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# The recognition and formalization of customary tenure in the forest landscapes of the Mekong region: a Polanyian perspective

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## ABSTRACT

Commodity-driven deforestation and forest conservation efforts in the Mekong region have placed multiple pressures on community-based resource systems, undermining tenure security and livelihoods. In response, several initiatives have been mobilized by states, communities, and civil society organizations which aim to recognize and formalize customary forest tenure rights. We draw on insights from Polanyi's dialectical movement of market expansion and social protection to examine these protective measures as counter-movements that combine forms of state-controlled recognition, community pushback contestations, and more emancipatory movements. We show the omnipresence and contradictions of the state in shaping these counter-movements and the multiple ways in which communities construct new forest tenure arrangements. While there have been important forest tenure reforms and the setup of state-sanctioned mechanisms to give communities greater rights and responsibilities over forests, the process and outcomes of community rights formalization are found to be highly uneven and contingent.

## ARTICLE HISTORY

Received 22 September 2022  
Accepted 20 April 2023

## KEYWORDS

Customary tenure; Mekong region; Polanyi; forest; commodification

## 1. Introduction

The rapid development of markets for land and natural resources in the Mekong region's forest landscapes has resulted in unprecedented, yet contrasting changes. On the one hand, deforestation and forest degradation have been central features of forest transitions across the region, driven by the expansion of agricultural commodity markets, timber logging, mining, and infrastructure development (Hurni et al., 2017; Yasmi et al., 2017). Smallholders have also embraced commercialized crops, as cash allows them to satisfy their needs and aspirations, and also because they often have little choice (Cramb et al., 2017; Gironde et al., 2021). On the other hand, several initiatives, such as protected area management, tree plantations, and community-based forestry, contribute to increasing or maintaining forest cover, or slowing the pace of deforestation (Ingalls, Diepart, et al., 2018). Market mechanisms are increasingly mobilized in these efforts, whether through incentives for verified legal timber (PROFOR, 2011), carbon sequestration (Larson, 2011), ecotourism (Khanal & Babar, 2007), or community forestry enterprises (Wong et al., 2020). The commodification of forest resources is thus a pervasive and variegated process that enrolls a wide range of state, private sector, community, and civil society actors in the coproduction of forests. Yet, commodification has contradictory aims and outcomes in

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terms of forest cover dynamics, forest governance, and how resistance is mobilized against the dislocating and alienating effects of commodification.

In this article, we examine how these contrasting forest transformation and commodification processes, along with the state regulatory mechanisms that shape them, enroll, reconfigure or undermine customary tenure institutions crafted by communities to manage their resources. The vitality of ecosystems and diverse peoples who depend on the forest is at stake. A large (and growing) proportion of the national territories of Cambodia, Laos, Myanmar, Thailand, and Vietnam are classified as state forests, representing 45.6% of the Mekong region's total area (authors' calculation based on FAO, 2020, pp. 136–142). More than 70 million indigenous and non-indigenous peoples live in or at the margins of these forests and depend on the land and natural resources to which they have limited or no legal rights (MRLG and Land Portal, 2021). They include smallholders practicing shifting cultivation, agroforestry, cash crops, and tree plantations; and individuals and communities managing remnant forests. These areas also host an increasing number of migrants in search of land and work. The article maps out key areas of reform and related initiatives to recognize and formalize customary tenure in forest landscapes, how they measure up in terms of their processes and social and environmental outcomes, and, more specifically, how they reshape gender relations.

While governments and outside actors have increased their control over forests, local populations are not passive. They actively engage in forest use and management transformations and shape them in turn. They also become involved in market-based environmental governance, and engage in multiple forms of forest co-management that promise new income streams and security of tenure.

Resource commodification alters how forests are used, valued, and enrolled into wider economic circuits (Hirsch et al., 2022). In the end, forest tenure arrangements can become increasingly 'disembedded' from local social relations, in the sense ascribed by Karl Polanyi (1944). His notion of the double movement as a dialectical process between two contending forces that continuously shape the development of market societies is very relevant to understand contemporary forest issues in the Mekong region.

Polanyi envisioned the state as the main vehicle through which the counter movement channels its demands (Goodwin, 2018). In the Mekong region's forests too, the institutional dynamics associated with the counter movement are framed in relation to the state, which continues to play a dominant role in the administration of forests (De Koninck, 2006; Hirsch et al., 2022; Ingalls, Diepart, et al., 2018). Governments across the region have enacted policies and legislation to involve local populations in sustainable forest management, initiated forest and land allocation programs, and new forms of forest co-management (Gilmour, 2016). In the Mekong region, the area of forest managed by indigenous and local communities as formalized social forestry schemes increased by 62% between 2010 and 2019 (authors' calculation based on RECOFTC, 2020, pp. 43–87, which does not provide any data for Laos).

These countervailing processes reposition communities within networks that bring together an array of different actors with close and distant connections with forests (e.g. farmers, officials, market brokers, activists, development organizations, and researchers) who mediate relations between forest users and the state. Operating in contexts where political space for outright contestation is limited by authoritarian governments, opposition to enclosures of customary land in the Mekong region has tended to work within the state apparatus (Diepart et al., 2019; Kenney Lazar et al., 2018; Sikor & Nguyen, 2011).

