalization of customary tenure rights.
- In **Viet Nam**, the two initiatives to strengthen community-based forest enterprises presented by Mr Hong in presentation 3 were further explained and discussed by CEGORN and RIC.
- At the **regional level**, RECOFTC proposed an analysis of the legal challenges and pathways for increased recognition of forest tenure. A parallel session with a gender expert from RECOFTC looked at the status

of gender in customary tenure systems and the prospects for knowledge building, policy and practice.

Key takeaways

By Ms Akiko Inoguchi (Forestry Officer, FAO)

- Communities have used land and forests for generations working under customary rules, which suggests that many of these practices are sustainable.
- Shifting or rotational agroforestry systems are prevalent across the uplands of the region although their impacts differ. Under the right conditions, these practices are sustainable and can maintain forest and biodiversity. Too often these systems are not appropriately considered in the statutory legal frameworks.
- Documenting customary tenure systems enables communities to discuss, address and unpack their current practices and decide how they want to manage their natural resources. Documenting is also an important tool to protect their land while engaging with external stakeholders, whether state or private sector.
- Given the diversity of land use, management regimes and forms of tenure, there is no ‘one-solution-fits-all’ in addressing customary forest rights. Therefore, securing forest tenure systems requires mixed ap-

proaches combining individual and collective titling, certification, land use planning and various forms of co-management.

- In Viet Nam, forest land allocation to communities has led to increased productivity and utilization of forests. These examples demonstrate that to invest in sustainable forest management, communities need the rights not only to manage the land but also to productively utilize that land for benefits such as revenue and livelihood generation. This is possible with the right models of community-based forest enterprises.

Key challenges

Throughout the region, there is a lack of clarity on how to govern the many overlaps between local communities and government-designated forestland areas whether for production, protection or conservation. Unclear or incomplete legal frameworks, overlapping mandates between state institutions, and a general lack of public resources invested into land tenure security are key constraints to implementing new policies and laws.

Above all this, there is still a lack of political willingness to acknowledge not only the rights of local communities but their actual capacity to manage forest productively, sustainably and within conservation guidelines. Governments are responsible for creating the right set of positive incentives for communities to do so. Where communities have been deprived of rights to their forest, unsustainable

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“In our classes, we had frequent discussions on community rights, including the notion of a bundle of rights. When people mention rights, they usually mean legal or formal rights. But what of community rights, such as for the spiritual value that indigenous people attach to their land? There are many different types of rights that should be recognised (...)”

Mr Ba Nyar Oo,
Master's student, Chiang Mai University

practices are prevalent and can have detrimental impacts on forest landscapes and communities. Whether communities have rights or not, they remain the principal agents of forest management and they need to be part of the conversation. As shown in the session, there are plenty of opportunities for governments to scale up their actions in favour of land tenure security through the recognition of customary tenure.

Further readings

- [Allaverdian, C., Fogerite, J. Scurrah N. and Si Thu Htiike San. \(2017\). Documenting Customary Tenure in Myanmar. A guidebook. MRLG guidebook #1. Vientiane & Yangon: MRLG. Also available in Myanmar language.](#)
- [Andersen, K. E. \(2016\). The Recognition of Customary Tenure in Myanmar. Thematic Studies Series #3. Vientiane: MRLG.](#)
- [Erni, Christian \(2021\). Persistence and Change in Customary Tenure Systems in Myanmar. MRLG Thematic Study Series #11. Yangon: POINT, MRLG.](#)
- [FAO and MRLG \(2019\). Challenges and opportunities of recognizing and protecting customary tenure systems in Cambodia. Bangkok.](#)
- [FAO and MRLG \(2019\). Challenges and opportunities of recognizing and protecting customary tenure systems in Lao PDR. Bangkok.](#)
- [FAO and MRLG \(2019\). Challenges and opportunities of recognizing and protecting customary tenure systems in Myanmar. Bangkok.](#)
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- [Ironside, J. \(2017\). The Recognition of Customary Tenure in Cambodia. Thematic Study Series #5. Vientiane: MRLG.](#)
- [Ironside, J. \(2017\). The Recognition of Customary Tenure in Lao PDR. Thematic Study Series #8. MRLG. Vientiane: MRLG.](#)
- [Ironside, J. \(2017\). The Recognition of Customary Tenure in Vietnam. Thematic Study Series #6. Vientiane: MRLG.](#)
- [Ou, S. \(2019\). Customary Tenure Arrangements within Khmer Communities in Cambodia. Thematic Study Series #10. Vientiane: MRLG.](#)

A photograph of a lush green forest landscape. In the foreground, there are large, leafy trees. In the middle ground, a small white-roofed house is visible on a hillside. The background is a dense forest of tall trees.

Session 2: Trends in customary forest tenure recognition throughout the Mekong region and globally: Leveraging regional platforms

SESSION 2 Increasing Customary and Collective Forest Tenure in the Mekong



1/3 OWNED BY COMMUNITIES

CHALLENGES

LACK FORMALIZED RIGHT

PROTECTIONS (NOT ADEQUATE) IN LAWS

OBSTACLES from REGULATORY FRAMEWORKS

INCOMPLETE LEGAL FRAMEWORKS

CONFLICTS with OTHER SECTORAL POLICIES

ALLOCATION of LARGELY DEGRADED FORESTS

AWG-SF

OBJECTIVES

TENURE RIGHTS are important in APPLYING SOCIAL FORESTRY

- PROVIDE POLICY RECOMMENDATIONS
- ENGAGE WITH PARTNERS ON SOCIAL FORESTRY & CLIMATE CHANGE
- ACCESS & USE RIGHTS of INDIGENOUS & COMMUNITIES
- SUPPORT (FINANCIAL + SKILL)

FOREST TENURE

WHOEVER OWNS, USES & MANAGES MAKE DECISIONS ABOUT THE RESOURCES

CUSTOMARY RIGHTS

REGULATIONS & RULES INHERITED from ANCESTORS (MAY NOT BE RECOGNIZED OFFICIALLY BY THE STATE)

FRONTLINE SAFEGUARDS AGAINST DEFORESTATION

TRADITIONAL INDIGENOUS KNOWLEDGE IS CRUCIAL

STRENGTHEN BIODIVERSITY CONSERVATION & PROTECTION EFFORTS

ENHANCE PROTECTION OF THE ENVIRONMENT



TAKE-AWAYS

IT'S IMPORTANT THAT ACTION HAPPEN AT THE

NATIONAL LEVEL

CONNECT THE POLICY TO PRACTICE

LEVEL THE PLAYING FIELD

FOLLOW THE MONEY

CONNECT WITH THE RIGHT PEOPLE

MIRROR WHAT THE COMMUNITIES ARE DOING LEARNING & EXCHANGE EXPERIENCE

FIND ACCESS TO THE FUNDING

BALANCE THE POWER DYNAMIC

RECOGNITION OF RIGHTS

MEKONG REGIONAL LAND FORUM 2021

VISUAL BY TAK-TIK visual solutions

Framing the session

The second session of the Forum explored regional and global trends in protecting local user rights in forests. The session looked in particular at regional programs in social forestry and how these attempt to draw a balance between community needs, demands for conservation, and exploitation for timber and non-timber resources. How to better leverage regional platforms such as ASEAN to increase forest tenure security at the national level was also explored.

Presentation 1: Global and regional forest tenure trends: Opportunities and continuing challenges for communities and smallholders

By Ms Safia Aggarwal (Forestry Officer, FAO)

Please find [the link to the presentation here](#).

Nearly one third of forests worldwide are managed by communities and smallholders. For Asia and the Pacific region, this stands at 34 per cent of forest areas, covering nearly 249 million hectares. Community forests have become more recognized in laws and national constitutions since the 1980s and communities are able to access both timber and non-timber resources, although with mixed results.

Positive trends towards increased forest cover, reduced degradation and reduced resource depletion have been observed, yet FAO studies

indicate that findings are not consistent across different countries. Stronger legal provisions have aided subsistence benefits for forest communities but have brought few income benefits. Likely obstacles to greater benefits include limited recognition and weak protection of community rights as well as limiting regulatory frameworks. Benefit sharing for forest communities is inequitable when compared to those of agribusiness and timber companies operating in forests.

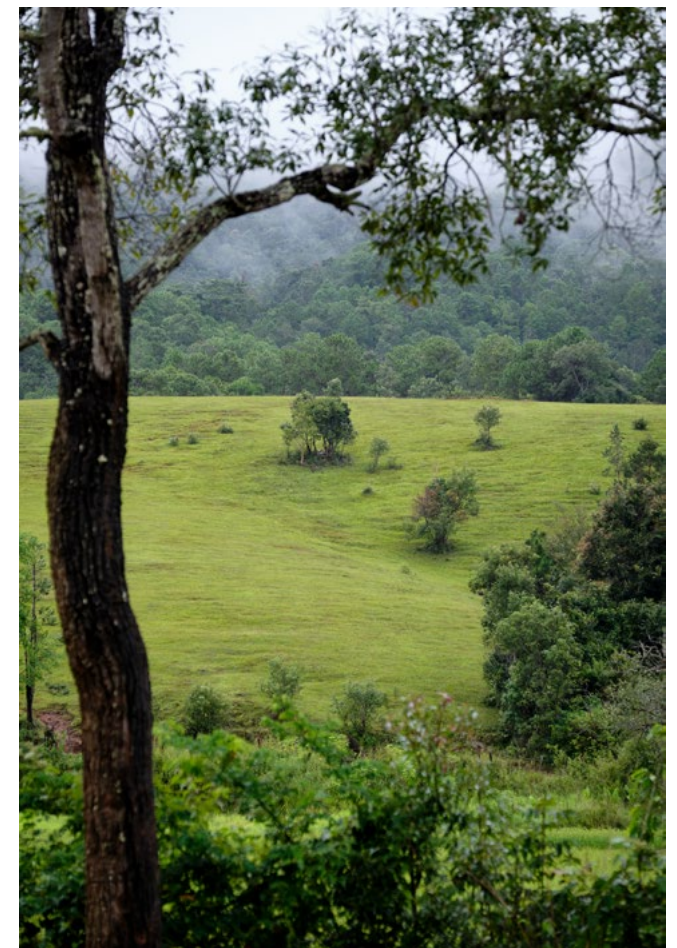
Since the 1970s both China and Viet Nam have transferred forest lands to smallholders with commercial harvesting licences and community forestry. Indigenous and community forest rights have been recognized in the Philippines, Indonesia and India, albeit frequently without formalization or adequate implementation on the ground. In the Mekong region, significant challenges for policy and legal frameworks in customary and collective forest tenure include incomplete frameworks, poor implementation, and conflicts with other sectoral policies. However, new laws, such as those in Viet Nam and Lao PDR, offer some entry points and opportunities.

To sum up, community forestry carries a hidden potential to contribute to addressing forestry and conservation needs, alleviate the impacts of climate change, improve local livelihoods and meet domestic timber and non-timber needs – all contributions towards reaching the Sustainable Development Goals.

“

“Since 2012, the number of hectares under social forestry has nearly doubled in Southeast Asia.”

David Ganz, RECOFTC



Presentation 2: A regional platform working towards more sustainable and inclusive forestry practices: Experience from the ASEAN Working Group on Social Forestry and the ASEAN-Swiss Partnership on Social Forestry and Climate Change

By Ms Alfi Syakila (AWG-SF Secretariat)

Please find [the link to the presentation here](#).

For ASEAN countries considering land tenure issues, regional-level policies on social forestry have the potential to contribute to improving land tenure security for forest communities. Under the framework of [Vision and Strategic Plan for ASEAN Cooperation in Food, Agriculture and Forestry \(2016-2025\)](#), the ASEAN Working Group on Social Forestry (AWG-SF) is directly engaging with community tenure rights with a mandate that includes:

- providing policy recommendations to enhance social forestry management
- supporting the recognition and protection of both customary and statutory land tenure arrangements involving forest communities
- supporting the continued access and usage rights for forest dwellers and other forest-dependent groups

- supporting the integration of appropriate legislation such as FPIC

The work of AWG-SF is supported by the ASEAN-Swiss Partnership on Social Forestry and Climate Change (ASFCC) through several partner organizations: RECOFTC, the Center for International Forestry Research, World Forestry, Non-Timber Forest Products Exchange Programme Asia (NTFP-EP), and the Southeast Asian Regional Center for Graduate Study and Research in Agriculture. The program aligns with regional documents at the ASEAN level and is implemented from the regional to national and subnational levels on a multi-stakeholder platform. Working together with ASFCC partners and the CSO Forum, AWG-SF creates awareness within local forest departments and agencies on the financial and social benefits of social forestry. ASFCC contributed to a significant increase in community forestry in the ASEAN region, from 6 million hectares in 2010 to 13 million hectares in 2019.

To implement the approved Plan of Action, the AWG-SF engages a range of actors, from senior forestry officials to CSO representatives. Priority areas of work include the development of the following publications and guidelines:

- ‘State and Outlook of Agroforestry in ASEAN’, with specific provisions on the importance of tenure security for local communities
- ‘The ASEAN Guidelines for Customary Forest Tenure Recognition’, informed by

work on the ground to include key principles and options of how to fully recognize customary forest tenure

- ‘Handbook on FPIC implementation’, a supplementary document to the guidelines above
- Legal guidelines to establish FPIC in community forestry

These policy documents will be expected to strengthen the commitments of national governments in the region towards community rights in forest areas and to provide common principles to discuss this agenda in national-level policy arenas.

“

“When we think about how to progress on customary tenure, it needs to be strategic...to go beyond the forestry sector and start engagement with the agricultural and mining sectors in order to make a stronger impact.”

Doris Capistrano

Presentation 3: Increasing customary and collective forest tenure in the Mekong through a customary forestry tenure regional policy framework

By Ms Femy Pinto (Executive Director, NTFP-EP Asia)

Please find [the link to the presentation here](#).

A regional alliance including NTFP-EP, RECOFTC, AFA, AIPP, MRLG and the CSO Forum on Social Forestry in ASEAN was established in 2019 to strengthen customary tenure rights in forests in the Mekong region.

In setting out an agenda for work, it is important to highlight some of the positive aspects as well as weak points in forest policy and practice. Positive aspects include:

- The doubling of areas under community/ social forestry over the last ten years
- Indigenous and community conserved areas managed and governed through voluntary and self-mobilization of local communities
- New legislation with language on customary forest tenure (e.g. provisions for recognizing customary tenure in the National Land Use Policy in Myanmar 2016 and the Forestry and Land Laws 2019 in Lao PDR, and the recognition of communities as official forest owners in Viet Nam under the new Forest Law 2017)

Contradictions and weak spots include:

- A lack of clarity on a pathway to formalize customary tenure under present legislation
- The inability of governments to cope with the expansion of agribusiness into customary tenure areas and forestlands
- The continuing untapped potential of sustainable use and management of forest areas

To help ASEAN member states address some of these challenges, the regional alliance aims to put together a Regional Customary Forest Tenure Policy Framework for ASEAN and to utilize the CSO Forum and the AWG-SF as vehicles to support this work. The framework should include the following: comprehensive definitions of customary forest tenure; social safeguards; traditional knowledge and land management practices; mechanisms and tools to increase recognition and, where appropriate, formalize tenure; and inclusive governance practices.



Panel discussion

Led by **Ms Natalie Campbell (Regional Customary Tenure Adviser, MRLG)**, the panel discussion explored themes raised in the presentations, looking at the best pathways for social forestry to succeed and how regional platforms can gain traction.

Ms Doris Capistrano (Senior Advisor, ASFCC) highlighted that ASEAN is an unusual region in that there is a long-standing platform for social forestry based on consensus that has a certain power of influence. Nevertheless, the actual scope for action remains with member states. While regional guidelines are important, it is national-level implementation that turns policy to action. Key to this is the role of CSOs and their ability to engage practically with governments. The forestry sector could also learn from strategies and platforms on agriculture, mining and other sectors.

Ms Nonette Royo (Executive Director, The International Land and Tenure Facility) urged civil society to remain informed about international platforms which can help amplify the voice of communities and organizations on the ground. There is an urgency to act due to the fragility of forests and their communities. As a community of practice, we must reflect on the instruments and mechanisms that work on the ground and scale them up. By doing this, we can scale up approaches that work. Supporting access to finance and livelihood opportunities and fostering inclusive

partnerships are critical to land tenure security. We have heard about many opportunities to do so, such as engaging with local communities to document their customary tenure. The Tenure Facility offers resources for communities and governments who want to scale up their efforts to recognize tenure rights for local communities.

Mr David Ganz (Executive Director, RECOFTC) highlighted that policy change can be successful only if people are on the ground to make it happen, citing the decision by RECOFTC long ago to open seven national offices based within national forestry departments and to collaborate directly with governments. Regional platforms are only as good as their ability to reach out to people – communication and accessibility are critical. There will be further shocks to forest landscapes and ecosystems, in particular due to climate change. Policy changes are urgent. However, with the right stakeholders at the table, there is every chance of success.

“

“Legalising rights normally forces communities to go through a process that requires resources and funds. This makes the process dependent on outside funding and support to communities.”

John Ashish, WCS, Cambodia

Breakout sessions

- In **Cambodia**, Conservation International explained how their projects take customary tenure into account and described the difficulties around customary forest tenure in the country. In a parallel session, Sophoan Phean, a gender consultant, discussed how the process of community protected area zoning incorporate gender considerations.
- In **Lao PDR**, RECOFTC shared experiences of village forest management planning. In a parallel session, Chansouk Insouvanh, a gender consultant, detailed how customary tenure and investment projects often overlap on the ground and how women are frequently left out of FPIC processes and equitable benefit sharing. An additional parallel session facilitated by FAO detailed and discussed an upcoming study that will look at how forest cover and land use planning affect tenure security in forest areas.
- In **Myanmar**, the Land Core Group discussed how customary tenure is addressed in legal frameworks such as the National Land Use Policy, the Vacant, Fallow and Virgin Land Management Law, and the drafting of the National Land Law. Issues are not only related to legal gaps and policy weaknesses but to systemic and institutional factors that affect the implementation of the laws on the

ground. Unless these challenges are considered in the reform agenda, there is little chance that the protection of customary tenure systems will be effective.

- In **Viet Nam**, Dr Tuan discussed lessons learned from community-oriented forest land allocation and specifically touched on how to ensure that these processes are inclusive. In a parallel session, Lan Nguyen, a gender consultant, facilitated a discussion on gender-inclusive strategies for forest and land allocation processes.
- **Regionally**, NTFP-EP together with AIPP and AFA discussed the critical elements of customary tenure that could feed into the development of a regional policy framework for ASEAN. In a parallel session, Dr Jintao Xu from Peking University shared the approach to recognizing smallholder tenure in forest areas in China and discussed how countries in the Mekong region could benefit from their experience. The session concluded that China does not yet have a policy for customary tenure recognition but was focusing on individual use of production forest to increase productivity.

Key takeaways

By Mr Julian Atkinson (Program Coordination and Technical Services, RECOFTC)

Please find [the link to the presentation here](#).

- In all Mekong countries over the last five years we have seen the enactment of new and progressive policy instruments, the creation of new multi-stakeholder mechanisms and partnerships, and an increasing recognition of the value that indigenous peoples, local communities and civil society can contribute to forest governance. These positive developments have provided an increasing number of opportunities for local people to understand, claim, exercise, and defend customary rights over their forest land and resources.
- While countries have adopted these new laws and policies for forest tenure reform, legal recognition in many cases continues to only be partial. Legal frameworks do not always recognize the full bundle of rights or the whole area where communities have been exercising customary rights. The legislative and policy environment can also perpetuate existing inequalities within communities.

- To help address gaps in legal recognition, AWG-SF and other regional platforms provide opportunities to produce and adopt guidelines and protocols in line with international instruments that have a stronger legitimacy and ownership of member states.