In this paper, we conceptualize customary tenure dialectically with forest commodification processes. Commodification transforms customary tenure institutions that regulate the use and management of land and resources. In turn, customary tenure is mobilized as protective counter-movements against commodification and 'disembeddedness' in the Polanyian sense. These comprise the multiple forms of contestation and negotiation by forest users to have their rights to use and manage forests on their own terms and in line with their aspirations, recognized and valorized by the state. Using a meta-analysis approach, we identify key forest tenure reforms, initiatives, and practices seeking to recognize the land and resource rights of indigenous people, local communities, rural women, and smallholders; examine the extent to which such mechanisms have provided greater access and control over resources; and ask whether communities and their allies have been able to

mount an effective opposition to processes of commodification and alienation to secure better tenure, livelihood, and forest conservation outcomes.

## 2. Framing customary tenure with Polanyi

In this section, we outline a conceptual framework that examines how customary tenure is mobilized in the Mekong region's forest landscapes as Polanyian counter-movements. We begin by briefly unpacking the notion of customary tenure, before turning to examine several processes of commodification that are reshaping the use and governance of forest resources. Finally, we present three interrelated processes that shape protective responses.

### *A dynamic and differentiated view of customary tenure*

Broadly defined, customary tenure is a set of local rules, norms, and practices that regulate the allocation, access, and use of land, forest, and water resources within a territory (usually a village or village cluster). These are determined and sustained by communities and informed by particular knowledge, values, and world views. They are tied up with various local customary institutions such as kinship, ethnicity, neighborhood, village, etc. Customary tenure systems include rights to access and use productive resources (agricultural land, forest land, grazing land, and water areas for fisheries); these rights also cover sacred, spiritual, and burial sites (MRLG and Land Portal, 2021). Community members usually have multiple and overlapping rights over land and resources, which can range from individual to collective, temporary to permanent. Together, they represent a set of institutions that define who can use which resources, in what ways, and under what conditions; these are negotiated among community members and offer some form of tenure security to them.

Access to customary and collectively managed land continues to be hugely important for households' income, provision of food, raw materials, and medicinal plants. These resources are crucial to food security, as they provide alternatives and flexibility to cope with market volatility or climate-induced emergencies and reduce dependence on wage labor, migration, or the public health system. Yet, the expectation that customary land can serve as a buffer against market forces also needs to take account of new realities of globalized and increasingly financialized agrarian capitalism (Barney & van der Meer Simo, 2019), and farmers' changing aspirations for different ways of living and new priorities, such as quality education for their children.

Customary tenure systems are not static nor unchangeable: rules, norms, and practices are continuously adapted, reshaped, and renegotiated through processes that are highly contingent on and influenced by local conditions and their interactions with wider processes. Moreover, customary tenure coexists with state laws, institutions, and practices, resulting in overlapping rights, contradictory rules, and competing authorities. Customary tenure can also reflect hybrid governance arrangements where state and communities interact to influence the shaping of rules and practices around resource use and access (Suhardiman & Scurrah, 2021).

Customary tenure is not limited to indigenous peoples or ethnic minorities practicing shifting cultivation for self-subsistence, as is sometimes assumed. It includes a wide array of land use practices and forms of regulation and applies to ethnic dominant lowland groups who also manage forests, grazing land, and fisheries under collective arrangements (McElwee, 2011).

Likewise, communities are seldom intimate, spatially bounded, or socially cohesive units (Pasgaard & Nielsen, 2016). Across the Mekong region, forest communities have become increasingly mobile, highly diverse in terms of livelihoods, and socially heterogeneous. In all communities, hierarchies, and differentiation according to ethnicity, class, gender, and age are shaped by power dynamics, which have a bearing on how customary tenure is perceived and practiced at the local level (W. Dressler et al., 2013).

### **Variegated commodification processes**

While commodities are objects produced for sale on the market (Polanyi, 1944), commodification is the process through which an exchange value is assigned to these objects and the resulting stream of sales that unfolds (Castree, 2003). The process also encompasses the commodification of social relations mobilized to produce a commodity as exemplified by the development of paid labor in replacement of exchanged labor (Bernstein, 2010).

The commodification of forest systems (land, trees, non-timber forest products, and the labor mobilized to produce commodities) is a variegated process (Castree, 2003). We identify several commodification pathways that have contradictory outcomes in terms of forest cover dynamics (deforestation, conservation, and reforestation). Brought together, however, they highlight the centrality of markets in the current transformation and governance of forest landscapes, people's livelihoods, and their relation to nature.

Between 2000 and 2019, a total of 17 million ha of forest is reported to have been lost in the Mekong region, with important variations between countries (see supplementary material). Overall, the picture for the region is one of rapid forest decline, mainly due to forest loss in Cambodia, Laos and Myanmar. At the same time, Thailand and Vietnam experienced forest gain, mainly due to increases in secondary forests, plantations, and the reclassification of forest area (FAO, 2020). Deforestation is mainly driven by the territorial expansion of agriculture linked to regional and global commodity markets. It occurs through large-scale land concessions, medium-sized agriculture enterprises, and smallholder farmers. It takes place because of growing demand for land-intensive commodity exports (crops, animals, rubber, wood and pulp, and minerals), which increased three-fold between 2006 and 2015 (Ingalls, Diepart, et al., 2018). The emergence of plantation forests is further incentivized by market-based certification mechanisms or specific trade agreements. Forest resource commodification also occurs at the community level via practices that promote broader prosperity, for instance, community-based forestry enterprises (Flanagan et al., 2022; Wong et al., 2020).