Key Challenges

- The main challenge remains how to implement these legal frameworks effectively and at scale. For that to happen, higher-level policy and laws need to be translated into tools and processes that are accessible and implementable by rights holders on the ground.
- An ASEAN regional policy framework for recognizing customary forest tenure must remain practical and implementable to be used as an enabling tool by key actors within ASEAN member states for a more informed national-level dialogue, which remains the key level for turning policy into practice.
- The effectiveness of these policies is also related to inclusivity and the space created for women and marginalized community members to participate and make decisions.



Further readings

- ASEAN. (2020). *ASEAN Guidelines for Sustainable Harvest and Resource Management Protocols for Selected Non-Timber Forest Products (NTFPs)*. Jakarta, Indonesia: ASEAN Secretariat
- [FAO. \(2019\). *Assessing the governance of tenure for improving forests and livelihoods – A tool to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure*. Forestry Working Paper no. 13. Rome.](#)
- [FAO. \(2019\). *A framework to assess the extent and effectiveness of community-based forestry*. Forestry Working Paper no. 12. Rome.](#)
- [FAO. \(1994\). *Tree and Land Tenure Rapid Appraisal Tools*. Rome.](#)
- [Guerrero, M. C., and E. Andaya \(2020\). *Gap Analysis of ASEAN Standards for Non-Timber Forest Products*. NTFP-EP.](#)
- [RECOFTC. *Social Forestry Knowledge Tree*.](#)
- [RECOFTC. \(2020\). *Overcoming threats to the Mekong's forests and people*. Special Report.](#)
- [RECOFTC. \(2020\). *Community Forestry Participatory Assessment: A Guide for Practitioners*. Bangkok. RECOFTC.](#)



SETTING THE SCENE FOR DAY 2:

**RESPONSIBLE AGRICULTURAL INVESTMENT (RAI):
WHERE FROM, WHERE TO GO?**



By Mr Grahame Dixie (Executive Director, Grow Asia)

Find [the link to the presentation here](#).

The second day of the Forum focused on private sector investment practices and their impact on forests, surrounding communities, the rural poor and the environment.

Mr Grahame Dixie set the historical scene for day 2 by referring to the 2008 food price spike. Soaring prices meant that food security became a major concern among high importing countries, many of which looked to foreign investment as a means to secure reliable supplies. At the same time, in the context of a volatile global economy, investments in food systems were seen as likely to provide good, safe returns. This resulted in a stream of large-scale agricultural investments focused on developing countries. A polarized view emerged; civil society spoke out on the nature of irresponsible investments,

with heavy emphasis on socially and environmentally destructive outcomes, whereas the private sector focused on the positive end of the scale with emphasis on good practices.

To understand what was happening with investments on the ground in real numbers, the World Bank conducted a study that looked at 178 agribusiness investments over the last 50 years.⁴ The study identified that around 75 per cent of the investments became viable businesses but success needed time, often with the second or the third owner of the business making profits. The responsibility of investments was assessed by retrofitting a framework over 38 mature investments. Consultations with surrounding communities on their experiences revealed diverse outcomes, with land rights and environmental degradation the most painful issues. The close link with profitability was highlighted: in cases where an investment starts losing money, all responsibility goes out the window. The major benefits of the

investments studied were access to jobs, markets and infrastructure. The most successful businesses were also the most experienced and more likely to apply responsible practices because of an understanding of the value of harmonious relations with communities to their own viability and profitability.

In 2014, the Committee for World Food Security endorsed ten RAI principles (CFS-RAI) as a response to agricultural investment issues. The complex negotiations and consultations leading up to endorsement were somewhat characterised by unclear divisions of roles between governments and investors, diverse considerations on implementation and a lack of coverage of legacy issues in particular. The ten ASEAN agriculture ministers asked for a set of guidelines rather than principles, which would be more focused on what could be practically implemented. Grow Asia, in partnership with FAO and the International Institute for Sustainable Development (IISD), were requested to assist in adapting the

⁴ [Dixie,G. and Tyler,G. \(2013\). Investing in agribusiness: a retrospective view of a Development Bank's investments in agribusiness in Africa and Southeast Asia and the Pacific \(English\). Agriculture and environmental services discussion paper no. 1 Washington, D.C.: World Bank Group.](#)

CFS-RAI to what would become the ASEAN Guidelines on Responsible Investment in Food, Agriculture and Forestry (ASEAN-RAI). The guidelines were developed through regional multi-stakeholder consultations and adopted ASEAN-wide in 2018. A key consideration in their promotion is that a small outlay of the total investment for working with local communities greatly reduces the risks to the investor. Delays to cashflow that might otherwise undermine the project can thereby be avoided and better relationships can be forged with surrounding communities for longer-term profits.





Session 3: Demystifying FPIC: Tools to support development, avoid conflict and respect community rights

SESSION 3

Demystifying FPIC

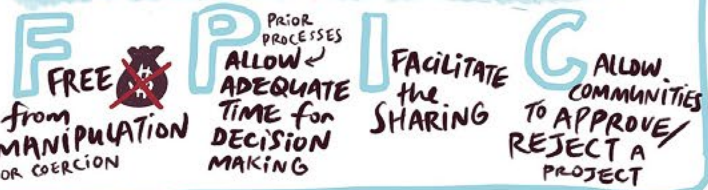


THE COST OF CONFLICT

THE LONGER THE MORE COSTLY

\$20 million PER WEEK

Free, Prior & informed CONSENT



MORE THAN 70 million FOREST-DEPENDANT PEOPLE IN THE MEKONG REGION

FPIC IS DESIGNED TO PROTECT THEIR RIGHTS

VIETNAM
SNV



GROW COFFEE IN FOREST

AGROFORESTRY & CLIMATE SMART LANDSCAPE SOLUTIONS



FPIC is Possible

WE MUST STOP SEEING the COMMUNITIES AS HOSTILE to INVESTMENT

SAY YES to FPIC BUT TO CONSIDER THEM AS BENEFICIAL & WE SHOW RESPECT

Examples

LAOS
BURAPHA

RESTORE DEGRADED FOREST LAND IN PRODUCTION FOREST AREAS PFA

IT'S IMPORTANT TO SEEK COMMUNITY CONSENT



MEANINGFUL & GENUINE ENGAGEMENT ON-GOING PROCESS

CONSENT HAPPENS THROUGH NEGOTIATION

INVOLVE HEAD OF VILLAGE & WOMEN GENDER SENSITIVE

MATCH MAKING COMMUNITIES WITH THE COMPANIES MANAGE the expectations



MEKONG REGIONAL LAND FORUM 2021

VISUAL BY TAK-TIK visual solutions



Framing the session

The third session of the Forum explored **Free, Prior and Informed Consent (FPIC)** in the Mekong region and addressed common concerns of government agencies and private investors about perceived challenges and risks in relation to FPIC application. The positive examples highlighted in the session demonstrated why FPIC is in the best interests of all stakeholders, as discussed in [the blog post 'Demistifying FPIC' by Dr Antoine Deligne \(MRLG\)](#).

Presentation1: FPIC: Concept, approaches, and recommendations

By Mr Khim Lay (Regional Extractive Industries Program Coordinator, Oxfam)

Please find [the link to the presentation here](#).

The forests of the Mekong countries are home to a large and ethnically diverse population who have distinctive relationships with the land and resources that communities depend on for their livelihoods. FPIC is applied as an internationally recognized approach that seeks the views of indigenous peoples on investment and development activities that affect them. Although the concept of FPIC originally evolved in relation to indigenous peoples, in principle it is a social safeguard that respects the rights of any community whose livelihoods, access or rights to land and resources will be affected by an external initiative or interest.

FPIC is based on the principles that communities:

- are free from manipulation or coercion
- have adequate time for traditional decision-making processes
- have full information that is accurate and easily understandable
- can give or withhold consent at any point on any project that affects them

FPIC thus requires the state, companies and local authorities to negotiate in good faith with legitimate representatives of local communities to obtain their uncoerced agreement – made with full understanding of what is being proposed – before any actions are taken that affect their land, livelihoods or rights. It also implies that affected people are compensated for the impacts of these decisions. FPIC is not a one-off event, nor is it a procedural checklist. It is a continuous process of two-way consultation where affected people are given full information prior to actions being taken. The process may or may not lead to consent.

Where FPIC does not take place, there is a risk of conflict, which has costs for all sides. These costs quickly increase, with investors sometimes paying millions of dollars to resolve community conflicts, threatening the viability of the investment. In most cases, these costs dwarf those of implementing a proper FPIC process.

“

“Regarding incentives for companies to implement FPIC, a study by the Rights and Resources Initiative reveals that land issues leading to social conflict can increase operating costs of companies by as much as 29 times over a baseline scenario. So FPIC is the most effective way to prevent conflicts and related costs for the companies.”

Anne-Sophie Gindroz
from the Rights and Resources Initiative

The key message shared by Oxfam was that FPIC is *possible* and does not have to be complicated. It is first a question of attitude towards local communities. It is important from the start not to see the communities as hostile to investment but to consider them a stakeholder and a local beneficiary and, most importantly, to show respect. A series of recommendations for the effective application of FPIC were put forward:

- A code of conduct for company staff working with and around local communities is a useful initial step. This can include showing respect to build trust, cultural sensitivity, and the maintenance of safety and security.
- Many companies are supportive of FPIC but many others are not aware of the process. Investors need government support to set clear rules around a correct and legitimate FPIC process that would protect company investments.
- Putting FPIC principles into laws would give strong incentives for private companies to integrate FPIC into their practices more systematically.
- NGOs can play a useful intermediary support role between local communities and companies during an FPIC process.

Presentation 2: The CAFÉ-REDD project in Viet Nam

By Mr Nam Pham (Project Manager, SNV)

Please find [the link to the presentation here](#).

In Viet Nam, SNV Netherlands works together with the Department of Agriculture and Rural Development and communities on coffee agroforestry to reduce carbon emissions from deforestation and forest degradation. Under this public–private–producer partnership, the [Café-REDD+ project is being implemented](#) in the Central Highlands of Viet Nam where 85 per cent of the land is forest and includes a National Park and Protection Forest. The project works in ten villages with K'ho ethnic communities who have been customarily using the forests.

With the promotion of sustainable agroforestry and deforestation-free coffee as a project objective, FPIC provides a practical approach for negotiation and dispute avoidance to restore areas of forest land converted to coffee. Communities can continue to grow coffee and multipurpose shade trees are also planted, creating a more sustainable, climate-resilient and profitable business model for farmers. Local communities receive significant payments for forest environmental services in addition to project and other government benefits.

FPIC acts as a social safeguard and can be used to achieve effective forest conservation and landscape restoration. In this case, the FPIC process was low

cost and built accountability, transparency and trust. Supporting technology, such as land mapping using drones, was also extremely useful. Mapping is an important tool to understand existing forest uses by communities. Mr Nam Pham emphasized the fact that FPIC is an ongoing process – in their case spanning two years – with several stages to address different issues. Through this process, the project improved governance arrangements between different actors, increased awareness of rights and increased motivation to support and participate in forest preservation efforts.



Ms. Kon Sa K'Hep and Mr. Cil Ha Nien, the farmers at Chappi Mountain Coffee, Da Sar Commune, Lac Duong District, Lam Dong Province, Vietnam. Credit: SNV Vietnam

Presentation 3: Establishing plantations in production forest areas in Lao PDR: Learnings from community consultations in Phou Yeuy PFA

By Mr Francois Guegan (Land Manager, Burapha Agro-Forestry)

Please find [the link to the presentation here](#).

Burapha Agro-Forestry is a Lao-Swedish eucalyptus plantation company based in Lao PDR. Burapha is seeking up to 60,000 hectares to expand its plantations. At the same time, the Government of Lao PDR is aiming to restore degraded forest in production forest areas – state lands where private ownership is not allowed. In practice, however, land use within these forest areas is complex. One such case is in Phou Yeuy Production Forest Area, where farmers use land for rotational rice and cash crops and also have some permanent areas of paddy and rubber for cultivation, not only by local communities but also more distant villages.

To acquire land, the Burapha team carries out drone assessments of land cover and only selects degraded lands that are not natural forests and are not on steep slopes or close to streams. The company then examines the land use assessments together with the local communities, identifying areas already used for permanent agriculture, areas under agroforestry, or areas of cultural significance. These assessments are conducted in conjunction with a multi-step consent process allowing time to understand the

complex context of each community. Importantly, this process also acknowledges differences between households in terms of relative vulnerabilities, and individual views are balanced against community consensus. Quality data are therefore an essential ingredient to build trust and make informed decisions.

Community consent is then sought through an extensive consultation process that may last up to three months. The process involves multiple visits to the site and open feedback with the aim of obtaining community-wide approval. Mr Guegan acknowledged that if a community disagrees, Burapha tries to understand the issue in greater depth. However, if at the end of the day the community still declines, Burapha will walk away. The company hopes that examples of good, profitable relationships with neighbouring villages who have agreed to join the plantation may encourage the villagers to ask the company to discuss again at a later stage.

For Burapha, community support is an integral part of the business plan. An investment cannot work in the long term with hostile communities and Mr Guegan concluded that **strong community support is more likely to result in safe investment.**

Panel discussion

The moderator, **Ms Marianna Bicchieri (Land Tenure Officer, FAO)** invited panellists to share their perspectives on FPIC from their respective countries.

Mr Uy Kamal (Deputy Director General of General Directorate of Environmental Knowledge and Information, Ministry of Environment, Cambodia) noted how Cambodia has recently completed their test run for a Reducing Emissions from Deforestation and Forest Degradation (REDD+) program and that community engagement through FPIC is required. He sees the value in aligning FPIC with REDD+, which represents an opportunity to support small-scale farmers.

Mr. Khitlaxay Kokmila (Deputy Director General, Department of Land, Ministry of Natural Resources and Environment, Lao PDR) looked at the process of land registration in Lao PDR in regard to FPIC. Village meetings are important for informing villagers about project objectives, with the need for different meetings to engage with different interest groups, such as village heads or women, to get their support.

“

“I realised that FPIC is not only about communities understanding a project but also about project managers understanding the community perspective. There is a need to show respect and build trust with local communities.”

**Ms Nan Mya Oo,
Master's student,
Chiang Mai University**

Mr Nguyen Dzung (National Project Coordinator, Sustainable Forest Trade, FAO Viet Nam)

agreed that FPIC is an important mechanism to protect the rights of communities and to avoid conflicts. A lesson from experience of FPIC during the implementation of a REDD program is that FPIC may become a lengthy and costly process if not carefully planned. It is necessary to keep the process concise, responsive to capacity limitations, easy to understand and relevant to the local context. Inclusion of vulnerable groups including women and poor households is crucial to the process. FPIC now contributes positively to the implementation of REDD+ plans.

Breakout sessions

The breakout sessions offered opportunities to learn about other experiences of FPIC in the region.

- In **Cambodia**, WCS explained its approach to applying FPIC to a REDD+ project in Keo Seima Wildlife Sanctuary. Grandis Timber shared the importance and positive results of the community engagement process for their teak plantation in an economic land concession.
- In **Lao PDR**, RECOFTC in collaboration with the Department of Forestry described their experience in applying FPIC to agree with local communities on forest management. The LIFE project shared good practices for community engagement and customary

land rights recognition in forest areas.

- In **Myanmar**, POINT shared positive results where local communities manage an FPIC process together with the Forest Department to define forest production areas.
- In **Viet Nam**, two presentations by LANDA and CISDOMA helped the Vietnamese audience better understand what FPIC means in practice.
- At the **regional level**, NTFP-EP discussed opportunities to promote FPIC at the ASEAN level.

Key takeaways

By Ms. Femy Pinto (Executive Director, NTFP-EP Asia)

Please find [the link to the presentation here](#).

- The adoption of FPIC is promoted in international conventions such as UNDRIP, International Labour Organization Convention 169 and the Convention on Biological Diversity, and in international instruments such as VGGT, CFS-RAI and ASEAN-RAI.
- FPIC requires that communities can meaningfully participate in decision-making processes and that their concerns, priorities and preferences are accommodated in project designs and implementation.
- Mekong countries have yet to adopt national laws that explicitly mention an FPIC obligation.

However, different aspects of FPIC may already be within existing policy and regulatory mechanisms and company procedures, even if not with explicit reference.

- There are many positive examples of the application of FPIC in the Mekong region, or of community engagement processes that are similar or close to FPIC.
- Meaningful engagement in good faith is needed rather than FPIC being used as a box-ticking exercise. Achieving consent can benefit both the community and the project.
- FPIC can be perceived as a challenging process which requires more time at the start of a project. However, the use of FPIC can be vital to avoid potential future conflicts. Dealing with conflicts is costly. It makes economic sense to invest and work in peace with your neighbours.
- In countries that have already put FPIC procedures into law and practice, FPIC has not stopped development from occurring and has been beneficial for both companies and communities. For investors and governments, FPIC makes good business sense.
- Finally, adherence to business standards can help Mekong countries promote an image of supporting sustainable investments and development, which will attract more responsible investors.

Key Challenges

A number of private investors already see FPIC as an important tool in their business model but these are a subset of companies with long-term interests in projecting a socially sustainable image as part of their brand reputation. **Is it feasible that FPIC principles can be mainstreamed into the practices of all land-based investments? What would it take to get there?**

Raising the profile of FPIC within relevant national legislation, including standard processes set in place by governments, can help incentivize the private sector and other stakeholders to integrate FPIC into their practices more systematically.





Further readings

Read more about the benefits of FPIC and the costs of conflicts in these publications:

- [FAO. \(2016\). *Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities*. Manual for Project Practitioners;](#) also available
 - [in Khmer language](#)
 - [in Myanmar language](#)
- [OXFAM. \(2010\). *Guide to Free Prior and Informed Consent*. Victoria. OXFAM.](#)
- [Rock, F. \(2019\). *The application of FPIC standards in Cambodia*. Discussion Note Series #5. Vientiane: Mekong Region Land Governance](#)
 - also available [in Khmer language](#)
- [Rock, F. \(2019\). *Does free, prior and informed consent \(FPIC\) need to be complicated, time-consuming, and costly? A proposal for the promotion and integration of the FPIC approach across various sectors in Cambodia*. Discussion Note Series #6. Vientiane: Mekong Region Land Governance.](#)
 - also available [in Khmer language](#)
- [Sohn, J. \(Ed.\), Herz, S., La Vina, A. \(2007\) *Development Without Conflict: The Business Case for Community Consent*. Washington DC: World Resource Institute.](#)
- [Rights and Resources Initiative. \(2016\). *Land Disputes and Stalled Investments in India*.](#)
- [Rights and Resources Initiative. \(2017\). *From Risk and Conflict to Peace and Prosperity: The Urgency of Securing Community Land Rights in a Turbulent World*. Washington, DC: Rights and Resources Initiative.](#)
- [Zakaria, R. Y., et al. \(2019\). *The Cost of Land and Natural Resources Conflict: A Community Perspective*. Jakarta: Conflict Resolution Unit, IBCSD.](#)



Session 4: Responsible agricultural investment in Mekong forest landscapes: What challenges do responsible investors face in applying RAI, and how can they be supported through policy and practice?