Other commodification pathways work by assigning a monetary value to non-commodified entities such as ecosystem services or carbon storage. The financialization of areas associated with environmental conservation through such mechanisms as Reducing Emissions from Deforestation and Forest Degradation (REDD+) makes 'green growth' the new frontier of market expansion. The global climate and biodiversity crises have put this proxy commodification (Castree, 2003) at the forefront, enrolling forest communities to assume new roles as guardians of the global commons.

Many of these commodification pathways are manifestations of neoliberalism as environmental governance projects (McCarthy & Prudham, 2004). But unlike the neoliberal gospel lauding the rollback of state interventions, governments across the region play an active role in the commodification of nature. Written two decades ago, Lohmann's article *Polanyi along the Mekong* (2002) already highlighted how Mekong states, along with their international advisors, were facilitating land transfers and pushing the land and forest resources commodification agenda. From a historical perspective, the enduring centrality of state power in forest issues and the persistence of authoritarian governance across the region is shaped by post-colonial, post-socialist, and post-conflict state formation processes that entailed the (re)making of forests by states as a means of territorializing power (Barney, 2017; Hirsch & Scurrah, 2015; Peluso & Vandergeest, 2020). Nowadays, a wide array of state institutions (legislation, policy incentives, and green economy administration) and technologies are mobilized to facilitate the development of markets in forest areas. The contemporary reforms are thus renewed motives for the state to control its peripheries and to source commodities and new markets.

### **Mobilization of customary tenure as Polanyian counter-movements**

As Polanyi (1944) put it, '*land is an element of nature inextricably interwoven with man's institutions*' (p.187). He argued that land (nature) and labor are not originally produced to be sold on the market; only an act of fiction makes them alienable and exchangeable in the

marketplace. When the logic of the market economy turns these 'fictitious commodities' into pure commodities, the economic system becomes disconnected from the socio-political system within which it is embedded. This 'subordination of the substance of society ... to the laws of the market' (p.75), if left uncontrolled, leads to the destruction of both society and the natural environment.

Yet, Polanyi argues, society protects itself against such destruction. Following his dialectic of the 'double movement' the commodification of land and forests across the Mekong region encounters reactions. Customary tenure institutions are adapted, reimagined, repurposed, and mobilized as a social protective measure to limit the negative impacts of excessive commodification and to articulate alternative realities that better account for communities' rights and their role in conservation and development. The reconfiguration of customary tenure as counter-movements takes many forms, as Lohmann already pointed out in 2002. We identify three inter-related forces that shape this process:

### ***Community pushback contestations***

The predominantly negative impacts of land concessions and resource development projects on communities across the Mekong region are well documented (Barney, 2007; Gironde & Golay, 2015; van der Meer Simo, 2020). Upland enclosures and the continued alienation of forestlands and resources from rural, often ethnic-minority communities, have triggered movements of resistance and contestation on the part of these groups against market actors and the state (Yasmi et al., 2010). Protests and pushback actions by communities and their allies are mainly territorial insofar as they aim to regain access to land and resources encroached upon.

### ***State regulatory apparatus***

The delineation of areas reserved for nature conservation, such as national parks and protected areas, is in itself a mechanism mobilized by the state to limit extraction and rollback commodification. Forest management reforms, promoted for about two decades in the region, offer, to a varying degree, the devolution of management rights to local communities and the promotion of different forms of co-management in the production and conservation of forests (Sikor et al., 2013). Legal and institutional frameworks have also made more space for initiatives such as land use planning, communal land titling (Baird, 2013), community forestry (Gritten et al., 2019) and zonation of protected areas (Hing & Riggs, 2021). Each of these mechanisms has a different approach to accommodating customary tenure within statutory systems. They may differ with regard to tenure arrangements, land use types covered, and rights holders recognized to enforce the rules (individual, community, or co-management). Each form has its own package of rights and responsibilities along with conditions related to the duration of these rights. Commonly referred to as bundles of rights (Schlager & Ostrom, 1992), they range from access and use rights, to management, exclusion, and alienations.

Two caveats are needed, however. First, given that some of the protective measures include market mechanisms (community-based forest enterprises, carbon markets, payment for environmental services, ecotourism, etc.), these counter-movements may be contradictory. Even national parks and protected areas, once described by conservationists as 'the ultimate non-commodity', have been likened to sites of accumulation that enable the conditions under which capitalist production can expand (Kelly, 2011; Milne & Mahanty, 2015). Second, even if these initiatives have opened up opportunities for the recognition and formalization of communities' role in forest management, they can also be seen as renewed attempts by governments to maintain or regain control over forests after the perceived failure of the forest industry model to engender socio-economic development, and states' inability to curb deforestation (Barney, 2007).

The ambivalent role of the state across the Mekong region as both driving forest commodification and initiating counter protection measures for certain sectors of the agrarian population is an invitation to examine how this contradiction lying at the core of the Polanyian double-movement is tackled by state and non-state actors alike.