SESSION 4 Responsible Agricultural Investment in Mekong forest landscapes



11% ASEAN'S GDP AGRICULTURE

FAO

ASEAN **RAI** GUIDELINE

EXISTING VOLUNTARY SUSTAINABILITY STANDARDS & CERTIFICATIONS

- ✓ BALANCING RIGHTS & INTERESTS
- ✓ RESPECT TENURE OF LAND
- FISHERIES
FOREST
ACCESS TO WATER
- ✓ CONSERVE, MANAGE NATURAL RESOURCES

VRG
TOWARD ENVIRONMENTALLY FRIENDLY RUBBER

IMPLEMENT SOCIAL SECURITY INVESTMENT

BUYING SMALLHOLDER RUBBER at TRANSPARENT MARKET PRICES

NEW FORESTS

MEKONG TIMBERS PLANTATIONS + MALAYSIA (ACACIA) + INDONESIA

TAFF TROPICAL ASIA FOREST FUND

ADVANCE RESTORATION + CONSERVATION

SECURITY & HUMAN RIGHT

ZERO DEFORESTATION ONLY DEGRADED LAND

HIGH CARBON STOCK APPROACH CLASSIFICATION

CAN BE PREVENTED BY **WWE**

GREEN WASHING 3RD PARTY

! ILLEGALITY & CORRUPTION

WE CAN'T CONTINUE DOING BUSINESS AS USUAL

MTP

REVAMPING the OUTGROWER SCHEME TO MEET farmers' need

GETTING EVERYBODY INVOLVED

GPSNR

SUSTAINABLE COST MORE? \$

TAX for SUSTAINABILITY

WE MUST INTERNALIZE THE COST

RUBBER PLANTATION ☹️ MONO CULTURE ☺️ AGRO FORESTRY

MEKONG REGIONAL LAND FORUM 2021

VISUAL BY **TAK-TIK** visual solutions

Framing the session

The fourth session of the Forum introduced [the ASEAN Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry \(ASEAN-RAI\)](#) – a tool which aims to promote investment that enables mutual benefits among farmers and investors while also avoiding negative social and environmental impacts. Larger companies often already apply many aspects of the RAI principles through corporate social responsibility (CSR) initiatives, the question is how the principles can become basic tenets of all agribusiness, including smaller, less visible companies and shorter-term investments. During the session, several companies shared their experiences of aligning their practices to RAI principles. The discussion then highlighted the key role of governments in creating a level playing field for all companies and providing stronger incentives to respect the RAI principles.

Read the blog post [‘Responsible agricultural investment in Mekong forest landscapes: How do we get there?’](#) by Dr Robert Cole (MRLG) to understand the value of responsible agricultural investment in the Mekong region and the challenges ahead. The blog post [‘Enhancing responsible agricultural investment: What role should investment incentives play?’](#) by Ms Jana Herold (FAO) addresses the importance of creating an enabling environment for responsible investment.

Presentation 1: The ASEAN Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry (ASEAN-RAI) and Mekong forest landscapes

By Ms Jana Herold (Associate Professional Officer - Responsible Agricultural Investments, FAO)

Please find [the link to the presentation here](#).

The [ASEAN-RAI Guidelines](#) bring together different initiatives and standards under a single, regionally adapted roadmap. They are intended to support policymakers, investors and civil society to foster more responsible agricultural investments across the ASEAN region. Agriculture remains a highly significant sector in the region – contributing more than 11 per cent to regional GDP – both as a generator of economic growth and a means to reduce hunger and poverty. Investments that are not responsible can have an impact on the livelihoods of not only local communities and workers but also the agribusiness companies who hoped to profit from them.

FAO, Grow Asia, IISD and the ASEAN Secretariat have been partnering to assist member states in the implementation of the Guidelines since their adoption ASEAN-wide in 2018.



From the ten thematic areas in the ASEAN-RAI, particular attention was drawn to Guidelines 4 and 5, which correspond to the emphasis of the Forum on forest landscapes.

- Guideline 4 on tenure of land, fisheries and forests calls for the respect of tenure rights holders in line with VGGT and UNDRIP and also calls for adherence to FPIC.
- Guideline 5 on conserving and sustainably managing natural resources, and ASEAN forests in particular, includes minimizing the impacts of investments, following sustainable forest management practices, supporting the needs of indigenous peoples and promoting sustainable sourcing and consumption.

The ASEAN-RAI Guidelines are now included in [the International Trade Centre Standards Maps](#), which are an important source for companies to align their practices with sustainability commitments and codes of conduct.

The Guidelines can help companies limit commercial and reputational risks in their ventures as well as prepare for a future policy landscape in which responsible investment practices will be required for a licence to operate. For this to become a reality, the ASEAN-RAI provide a reference to develop national policies that place responsible investors at a competitive advantage over those who profit from irresponsible practices.

Presentation 2: Towards more responsible rubber in Cambodia, Laos and Viet Nam

By Mr Diep Xuan Truong and Dr Hoa Tran Thi Thuy (Viet Nam Rubber Group)

Please find [the link to the presentation here](#).

In the second presentation of the session, the Viet Nam Rubber Group (VRG) gave details of its extensive regional investments in rubber which total more than 400,000 hectares. Approximately two thirds are located in Viet Nam and the remainder divided between investments in Cambodia and Lao PDR. Annual latex production is almost 370,000 tons from plantations and 80,000 tons purchased from smallholders. In recognition of the negative legacy issues of rubber investments, the VRG Sustainable Development Program 2019–2024 aims to achieve responsible production and investment over a number of economic, social, and environmental components that VRG has sought to align with national sustainability commitments.

Under this program, a total of 150,000 hectares of rubber trees qualified for the Viet Nam Forest Certification System in 2019–2020. Work by VRG to end its disassociation from Forest Stewardship Council certification includes cooperation with civil society organisations and the introduction of more inclusive models, including contract farming with smallholders through sustainable rubber management certificates. The company has also been supporting communities with roads, electricity

infrastructure, schools and housing for workers as part of a broader commitment to enhance its dialogue with local communities.

To support more sustainable rubber, VRG recommended the promotion of secure land rights certificates, more support from government and development organizations, and initiatives that benefit both communities and enterprises.

The Forum participants asked how VRG is seeking to redress legacy grievances related to its subsidiaries in Lao PDR who have historically acquired villagers' land without consent or proper compensation. Questions were also posed regarding the key motivations for VRG to transition towards more responsible and sustainable investment practices.

In terms of addressing historic land disputes and environmental issues, VRG explained that within the company's rubber development program in Lao PDR and Cambodia, the land concession process had been subject to many steps from surveying to evaluating with the participation of relevant ministries and sectors and the Concession Land Grant Council of the host country. Through these steps, different categories of forest and agricultural land of the local people were not included in the concession land. VRG companies and local authorities inspect and supervise the project areas annually to make sure that the areas comply with the concession licence.

The motivation for VRG to adopt responsible investment practices is to implement the sustainable

development strategy and to comply with the laws of the Government of Viet Nam and host countries that require businesses to develop sustainably, while also meeting the requirements of the market and customers. State agencies and NGOs of goodwill have supported VRG to develop and practice feasible solutions, and VRG recognizes that economic development must be associated with social responsibility and environmental protection.



Presentation 3: New forests commitments to responsible investment and perspectives from the timber sector in Lao PDR

By Mr Justin Mercer (Environmental and Social Manager, New Forests) and Mr Nico Strydom (General Manager, Mekong Timber Plantations)

Please find [the link to the presentation here](#).

New Forests was founded in 2005 and by 2020 had almost 1 million hectares under management worldwide, including 24,000 hectares in timber plantations in Lao PDR. The company has a CSR policy that attempts to align with numerous international certification models.

The company is allocating significant funding towards community livelihoods, biodiversity, and carbon sequestration, and aims to move beyond business-as-usual models. As an investment manager, Mr Mercer sees it as critical that benefits can be directed to the local level of project implementation. The company aims to obtain FSC certification and meet IFC performance standards. New Forests' CSR policy also calls for no deforestation, peatland protection, respect for land tenure (including FPIC), compliance with supply chain requirements (under FSC) and adherence to responsible investment guidelines (such as VGGT and the United Nations Declaration on Human Rights). The combination of FSC and IFC standards already demonstrates significant alignment with the ASEAN-RAI and other guidelines.

In the second part of the presentation, Mr Nico Strydom focused on New Forests' investment in Lao PDR in acacia and eucalyptus, where the current status is 9,479 hectares of planted area and more than 7,000 hectares suitable for establishment. New Forests has developed a new management model over two years to convert the existing pulp regime into a higher value veneer and sawlog crop.

Mr Strydom detailed how previous investors had set up an outgrower scheme involving 500 farmers, but this had not been well maintained and ended up failing. When taking over plantation management, it was important for New Forest to understand what had gone wrong, and a full consultation process was needed to set up the new Mekong Smallholder Partnership. The new scheme was developed in consultation with communities and included making it clear to the farmers that they retained control of the land, with New Forests providing technical assistance. However, the

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“Land corruption is a huge problem in the world. That is why we advocate for open and transparent land data and information, which we see as a pre-requisite to reducing land corruption.”

Neil Sorensen,
Land Portal

farmers had to give a clear indication if they intended to harvest and sell the timber. Mekong Timber Plantations collaborates with Village Focus International and IFC on the scheme, which requires community consultation and agreement with village leaders.

Panel discussion

Under moderation by **Dr Robert Cole (Adviser on Responsible Agricultural Investment, MRLG)**, the panel was asked to provide comments in response to the presentations.

Mr James Bampton (Regional Forest Lead, Asia Pacific, WWF) noted that responsible agricultural investment sounds positive and is necessary in the face of current global challenges. However, an unacceptable level of irresponsible investments continues, and adequate redress of past irresponsibility is not yet taking place. The question is, what are the motivating factors that might encourage irresponsible agricultural investors to change their practices? Demands from consumers and investors for more responsible practices tend only to come from markets for particular commodities. If other segments are not demanding responsible practices, and the guidelines are voluntary, then what will drive companies to follow them? There has also been a concern for decades that companies are ‘green-washing’ – making claims of sustainable practices that are hard for consumers and governments to verify. In this regard, the importance of third-party certification such as FSC stands out as key to verifiable social and environmental measures.

However, the starting point for many investors is the associated costs, which they may not be willing to absorb, and is one reason why irresponsible investments in agricultural commodity production continue in the Mekong region. Another is the continuation of illegality and corruption, particularly in land acquisitions and environmental violations, which distort the competitive landscape for more responsible investors. The first step is to stamp out illegality and incentives for corruption while also removing barriers to more responsible investments. Credible certification schemes that are driven by consumer demand for verifiable responsible agricultural investment will contribute to curbing illegality and corruption. Finally, it is important that these principles are embedded in regional legislation such as within ASEAN to ensure a level playing field between countries.