### **Emancipatory movements**

Certain forms of struggle add a dimension to community contestations by advocating for more democratic spaces to enable the inclusion of women, ethnic groups, and marginal voices, and to encourage equitable social relations. These struggles progress as network movements that translate into human rights-based campaigns, policy advocacy or initiatives aimed at empowering marginal groups. Emancipation works here towards the recognition of groups seeking to counter the inequalities produced both by resource commodification and also in the various forms of societal protection that belong to the counter movement (Fraser, 2017): authoritarian state regulation or rigid customary norms that maintain internal hierarchies that legitimate inequality through institutions of tradition (patriarchy, gerontocracy, ethnic or clan dominance, etc.). (2010) extends this argument by suggesting that external interventions by the state and donor organizations to protect agrarian populations against dispossession have often imposed forms of protection that farmers do not want, resulting in complex and heterogeneous counter-movements (Tania, 2010).

### **3. Methodological underpinning**

The empirical part of the analysis is based on the authors' synthesis and review of customary tenure and forest governance issues in the Mekong region represented in published articles and reports that document the evolution and (re)configuration of customary tenure across diverse forest landscapes.

During a preliminary exploration, we consulted several academic databases (Google Scholar, Web of Sciences), but their exclusion of 'grey' literature was deemed problematic because fine-grained data and case studies of forest tenure and customary rights recognition are often produced by researchers that work alongside practitioners and government agencies to produce lessons from field experiments. For this reason, we selected a database that includes both academic and grey literature: the Mekong Land Research Forum repository, hosted by the Regional Center for Social Science and Sustainable Development (RCSD) at the University of Chiang Mai in Thailand. The collection is not intended to be exhaustive but represents peer-reviewed research selected through an internal review and quality check process by regional experts (Hayward et al., 2021). As of April 2022, the database consisted of 848 entries on key themes around land governance in the Mekong region. Out of these, we selected 91 relevant articles published after 2008, a milestone year in the recent agrarian transition marked by the rise of agricultural commodity prices and a surge in land-based investments across the region (Ingalls, Diepart, et al., 2018). We complemented this list with 13 regional review articles retrieved from Google Scholar and 15 reports produced by the Mekong Region Land Governance project (MRLG). We ended up with a list of 119 documents, which we reviewed and coded in NVivo. To organize the review and synthesize a very diverse set of research agendas, each item was coded a priori for categories identified in the conceptual framework: the forest landscape (production, protection, conservation, and swidden), the population (indigenous peoples and other groups), and the forces driving the countermovement (community pushback contestations, state regulatory apparatus, and emancipatory movements). We followed an open coding approach to specify the different tools used to recognize customary tenure (e.g. community-led documentation, titling, co-management, land use planning, payment for environmental services, etc.) and the outcomes of these processes (formalization, exclusions, resistance and conflicts, tenure (in)security, land and resource access, etc.). We paid particular attention to how these processes intersect with gender issues. The themes that emerged from the a priori and open coding process were then used to structure the synthesis to which we now turn.

### **4. Learning from the literature**

This synthesis presents key trends and dynamics shaping customary tenure arrangements and rights to land and forests. It highlights key areas of forest tenure reform and reviews the main tools and



mechanisms mobilized by the state and other actors toward the recognition and formalization of customary tenure.

### ***The erosion of customary tenure in the Mekong region's forests***

Although substantial forest areas are held, claimed and (co)managed by indigenous peoples and local communities, forests in the Mekong region remain under government administration as production forests (for sustainable production of timber and non-timber forest products), protection forests (to maintain important watershed functions) or conservation forest (to preserve biodiversity), or forests allocated to private companies under a concession regime. Despite some promising reforms and initiatives in most countries towards forest tenure devolution, by far the dominant trend across the region is the accelerated decline in community-based access to and control over land and forests that were previously held and managed under customary arrangements. Exclusionary development policies such as large-scale agricultural concessions and environmental conservation are presented as primary causes of outright dispossession (Dahal et al., 2011; Erni, 2015, 2021; Hak et al., 2018; van der Meer Simo, 2020). Worldwide demand for cash crops, on the other hand, drives rapid deforestation and a shift from subsistence-oriented swidden farming to permanent agricultural fields (Erni, 2015). The commercialization of agriculture, individualization of land ownership, and the emergence of land markets also result in 'accumulation from below', including the loss of land by households via distress sales and the concentration of land in the hands of wealthier community members (Erni, 2021; Hak et al., 2018).

As government policies and market integration favor private land rights recognized by state legislation (Erni, 2015; Milne, 2013), institutional pluralism of customary norms and statutory rights has become a defining element of land tenure across the Mekong region (Andersen, 2016; Ironside, 2017a, 2017b, 2017c). Although statutory and customary tenure coexist together, they are not on an equal footing. The separation of the landscape into the forest and permanent agriculture, which has been central to how states allocate individual rights for farming and administer forests for conservation purposes, fails to recognize customary land use and livelihood practices that traverse the agriculture-forest divide. Thus, conflicts continue to emerge due to overlapping claims to land and forest resources (MRLG & LIWG, 2021).

Policy-makers often paint customary tenure and traditional land use and livelihood practices as backward, destructive to the environment, and a barrier to progress (Erni, 2015). Whether these prejudices and misconceptions arise from ignorance or are deliberate judgments, they undermine customary practices, and the knowledge systems on which they are based, and erode the security of tenure they offer (Springgate-Baginski, 2019). They also facilitate their incorporation into market systems with their inherent processes of accumulation and dispossession. Ethnic minorities and women in particular suffer disproportionately from deforestation and land alienation (Beban & Bourke Martignoni, 2021; Hak et al., 2018). Yet simplified representations of marginalization, exclusion, and inequality based on ethnicity and gender are also subject to challenge. Some authors argue for the need to take an intersectional approach to gender relations, which recognizes how culture, economic and social power shape customary tenure and how marginality is reproduced in new ways in contexts of enclosures of communal resources (Beban & Bourke Martignoni, 2021; Erni, 2021).

The loss of customary access and management rights to forests has consequences on labor and gender division of tasks (Erni, 2015). Beban and Bourke Martignoni (2021, p. 13) note 'a stronger spatial differentiation' between men and women. Women go less into the forest to collect food as forest areas have become more difficult to access since they were leased, those accessible are further away or they are depleted, and because women must give priority to growing cash crops. Forests have thus become 'a predominantly male space' (ibid), whereas the home is the space of women and their caring responsibilities. In this sense, gender roles have become more segregated (Park & Maffii, 2017). Also, more men engage in wage work, although the gap is narrowing as women also have to engage in wage work out of necessity (Gironde et al., 2021).

In contexts such as Cambodia, where customary systems have afforded women with some social power, the privatization of communal forests has reconfigured gender in ways that can make gender

inequality more prominent (Beban & Bourke Martignoni, 2021). Social norms over inheritance and intergenerational transfer of assets can also shift as customary land is commodified, with some evidence that in matrilineal and bilateral systems, a norm of patrilineality may become established as land becomes scarce (FAO, 2019). In Chin state, Myanmar, inheritance rules are also evolving, but in the opposite direction. In these formerly patrilineal communities, women are now inheriting land due to the out-migration of eldest or middle sons (Boutry et al., 2018).

As shown repeatedly in the literature, market forces are disrupting and undermining customary tenure systems everywhere. This is often associated with conflicts, forest loss and degradation, and growing inequality. Tensions are often represented through iconic cases involving confrontations between communities and outsiders or the state (Yasmi et al., 2012). Yet market opportunities also create dilemmas and differentiation within communities, between partisans of customary norms on the one hand, and individual land rights on the other (Milne, 2013). Elite capture and abuse of power at the local level can exacerbate these tensions and create social and economic fractures (Ling 2017; Springate-Baginski, 2019). However, customary institutions for conflict management can be ill-equipped to manage complex conflicts that involve a wider set of actors and scales, or the state itself (Work, 2016). Formal conflict resolution mechanisms, on the other hand, are often skewed toward the interests of powerful actors (Yun, 2015).

Multiple strategies are used to hold governments and corporations accountable for their activities, but communities usually target the state as an intermediary actor to regulate corporations (Hak et al., 2018). Although there are many cases of community mobilization and collective action to protest and resist, fomenting resistance can be life-threatening and exposes protesters to serious risks that are usually dissuasive (Kenney Lazar et al., 2018). Several researchers document stories of women leading land protests (Beban & Bourke Martignoni, 2021; Hennings A, 2019; Clara Mi Young Park, 2019). This engagement is seen as an opportunity to grasp leadership positions or at least result in 'increased levels of confidence' (Clara Mi YoungPark, 2019). Against this optimistic view, however, some authors argue that placing women at the forefront of violent protest exposes them to substantial physical and emotional risk (Clara Mi YoungClara Mi Young Park, 2019) without tangible rewards in the form of greater equality (Hennings A., 2019).

Given the multiple forms of discrimination faced by state representatives, some ethnic minority groups are asserting their identity as Indigenous Peoples as a basis for making claims to land, territories and resources (Swift, 2013). They are supported by regional alliances such as the Asia Indigenous Peoples Pact (AIPP) and a widening legal scope for indigenous rights at the international level, most notably the 2009 UN Declaration for the Rights of Indigenous Peoples (Dunford, 2019). Making claims based on Indigenous identities is not without risks, however, as recognition of legal rights to customary tenure can become anchored to particular practices, behaviors, and green indigenous subjectivities that do not always fit with the heterogeneous makeup of village life and livelihoods. Some of these initiatives have an emancipatory element that aims to enable more voice for groups that have been marginalized in both traditional and market institutions. For example, the Indigenous Women's Network (whose secretariat is based in the Philippines) works to connect women across the region and to strengthen their inclusion and agency in indigenous movements and initiatives for legal recognition.

### ***State mechanisms to recognize and formalize customary tenure***

Since the early 2000s, governments in the Mekong region have progressively revised their land and forest laws with the stated intention to include some level of recognition of customary tenure and rights in forestlands. While the literature acknowledges progress in these aspects of forest governance, implementation and enforcement remain central challenges (Gritten et al., 2019). Table 1 provides a summary of the different legal mechanisms mobilized by states across the region to formalize customary tenure in forested landscapes. Each mechanism is presented according to forest types (production, protection, and conservation), the institutions that oversee rulemaking and enforcement (individual, collective, or co-managed between a community and the state), and the bundle of rights (Schlager & Ostrom, 1992) granted to resources users (access, withdrawal, management, exclusion, and alienation). From the outset,



it should be said that the formalization of community tenure alone does not guarantee tenure security on the ground. Community rights have not always been upheld by other actors or enforced by the state. The recognition and protection of customary tenure, therefore, goes beyond formalization to include recognition and protection that necessitates enabling legal frameworks, institutions, and governance arrangements, all of which are shaped by political-economic contexts.