Mr Stefano Savi (Director, Global Platform for Sustainable Natural Rubber) highlighted the challenges around responsible purchasing where the price of commodities does not reflect the true cost. One side of the market seeks to take advantage of demand for sustainable production and align with certification schemes. Although acting more sustainably brings increased costs across the board – including to consumers – companies and producers wanting to act responsibly have to invest more in sustainable practices. In some cases, sectors that were previously unsustainable are now aligning with international standards, partly because of the maturity of those markets. In that regard, a key concern is how to disincentivize the companies selling to ‘leakage markets’ from doing so. One of the reasons

for the rise in multi-stakeholder approaches around several commodities is to put a stop to this practice. The question is, how can we disincentivize people from buying from irresponsible markets? It is also about targeting bottlenecks in the supply chain to find ways to monetize and thereby internalize the costs of negative externalities. Certification fulfils this function to an extent, but what other tools could be put in place? An example could be a global sustainability tax. Widening agreement on standards and guidelines such as RAI suggests that where there is a will, there is a way.

Ms Vicky Bowman (Director, Myanmar Centre for Responsible Business) explained how international standards provide guidance to companies in Myanmar. Of particular note are IFC Standards, which are often the most user friendly since they are designed for private investors. ASEAN guidelines are relevant as they originate from and are contextual to the region. Work on influencing regulatory frameworks in Myanmar has sought to engage international standards including on environmental impact assessments and FPIC, as discussed in the previous session – the challenge is to align the standards with legal provisions. In Myanmar it was hoped that the new Land Law could be a mechanism for alignment through an open and collaborative discussion with a new elected government and with civil society and business sectors involved, but it is now impossible to predict new developments in the face of political turbulence. For Myanmar, a reluctance to invest in agriculture, despite the sector employing the majority of the population, means that the country loses out on the

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“Government (regulator) and business should have a separation of duties (i.e. no conflict of interest). In Asia, the roles of business and companies are much more blurred with the result that enforcement (...) is much more challenging.”

Stuart Ling,
independent consultant, Lao PDR

improved practices needed to join global supply chains. Instead, Myanmar is very much part of what Stefano referred to as ‘leakage markets’, or untraceable export commodities such as rubber and maize going to Thailand and China. The result is lack of help for farmers to improve the sustainability of their practices, or accountability along supply chains to meet international standards, including ASEAN-RAI. This is sadly likely to continue as for now Myanmar returns to a no-go zone for investors, due to both political and reputational risks.

Breakout sessions

The breakouts delved deeper into specific examples from agribusiness investments in Mekong countries and additional tools relating to ASEAN-RAI.

- In **Cambodia**, Oxfam hosted a discussion on experiences of engaging rubber companies on RAI, while the Centre for Policy Studies provided a broader exploration of their recent case study research on agribusiness investments in Cambodia.
- In **Lao PDR**, the Investment Promotion Department of the Ministry of Planning and Investment led a discussion on experiences with land leases for plantation concessions in the country. Oxfam examined entry points for private sector engagement on RAI.
- In **Myanmar**, the Centre for Development and Environment shared findings of a recent study mapping large-scale palm oil plantations in the south of the country which showed how opaque and irresponsible the concession system in Myanmar remained even after a democratic government was established.
- In **Viet Nam**, PanNature shared examples of opportunities to promote RAI in practice. AgrolInfo led a discussion about responsible investment in contract farming in the Vietnamese context.
- **Regional** breakouts included an introduction to the ASEAN-RAI alignment tool by IISD and an exploration of the constraints faced by private companies as seen in several case studies on RAI in the Mekong region.

Key takeaways

By Mr Daniel Hayward (Project Coordinator, Mekong Land Research Forum)

- The ASEAN-RAI guidelines offer a set of internationally recognized approaches to practical issues of agribusiness investments, with an emphasis on forest landscapes. The challenge is to apply the guidelines at the national level to support governments, communities and companies in the push for inclusive, equitable and sustainable investments.
- FAO, Grow Asia, and IISD are joining forces with the ASEAN Secretariat and member states to achieve a measurable increase in the quantity and quality of responsible and sustainable private sector investment in ASEAN.
- Large-scale companies with regional investments in forestry industries are interested in applying RAI principles as part of social and environmental sustainability activities. During the Forum, examples were provided by New Forest and VRG. Aspects of their CSR frameworks already align with the ASEAN Guidelines, even if this work is not always expressed in the terminology of RAI, and show how alignment with the guidelines can be achieved by focusing on those not yet being applied.
- Some agribusiness sectors carry long-standing legacy issues that remain unaddressed.

Although future practices can be improved, past damage cannot be undone and requires efforts towards redress. This begins with multi-stakeholder dialogue.

- Beyond the theory, the practice of RAI is complex and challenging for companies that are not necessarily organized and resourced for it. They need guidance from governments as well as multilateral, local and non-governmental organisations on how to apply the ASEAN-RAI guidelines within national policy frameworks.
- While there are companies interested in following international standards that may align with RAI, it is important to be realistic about the reasons why many others are not. Companies are often able to be more competitive through irresponsible practices. Illegality and corruption should be called out, while responsible investment practices should be incentivized and rewarded. This calls for broader action on the rule of law beyond the application of voluntary guidelines.

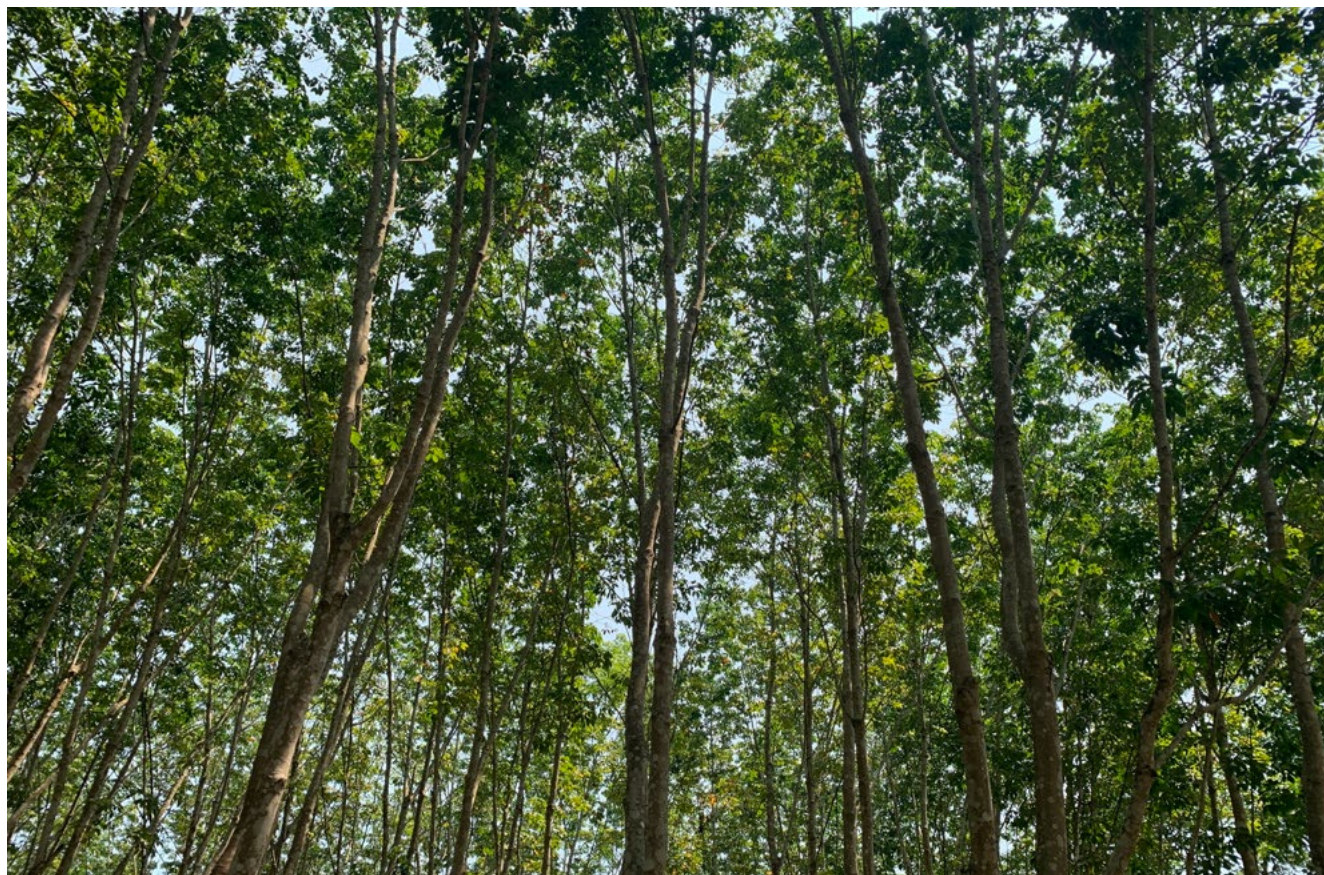
Key Challenges

As with FPIC, the ASEAN-RAI Guidelines may also be subject to some degree of self-selection because larger and higher-profile companies with existing CSR missions are likely to be first in line to adopt these principles. The key challenge that has to be overcome is how to encourage less visible companies – including those whose invest-

ments are smaller scale, shorter term and with tighter margins – that investing more responsibly is in their interests too. Beyond that, how can elite interests operating beyond the reach of policy start to be engaged in such processes?

Further dialogue and effective communication on the purpose and potential benefits of ASEAN-RAI approaches are key to widening their reach. It is equally important to understand the enabling policy

and business environment to increase the application of RAI principles and sharing of best practice examples. This understanding includes identifying challenges faced by different stakeholders – governments looking to boost the growth of the agricultural sector while also preventing negative social and environmental impacts, companies operating within profit margins, and communities seeking to participate in and benefit from agricultural investments.





Further readings

Read more about RAI at the following links:

- [ASEAN. \(2018\). *The ASEAN Guidelines on Responsible Investment in Food, Agriculture and Forestry.*](#)
- [Committee for World Food Security. \(2014\). *Principles for investment in agriculture and food systems.*](#)
- [FAO and IISD. \(2020\). *Responsible investment in agriculture and food systems: A practical handbook for parliamentarians and parliamentary advisors.* Rome.](#)
- [Grow Asia. *Promoting Responsible Agricultural Investment in ASEAN.*](#)
- [Land Information Working Group and Village Focus International. \(2018\). *Responsible Agricultural Investment in Lao PDR: Overview and implications for policy making.*](#)
- [MRLG. \(2019\). *Towards Responsible Large-Scale Agricultural Investments in the Mekong Region: Key messages from a regional dialogue.*](#)
- [World Bank: *Responsible Agricultural Investment Knowledge into Action Notes.*](#)



CLOSING SESSION



In closing remarks, Ms Vicky Tauli-Corpuz (Director and Founder, Tebtebba and former Special Rapporteur on the Rights of Indigenous Peoples, United Nations) applauded the attention given to customary land tenure throughout the Forum. Communities have always struggled for their traditional practices to be acknowledged even though these existed long before the arrival of state governments. The fact that a large platform such as the Forum focused on these issues was already an important step in the right

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“I would like to congratulate the companies who came to speak, I know there are still many challenges, but as long as we proceed with these values [of inclusion, transparency, FPIC and sustainability], I think these companies and other companies can become role models for the broader private sector.”

direction. She found much promise in the legal work taking place in the Mekong region, especially the work to engage with existing and planned legal frameworks and policies. These processes will help ensure there is a key role for customary land tenure in the sustainable management of forests, as opposed to an image of customary systems as backwards. It is essential to continue pushing for the principles that communities have always fought for.

A key challenge is that the allocation of forest land to communities has been slow through the region as well as in other countries in Asia. Recording and documenting customary areas is necessary for companies to know where they can invest, and how they can manage land responsibly. Ms Tauli-Corpuz appreciated seeing some companies engaging with communities meaningfully. The use of FPIC is critical but this is not yet the norm. In general, the private sector and governments avoid conversations and engagement with local communities in the FPIC process. Sharing positive cases of FPIC implementation can help other actors understand how FPIC

reduces the risk of conflict and unsustainable investment and also fosters accountable and responsible practices.

Ms Tauli-Corpuz ended by stating that there are many opportunities that can result in forums like this and other regions in Asia would benefit from such discussions. She emphasized the importance of sharing findings and projects with indigenous peoples, companies and other development partners. She ended by leaving food for thought, remarking that for communities to be empowered, they need to be informed. Ensuring that communities are informed about policies and development or investment projects can empower them to become active stakeholders and participants in these platforms.

Strong and clear rights for indigenous peoples and local communities must remain at the top of the agenda while pursuing other objectives such as economic development, climate change adaptation or forest conservation.

AGENDA

DAY 1 / Wednesday 26 May

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
9:00 – 9:30	Setting the Scene: Strengthening the land rights of the local communities and women in forest areas <ul style="list-style-type: none"> • Welcoming word by SDC • Key initiatives supported by MRLG and FAO to strengthen land rights in the region • Presenting the Forum objectives 	MC : Thin Lei Win Jean-François Cuenod (SDC Laos) Dr Micah Ingalls (MRLG) Dr Louisa JM Jansen (FAO)
09:30 – 12:30	<i>Session 1: Customary and Collective Forest Tenure in the Mekong Region: Experiences from Mekong countries on approaches and methodologies for communities to have increased customary tenure in forest landscapes, engagement with policy, unpacking opportunities and challenges</i>	
09:30 – 10:15	Session 1a: Online / Plenary <ul style="list-style-type: none"> • Introduction: Key Initiatives of Forest Tenure Recognition and Customary Tenure Documentation in the Mekong Countries • Lao PDR: Experiences in the Statutory Recognition of Forest Tenure Rights • Viet Nam: Forest land allocation for Community-based Forest Management 	Natalie Y. Campbell (MRLG) Viladeth Sisoulath (GiZ) Ngô Văn Hồng (CEGORN)
10:15 – 10:45	Session 1b: Panel Commentary and Q&A	Moderator: Antoine Deligne (MRLG) Discussants: <ul style="list-style-type: none"> • Mr. Bounpone Sengthong (Department of Forestry, Lao PDR) • Mr. Dinh Van Tuyen (Forest Protection Department, VNFOR-EST, Viet Nam)
30' Break (join the breakout group)		

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
11:15 – 12:00	Session 1c: In-person and online breakout group discussions Discussion examines initiatives in specific countries and at regional level Questions: <ul style="list-style-type: none"> • What are the biggest opportunities, risks and challenges to increase forest tenure recognition in the Mekong? • What are the enabling factors for success / failure in forest right allocation and community participation in forest management? 	MRLG and FAO partners
Regional 1	Legal Challenges and Pathways for Increased Recognition of Forest Tenure in the Mekong Region (EN)	Nathalie Faure (RECOFTC)
Regional 2	Gender and Customary Tenure in Asia: Status and prospects for knowledge-building, policy and practice (EN)	Kalpana Giri (RECOFTC)
Cambodia 1	How Customary Tenure Documentation Can Lead to More Inclusive Protected Area Zoning Practices? (KH, EN)	Sithan Phann (WCS)
Cambodia 2	The Legal Challenges of Community Participation in Forest Management in Cambodia (KH, EN)	Tol Sokchea (RECOFTC)
Lao PDR 1	A Comparison of the New Forest Law and Land Law in Lao PDR: What Are the New Opportunities for Customary Tenure Recognition in Forestlands? (EN)	Richard Hackman and Julian Derbidge
Lao PDR 2	Collective Agricultural Land Management (CALM) and Customary Tenure: Experiences from MRLG Partners (LAO, EN)	Hongthong Sirivath (VFI) Avakat Phasouysaingam (MRLG)
Lao PDR 3	World Bank's Engagement on Forest Tenure Reform in Lao PDR) (LAO, EN)	Luck Bounmixay (WB)
Myanmar	Living in a Legal Void in Myanmar: Documenting Customary Tenure as a Tool for Rural Communities to Protect their Rights (MM, EN)	Ke Jung (IPP)
Viet Nam 1	Forest Tenure Reallocation and Community-based Forest Enterprise of Dried Bamboo Shoots in Viet Nam: Experience from MRLG Partners (VN, EN)	Ngô Văn Hồng (CEGORN)
Viet Nam 2	Strengthening Community Forest Tenure through Forest Co-management and Community-based Livelihood Approach in Hoa Binh, Vietnam (VN, EN)	Lê Văn Hải (RIC)
15' pause (join the plenary)		

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
12:15 – 12:30	Session 1d: Online / Plenary Key take-aways and plans for further actions	Akiko Inoguchi (FAO Lao PDR)
Lunch Break		
14:00 – 17:00 <i>Session 2: Increasing Customary and Collective Forest Tenure in the Mekong: Trends in customary forest tenure recognition throughout the region and globally, and how to leverage regional platforms to increase forest tenure security at the national level</i>		
14:00 – 14:45	Session 2a: Online / Plenary <ul style="list-style-type: none"> • Introduction: Global to Regional Forest Tenure Trends • The Experience of the ASEAN-Swiss Partnership on Social Forestry and Climate Change (ASFCC), the ASEAN Working Group on Social Forestry and Impact on National Social Forestry Policies • Increasing Customary and Collective Forest Tenure in the Mekong through a CFT Regional Policy Framework 	Safia Aggarwal (FAO) Alfi Syakila (AWG-SF) Femy Pinto (NTFP-EP)
14:45 – 15:15	Session 2b: Panel Commentary and Q&A	Moderator: Natalie Y. Campbell (MRLG) Discussants: <ul style="list-style-type: none"> • David Ganz (RECOFTC) • Doris Capistrano (Senior Advisor of the ASFCC) • Nonette Royo (The International Land Tenure Facility)
30' Break (join the breakout group)		
15:45 – 16:30	Session 2c: In-person and online breakout group discussions Discussion examines initiatives in specific countries and at regional level Questions : <ul style="list-style-type: none"> • How do policy objectives and implementation of policy match up in national contexts? • What are the existing initiatives on forest tenure that can be leveraged at policy level? • What are the potential action points or ideas to increase forest tenure recognition in policy and practice? 	MRLG and FAO partners
Regional 1	Critical Elements in Customary Tenure Regional Policy Framework in ASEAN's Forested Landscapes (EN)	Femy Pinto and Dazzle Labapis (NTFP-EP)

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
Regional 2	China's Approach to the Recognition of Community and Smallholder Tenure in Forest Areas (EN)	Pr. Jintao Xu (Peking University) Safia Aggarwal (FAO)
Cambodia 1	Combining the Conservation and Land Tenure Security Agendas in Cambodia (KH, EN)	Naven Hon (Conservation International)
Cambodia 2	Gender, Customary Forest Tenure and Pathways forward in Cambodia (KH, EN)	Sophoan Phean (MRLG National Gender Consultant)
Lao PDR 1	The Recognition of Customary Forest Land Tenure in Luangprabang and Xiengkhouang provinces of Lao PDR: Learnings from RECOFTC approach (LAO, EN)	Bounyadeth Phouangmala (RECOFTC), Phonephanh Luangaphay (Department of Forestry)
Lao PDR 2	Gender, Customary Tenure and Pathways Forward in Lao PDR (LAO, EN)	Chansouk Insouvanh (MRLG National Gender Consultant)
Lao PDR 3	Forest Cover, Land Use Planning and Tenure Security in Lao PDR (EN)	Akiko Inoguchi (FAO Lao PDR)
Myanmar	The Legal Recognition of Customary Forest Tenure in Myanmar (MM, EN)	U Shwe Thein (Land Core Group)
Viet Nam 1	Lessons Learned for MRLG Customary tenure Pilots in Viet Nam: How to rollout and scale up inclusive, community-oriented forest land allocation (VN, EN)	Dr Đỗ Anh Tuấn (Vietnam University of Forestry)
Viet Nam 2	Gender, Customary Tenure and Pathways Forwards in Vietnam (VN, EN)	Nguyễn Ngọc Lan (MRLG National Gender Consultant)
15' pause (join the plenary)		
15:45 – 16:30	Session 2d: Online / Plenary Key take-aways and plans for further actions	Julian Atkinson (RECOFTC)