### ***Private versus collective titling***

The review of these mechanisms highlights a clear bias favoring private land titles (or land use certificates) over collective ones across all countries in the region (see [Table 1](#)). Collective titling is either limited to non-productive land categories ([Derbidge, 2021](#)), or tied to ethnic or indigenous status requiring cumbersome processes whereby communities are required to prove indigenous status and register as legal entities ([Baird, 2013](#); [FAO & MRLG, 2019](#)). Swiddeners are disproportionately affected as shifting cultivation is fundamentally associated with collective management ([W.H. Dressler et al., 2017](#)). Conversely, communal titling can be seen as a form of isolating ethnic minorities from market opportunities, with restrictions on sale and transfer which may constrain farmer options on such land ([Barney & van der Meer Simo, 2019](#); [Milne, 2013](#)).

The literature suggests that the outcomes of individual or collective titling are ambiguous with regard to women's tenure security, equity, and inclusiveness. Governmental procedures are found to be gender-biased, as men make up the great majority of applicants, due primarily to social norms that recognize men as the landholders and marginalize women in land rights certificate delivery as in Vietnam ([Câm et al., 2013](#)). In Myanmar, [Pierce and Thi Thi Oo \(2016\)](#) show that holding husband and wife joint registration does not change decision-making dynamics. Moreover, women's land rights do not protect women from the precarity produced by the enclosure of communal land and the forest they depended upon for food and livelihood ([Park & Maffii, 2017](#)).

### ***Forest co-management***

Co-management arrangements offering a share of rights and duties between the state and communities (e.g. community forestry, community protected area) have become integral to forest management policies across the region ([Table 1](#)). The literature indicates that co-management, also known as community-based forest management, often contributes to improving forest conditions, partly because communities help restore degraded forests that were allocated to them in the first instance. A common finding in the literature is that the devolution of rights from the state to communities and the strength of tenure rights are insufficient to deliver significant impacts on livelihoods. In particular, communities with rights over commercially viable forest resources are often required to obtain approval from government officials to harvest, and/or are restricted by regulatory barriers on timber harvesting, processing, and transport, as well as complicated forest management planning requirements ([Gritten et al., 2015](#)). Issues related to elite capture, e.g. by village headmen or representatives of community-based groups who seize collective benefits towards their private interest, are often identified as lying behind the failure to meet poverty reduction targets of forest co-management schemes ([Gilmour, 2016](#); [Sikor et al., 2013](#)). Support for community-based forestry has waned over the last two decades. According to [Gilmour \(2016\)](#), this is because projects have failed to deliver the promised trade-offs between biodiversity conservation and livelihoods. Donor agencies redirected funding to more efficient poverty alleviation projects. However, it has regained traction with increasing interest in the potential of forests to contribute to carbon storage and hence climate change mitigation ([Gilmour, 2016](#)).

The literature further suggests that the potential of community forestry to overcome gender inequality often remains unfulfilled. Several articles point to situations where women have minimal participation or are underrepresented in community forestry ([Gilmour, 2016](#)), have little or no leadership positions in the forestry sector as in Vietnam ([Thuy et al., 2012](#)), or cases where gender aspects are not addressed as exemplified by the revised forestry law in Laos ([MRLG & LIWG, 2021](#)).



**Table 1.** Characteristics of key mechanisms of customary tenure formalization in the Mekong region.

	Forest types					Rulemaking and enforcement			Bundle of Rights (granted to users)			
	Production	Protection	Conservation	Other***	Individual	Collective	Co-management	Access	Withdrawal	Management	Exclusion	Alienation
C	Community Forestry	✓			N/A		✓	✓	✓	✓	✓	✓
	Communal land title	✓			N/A		✓	✓	✓	✓	✓	✓*
	Community Protected Areas	✓	✓		N/A	✓	✓	✓	✓	✓	✓	✓
	Private titling	✓	✓		N/A		✓	✓	✓	✓	✓	✓
L**	Land Use Planning	✓	✓		N/A	Variable depending on LU	✓	✓	Variable depending on LU	✓	✓	✓
	Village Forest Management Plan and Contract	✓	✓		N/A	Variable depending on LU	✓	✓	✓	✓	✓	✓
	Control Use Zone permit	✓	✓		N/A		✓	✓	✓	✓	✓	✓
	Land Use Certificates (non-permanent land uses)	✓	✓		N/A		✓	✓	✓	✓	✓	✓
M	VfV land use permit			✓			✓	✓	✓	✓	✓	✓
	Land title (Form 7)			✓			✓	✓	✓	✓	✓	✓
	Community Forestry Certificate	✓			N/A		✓	✓	✓	✓	✓	✓
	Community Forest-Based Enterprise	✓			N/A		✓	✓	✓	✓	✓	✓
T	Community Forestry	✓			N/A		✓	✓	✓	✓	✓	✓*
	Community Land Title	✓			N/A		✓	✓	✓	✓	✓	✓
V	Individual Land Use Rights Certificates	✓			N/A	✓		✓	✓	✓	✓	✓
	Collective Land Use Rights Certificates	✓			N/A		✓	✓	✓	✓	✓	✓*
	Forest contracts	✓			N/A		✓	✓	✓	✓	✓	✓

Note: Key: 1. C=Cambodia L=Laos M=Myanmar T=Thailand and V=Vietnam; \*incomplete transfer (limited to specific land categories or specific groups) \*\* In Laos, tenure rights for communities inside forestlands remain unclear following the revisions of the Land Law and Forestry Law. Inter-ministerial discussions are underway exploring the possibility of allowing 'land titles (to be issued) to landholders of permanent residential and agricultural land in villages that are located inside the three State Forestland categories, but existed before the official declaration of the respective Forestland, while Land Use Certificates can be issued on non-permanent types of land uses.' However, regulation has not yet been developed (Derbridge, 2021). \*\*\* The category 'other' applies to Myanmar only and refers explicitly to the Vacant, Fallow, and Virgin land category, which is not part of the Permanent Forest Estate and Protected Areas but is home to important customary tenure arrangements associated with but not limited to shifting cultivation practices.

### ***Territorial recognition of customary tenure?***

Given the centrality of the state in forest management, most of the discussion, advocacy, and support for initiatives to recognize customary tenure focus on the formalization of community rights within specific forestry schemes. However, the literature also points to other mechanisms that can be mobilized with the same goal. They can take the form of social safeguard mechanisms, such as Free, Prior, and Informed Consent (FPIC) that builds evidence and prepares communities for informed engagement with the state, investors, and conservationists (Rock, 2019). Documentation and mapping of customary tenure by communities and civil society organizations can be an important (interim) measure to protect community lands from outside interests, particularly in the absence of laws protecting customary tenure, such as in Myanmar. Documentation and mapping of community forest tenure have also been undertaken as part of formalization processes, for example, in preparation for state registration of community forests in Thailand. Documenting customary tenure also has the potential to empower communities in protecting and managing their resource base through a reflexive process that helps articulate both their rights and common visions for the future against competing interests (Allaverdian et al., 2017).

Communities manage forests, agriculture, water, and other natural resources in integrated systems across several land uses (Fogerite, 2019). Initiatives that formalize customary tenure tend to divide these multi-functional landscapes into different land categories, forest schemes, and even individual parcels which are regulated by sector-specific institutions. This fragmentation can disrupt effective land governance and undermine both livelihoods and the sustainable use and management of forests, precisely because these fragments are part of integrated systems. Land use planning is often presented as a tool to bridge these institutional divides because it adopts a territorial approach that recognizes the multiple dimensions of land uses and helps build dialogue between sectors. When approved, land-use plans can in theory offer interim protection of customary and communal lands (Ling, 2017). However, the literature shows that land-use plans are often part of state territorialization projects (Lestrelin et al., 2012) and predominantly serve the land management and forest conservation objectives of government actors (Broegaard et al., 2017). A review of experiences with land use planning in Laos, where it has been experimented for more than two decades as a mechanism for formalizing village land use rights, finds that land-use plans have generally not been effective in enhancing the tenure security of local communities (Ling, 2017; for an exception, see Suhardiman & Scurrah, 2021).

### ***Customary tenure and the global commons***

The global carbon economy mobilized for REDD+ turns the carbon sequestration in forests into a tradable commodity. Conceived as a win-win market-based intervention, payments of carbon credits are seen as a way to compensate resource holders (the state and the communities) for protecting the forest.

The literature on REDD+ experiences across the region intersects with customary tenure in at least four ways. First, REDD+ schemes are managed under national programs or strategies integrated into national forest management plans (RECOFTC, 2020). As such, they are instrumental in reproducing the struggles and negotiations described above between local forest users and government representatives. Second, as Dwyer and Ingalls (2015) note in the case of Laos, REDD+ engages primarily with deforestation driven by smallholder farmers, while forest loss due to infrastructure projects and large-scale concessions are usually excluded. This puts a considerable burden on forest-dependent farmers, whereas their actions are often framed by much larger-scale dynamics of commodification and deforestation. Not only does this raise equity and justice concerns, it also questions the ability of REDD+ to tackle deforestation. Third, although REDD+ schemes have been identified as having the potential to strengthen local resource tenure (Baird, 2014), the production of carbon as a commodity is embedded in and highly contingent on local processes. Contracts for avoided deforestation are often negotiated locally based on informal customary rights and are shaped by local power dynamics and the ability of actors to assert their claims. The outcome can be paradoxical, as exemplified by a case in Cambodia, where the Forestry Administration allowed shifting cultivation to occur inside a REDD+ project zone because it served its interest to sell carbon, but continued

to prohibit the practice outside the REDD+ area (Mahanty et al., 2013). Fourth, considering the scale of funding made available to local communities, Biddulph (2012) shows that REDD+ is neither a poverty alleviation mechanism nor even a credible means to incentivize avoiding deforestation and forest degradation. He highlights the high risk of elite capture, where local leadership manages REDD+ schemes in ways that work against the interests of poor and marginalized members of the community (ibid).

## 5. Complex and uneven counter movements: Concluding remarks

This article recalls the process of forest use and management transformation and commodification over the last two decades. We analyze how this process puts multiple and increasing pressure on community-based resource systems and reshapes and undermines customary tenure institutions. This has prompted responses by multiple actors to advocate for greater recognition of customary forest tenure rights as a pathway for achieving the interrelated goals of sustainable livelihoods and management of the region's remaining forests. We have envisaged these protective measures as Polanyian counter-movements that combine forms of state-controlled recognition, community mobilization, and more emancipatory movements that challenge both state and internal community hierarchies.