DAY 2 / Thursday 27 May

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
9:00 – 9:15	Setting the scene: What are the RAI principles and how to engage with the private sector about them?	Grahame Dixie (Grow Asia)
9:15 – 12:15	Session 3: Demystifying FPIC: Tools to support development, avoid conflict and respect community rights	
9:15 – 10:00	Session 3a: Online / Plenary <ul style="list-style-type: none"> • Introduction: The rationale and purpose of FPIC • Viet Nam: Applying FPIC in the project Coffee Agroforestry and Forest Enhancement for REDD+ (CAFÉ-REDD) • Lao PDR: Burapha Agroforestry's approach to FPIC and land acquisition processes in Production Forest Areas 	Khim Lay (Oxfam Cambodia) Nam Pham (SNV) François Guegan (Burapha Agroforestry)
10:00 – 10:30	Session 3b: Panel Commentary and Q&A	Moderator: Marianna Bicchieri (FAO) Discussants: <ul style="list-style-type: none"> • Uy Kamal (Department of Environmental Knowledge and Information and REDD+ Deputy Secretary, Cambodia) • Khitlaxay Kokmila (Department of Land, MONRE, Lao PDR) • Nguyen Huu Dzung, FAO Vietnam
30' Break (join the breakout group)		
11:00 – 11:45	Session 3c: In-person and online breakout group discussions Country-specific discussions based on a specific case study and at regional level Questions: <ul style="list-style-type: none"> • What other positive examples of full or partial FPIC processes do we know about? • How have these processes benefitted not only the local communities, but other stakeholders (government, private sector, etc.)? • What enabling conditions can be observed for these beneficial examples of FPIC? • How can such enabling conditions be supported by regulatory and policy frame works in each country? 	MRLG and FAO partners

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
Regional	Opportunities and Entry Points within ASEAN for Promoting and Applying FPIC to support Customary Tenure recognition (EN)	Dazzle Labapis (NTFP-EP)
Cambodia 1	Lessons from Applying FPIC in the Keo Seima Wildlife Sanctuary REDD+ Project in Cambodia (KH, EN)	Teng Rithiny (WCS)
Cambodia 2	Lessons from Community Engagement in the Grandis Timber Economic Concession in Cambodia (KH, EN)	Hong Lina (Grandis Timber)
Lao PDR 1	Community Engagement Practices on Customary Land Rights in Forest Areas of Laos (LAO, EN)	Lenol Bounpheng (LIFE)
Lao PDR 2	Applying FPIC for Forest Management in Lao PDR: Lessons from RECOFTC experience (LAO, EN)	Bounyadeth Phouangmala (RECOFTC), Phonephanh Luangaphay (Dpt of Forestry)
Myanmar	Lessons from Applying FPIC for Forest Management in Myanmar (MM, EN)	Naw Ei Ei Min (POINT)
Viet Nam 1	Understanding FPIC in the Vietnamese context: How to apply it and what works best (VN, EN)	Van Ngoc Phan (LANDA)
Viet Nam 2	The FPIC cycle: Practical project experiences in Viet Nam (VN, EN)	Truong Can (CISDOMA)
15' pause (join the plenary)		
12:00 – 12:15	Session 3d: Online / Plenary Key take-aways and plans for further actions	Femy Pinto (NTFP-EP)
Lunch Break		
14:00 – 17:00	<i>Session 4: Responsible Agricultural Investment in Mekong Forest Landscapes: What challenges do responsible investors face in applying RAI, and how can they be supported through policy and practice?</i>	
14:00 – 14:45	Session 4a: Online / Plenary <ul style="list-style-type: none"> Introduction: ASEAN-RAI and Mekong forest landscapes Towards more responsible rubber in Cambodia, Laos and Viet Nam Perspectives from the Timber Sector in Lao PDR 	Dr Jana Herold (FAO) Mr. Diep Xuan Truong and Dr Tran Thi Thuy Hoa (Vietnam Rubber Group) Justin Mercer and Nico Strydom (New Forests, Mekong Timber Plantations)








Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
14:45 – 15:15	Session 4b: Panel Commentary and Q&A	Moderator: Robert Cole (MRLG) Discussants: • James Bampton (WWF) • Stefano Savi (GPSNR) • Vicky Bowman (MCRB)
30' Break (join the breakout group)		
15:45 – 16:30	Session 4c: In-person and online breakout group discussions Discussion examines initiatives in one prominent sector per country and at regional level Questions: • What are the main sector experiences and challenges to applying RAI principles? • What are the key regulations that can help move RAI forward in each sector?	MRLG and FAO partners
Regional 1	The ASEAN-RAI Alignment Tool (EN)	Ms Sarah Brewin and Mr Ronald Tundang (IISD)
Regional 2	Findings from ASEAN RAI Investor Case Studies in Cambodia and Vietnam (EN)	Giang Vu and Bormey Chy (Grow Asia)
Cambodia 1	Engaging with Rubber Companies on RAI in Cambodia (KH, EN)	Ms Man Asisah and Mr Sok Khim (Oxfam)
Cambodia 2	Policy Lessons from Several Case Studies of Agribusiness Investment in Cambodia (EN, KH)	Mr Chan Sophal and Ms Ngorn ChanSovy (CPS)
Lao PDR 1	Experiences of Land Lease Arrangements for Plantations in Laos (LAO, EN)	Sengthong Soukhathammavong (MRLG), Khankeo Ouphravanh (GIZ)
Lao PDR 2	Lesson Learned from Private Sector Engagement on RAI: What are the entry points? (LAO, EN)	Jakapong Prapanjit, Palina Thong-outhoum (Oxfam)
Myanmar	Transparency in agricultural investments as a mechanism to promote rule of law and good governance: Mapping large scale palm oil plantations in southern Myanmar (EN, MM)	Glenn Hunt and Sonia Leonard (CDE)
Viet Nam 1	Opportunities to promote RAI in practice in Vietnam (VN, EN)	Đỗ Hải Linh (PanNature)

Time (Bangkok,UTC+7)	Session	Speaker / Facilitator
Viet Nam 2	Responsible investment in contract farming in the Vietnamese context (VN, EN)	Nguyễn Anh Phong (AgroInfo, IPSARD)
15' pause (join the plenary)		
16:45 – 17:00	Session 4d: Online / Plenary Key take-aways and plans for further actions	Daniel Hayward (MLRF – RCSD)
17:00 – 17:15	Closing session: Looking at the future of customary rights in the forest landscapes of the Mekong region	Vicky Tauli-Corpuz (Tebtebba)
17:15 – 17:20	Thanks words	Thin Lei Win









List of partner organizations who contributed to the Forum








Acronym	Full Name	
AFA	Asian Farmers' Association for Sustainable Rural Development	
AIPP	Asia Indigenous Peoples Pact	
ASFCC	ASEAN-Swiss Partnership on Social Forestry and Climate Change	ASFCC
AWG-SF	ASEAN Working Group on Social Forestry	

Acronym	Full Name	
CCRD	Center for Rural Communities Research and Development	
CDE	Centre for Development and Environment, University of Bern	
CEGORN	Center for Highland Natural Resource Governance Research	
CI	Conservation International	

Acronym	Full Name	
CISDOMA	Consultative Institute for Social Economic Development of Rural and Mountainous Areas	
CPS	Centre for Policy Studies	
DEKI	Department of Environmental Knowledge and Information, Ministry of Environment, Cambodia	
DoF	Department of Forestry, Ministry of Agriculture and Forestry, Lao PDR	
DOL	Department of Land, Ministry of Natural Resources and Environment, Lao PDR	
FAO	Food and Agriculture Organization of the United Nations	
Forland	Forestland Alliance	







Acronym	Full Name	
GIZ	German development agency (Deutsche Gesellschaft fuer Internationale Zusammenarbeit)	
GPSNR	Global Platform for Sustainable Natural Rubber	
GRET	GRET Professionals for Fair Development	
GrowAsia	Grow Asia	
IISD	International Institute for Sustainable Development	
IPD	Investment Promotion Department, Ministry of Planning and Investment, Lao PDR	
IPP	Indigenous Peoples Partnership	

Acronym	Full Name	
IPSARD	Institute of Policy and Strategy for Agriculture and Rural Development, Ministry of Agriculture and Rural Development, Viet Nam	
Land Portal	The Land Portal Foundation	
LANDA	Land Alliance, Viet Nam	
LCG	Land Core Group	
LEI	Land Equity International	
LIFE	The Land Learning Initiative for Food Security Enhancement, Lao PDR	
MCRB	Myanmar Centre for Responsible Business	
MLRF	Mekong Land Research Forum, RCSD, Chiang Mai University	

Acronym	Full Name	
MRLG	Mekong Region Land Governance	
NTFP-EP	Non-Timber Forest Products Exchange Programme Asia	
NUoL	National University of Laos	
Oxfam	Oxfam Cambodia and Laos	
PanNature	Center for People and Nature Reconciliation	
POINT	Promotion of Indigenous and Nature Together	
RCSD	The Regional Center for Social Science and Sustainable Development, Chiang Mai University, Thailand	

Acronym	Full Name	
RECOFTC	The Center for People and Forests	
RIC	The Center for Research on Initiatives of Community Development	
SDC	The Swiss Agency for Development and Cooperation	
SNV	SNV Netherlands Development Organization	
Tebtebba	Indigenous Peoples' International Centre for Policy Research and Education	
VFI	Village Focus International	

Acronym	Full Name	
VNFOREST	Viet Nam Administration of Forestry, Ministry of Agriculture and Rural Development	
VNUF	Viet Nam National University of Forestry	
VRG	Viet Nam Rubber Group	
WB	World Bank	
WCS	The Wildlife Conservation Society	
WWF	World Wildlife Fund	

Acronym	Full Name	
	Burapha Agro-Forestry	
	Grandis Timber Ltd	
	Mekong Timber Plantations	
	New Forests Asia	
	Peking University	
	The Tenure Facility	





The Mekong Region Land Governance Project (MRLG) aims to improve the land tenure security of smallholder farmers in the Mekong Region and has been operating in Cambodia, Laos, Myanmar and Vietnam since April 2014.

MRLG is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC), with co-financing from the Government of Germany and the Government of Luxembourg.

For more information on MRLG, please visit

www.mrlg.org

Mekong Region Land Governance

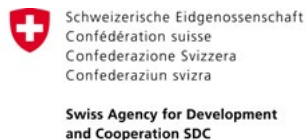
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