These three political forces rarely work in isolation from one another. Confrontational pushback against the state is not a tenable option for many forest communities in the Mekong region where repression of dissent is a common response under prevailing authoritarian polities (Barney, 2017). Grassroots mobilizations that spearhead counter-movements and inflect change in state policy and laws as described by Lohmann in Thailand (2002) have become more the exception than the rule. To gain legitimacy and credibility, communities need to navigate complex state regulatory and bureaucratic processes and compromise, engage, and negotiate with the state (Diepart et al., 2019; Kenney Lazar et al., 2018). In turn, the state retains the discretion to accommodate, dilute or repress demands for protection. In the end, counter-movements are polymorphous, a finding that echoes the work of Goodwin (2018) and (2010). They combine multiple forms of expression, power, and engagement with networks that usually transcend the nation-state (Vandergeest, 2006). These counter-movements have been crucial in widening the recognition that secure tenure and community access to land and resources are preconditions for the sustainable management of forests. Nevertheless, our analysis shows the omnipresence of the state in shaping these movements and the narrow and uneven pathways offered to communities to legitimize and gain legal rights to their customary lands, territories, and resources on their terms. Community rights formalization processes are found to be highly uneven, contingent, and susceptible to new forms of control and exclusion. They also can reproduce or emphasize gender inequalities as women usually don't have much decision-making power in forest management or suffer disproportionately from the loss of forests.

Our review highlights the central role of the state in developing or amending legislation, creating institutions, and setting conditions, zonings, and procedures that recognize and allocate indigenous people and local communities certain rights over forests. Yet, the literature also reveals the contradictory role played by the state in that pursuit, pointing to forces that simultaneously marginalize local actors and incrementally deprives them of their entitlements. While state formalization processes are central to strengthening the recognition and protection of customary tenure, governments across the region are also actively prioritizing certain land uses (and users), and empowering corporate actors, developers, and their own forestry departments whose actions continuously undermine customary tenure arrangements and community rights to use and manage forests.

In Vietnam, individual and communal ownership of forests has expanded, but in other countries (Cambodia, Laos, Myanmar) private or state-owned companies have generally outcompeted communities and indigenous groups in gaining formal forest tenure rights on state land. In Thailand, the system of protected areas generally limits community rights. This overall picture reflects a preference in the region for industrial concessions, export-oriented commodity crops, and protected areas over community forms of management, and has limited the scope for forest tenure reform as well as the enforcement and protection of community rights.

Governments maintain important prerogatives over forest management and play a crucial role in facilitating capitalist expansion through the granting of agro-industrial concessions, infrastructure development, and other resource extraction project from which they benefit. Because of this, they impose restrictions and conditions that limit communities' rights over their customary lands. Altogether, the devolution of forest management rights to communities is insufficient to generate livelihood benefits from the forest or even safeguard them against possible dispossession or appropriation of resources by the state and powerful elites. The preference for and the promotion of individual land rights against collective forms of property rights further propels forest resource commodification and puts additional pressure on customary land tenure systems.

Customary tenure rights are thus never simply granted by the state. Communities need to actively demand their rights and legitimize their claims through sustained collective agency and the creative use of strategies. In the Mekong region, this struggle always requires an engagement with the state. Communities must continuously demonstrate their intention and capacity to use and manage resources responsibly and overcome bureaucratic hurdles to benefit from forest products, particularly those that generate income. At the same time, communities can at times find some room to maneuver to shape how certain rules are implemented on the ground that enables them to conform to state formalization blueprints. The recognition of customary tenure in the Mekong forest landscapes is thus an act of constant negotiation whereby the rules, practices, and norms that shape the use, access, and management of forest resources are co-constructed by communities and the state based on hybrid institutions.

Another contradiction that lies at the core of customary tenure recognition is that while strengthening community forest tenure is seen as a protective measure against commodity-driven deforestation or conservation, the very process of gaining recognition often involves enrolling communities into market relations through new forms of forest commodification. This is evident, for example, in efforts that allow communities to live in forests by providing them with alternative sources of income in ecotourism, carbon credit schemes, and payment for environmental services. Struggles for recognition of customary tenure can therefore be both a counter-movement against commodification and a process that entails the re-commodification of forests that embroils communities into new networks and social relations of production to serve the market.

The complex processes and dynamics by which customary rights are articulated and legitimized are context-specific. The literature highlights multiple ways in which claims for recognition are shaped by power configurations at multiple scales that produce new forms of inclusion and exclusion, sometimes in quite unanticipated ways. For example, experiences with land titling in Cambodia show that even tenure mechanisms that are considered progressive, have not precluded processes of community social differentiation, elite capture, and growing inequality. Emancipatory and resistance movements that challenge these inequalities do exist but are marginalized by both existing approaches to customary tenure formalization and in everyday forest management practices by the state and communities alike.

## Acknowledgments

This work was supported by the Mekong Region Land Governance project (MRLG). 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. MRLG is implemented by Land Equity International (LEI) and Gret, Professionals for fair development. The Journal's two anonymous referees made excellent comments, which greatly helped strengthen the paper. All remaining mistakes are ours. The Journal's two anonymous referees made excellent comments, which greatly helped strengthen the paper. All remaining mistakes are ours.

## Disclosure statement

No potential conflict of interest was reported by the authors.

## Funding

The work was supported by the Mekong Region Land Governance project.

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