

ASEAN Guidelines on Recognition of Customary Tenure in Forested Landscapes (ASEAN CT Guidelines)



➔ Background

In Southeast Asia, approximately 300 million people reside in rural areas, with up to 70 million relying on forests for their livelihoods. This includes Indigenous Peoples and local communities engaged in traditional farming, fishing, and forestry activities.

There is a pressing need for Customary Forest Tenure Recognition guidelines to address this. These guidelines aim to promote existing forest stewardship, biocultural diversity, and sustainable practices. Customary Forest Tenure Recognition guidelines are needed to promote sustainable practices and reflect cultural values in governing land and natural resources. Moreover, it reflects Indigenous Peoples and local communities unique cultural values and relationships with specific locations.



Photo: NTFP-EP Cambodia

10 GUIDING PRINCIPLES

The ASEAN developed 10 guiding principles to recognize customary tenure for Indigenous Peoples and Local Communities in forested areas. The principles aim to promote equity, gender responsiveness, and inclusion. They form an interconnected framework, addressing cultural significance, legislative changes, participatory planning, benefit-sharing, and collaboration for customary tenure recognition and reform.

➔ Highlights of Studies and Discussions on Guidelines

Between June 2021 and March 14, 2022, ASEAN and relevant stakeholders conducted national and regional case studies, multi-stakeholder technical seminars, and policy dialogues to develop the Guidelines.

Depending on the country's laws and policies, only certain customary rights (use and access to forests and natural resources relative to all other activities supporting customary rights and traditional occupations) and areas of land governed by customary tenure systems are formally recognized.

➔ ASEAN Policy Context

ASEAN needs a specific policy framework to recognize customary land ownership in Southeast Asia. The AWG-SF focuses on reviewing tenure arrangements, mainstreaming FPIC, and identifying priority areas in social forestry. Land and resource policies' complexity, rooted in colonial times, still impacts Indigenous and local communities. Six ASEAN countries have set targets to transfer forest land to communities, with Vietnam achieving its goal in 2016.



PRINCIPLE 1. The Right to Customary Tenure (FPIC)

Customary tenure is a system that connects Indigenous Peoples, local communities, and their territories. It is crucial for their social, economic, cultural, and spiritual identity and the management of natural resources. Recognizing and supporting customary tenure helps protect biodiversity and ensures the well-being of these communities.



PRINCIPLE 2. The Right to Local and Cultural Diversity in Customary Tenure Systems

This guideline acknowledges customary tenure systems' diverse nature, encompassing economic, cultural, and social elements. Any recognition process shall consider the inherent diversity between the highlands, lowlands, and coastal customary tenure systems across ASEAN and the varying bundle of rights attributed to them by Indigenous Peoples, local communities, and the women, girls, and youth in these groups. Customary tenure systems based on cultural and religious values should be recognized, supported, implemented, and monitored.



PRINCIPLE 3. The Right to Traditional Livelihoods and Livelihood Development

This guideline legally recognizes and protects the traditional livelihoods and social and economic enterprises of Indigenous Peoples and local communities linked to customary tenure and their associated bundle of rights linked to lands, forests, mangroves, fisheries, and natural resources in forms that contribute to food and livelihood security, traditional conservation practices and sustainability.



PRINCIPLE 4. The Right to Equitable and Sustainable Involvement of Women

This guideline stresses the significance of including women in securing customary tenure rights. It acknowledges the need to integrate gender perspectives and acknowledge intersectionality in policies and programs related to customary tenure. It also calls for proactive steps to ensure women's involvement and leadership in decision-making, management, and planning, including designing, approving, implementing, and monitoring policies and programs for recognizing customary tenure.

➔ ASEAN CT Guidelines OVERVIEW

Overview: Customary tenure is the informal and socially accepted rules governing land use for Indigenous Peoples and local communities, based on guardianship. It includes rights for women, men, and youth, and often involves overlapping land rights. Recognition can vary from informal agreements to formal titling, but full respect is crucial beyond formalization alone.

Recognition: Recognizing customary tenure goes beyond formal legal documentation. Formalizing statutory rights may not fully protect community lands and their associated rights. National laws often do not fully recognize the bundle of rights held by communities under customary tenure systems.

Nature of the ASEAN CT Guidelines: The Guidelines are voluntary and shall not conflict with existing national laws and regulations or binding international treaties.

Objectives: (1) promote a regional approach to recognizing customary tenure that is gender-responsive and socially inclusive; (2) establish ASEAN standards for customary tenure to ensure alignment with local practices and support livelihoods and food security; and (3) facilitate engagement with Indigenous Peoples and Local Communities at the national level, considering the specific circumstances of each ASEAN member state.

➔ Guide to Implementation

Approaches to guide the implementation of the Guidelines include strengthening national commitments, effective communication, implementation mechanisms, and encouragement of analytical work to recognize customary tenure. It also includes utilizing the best available knowledge and tools and developing toolkits on FPIC and customary recognition.

These guidelines should be treated as living documents.



Photo: POINT Myanmar



PRINCIPLE 5. Secure Legal Recognition of Customary Tenure Systems

For effective recognition, customary tenure systems should consistently represent the interests of Indigenous and local communities. Emphasis must be on safeguarding community rights, especially for women and girls. Though challenging, integrating traditional land tenure into existing legal frameworks is vital. The process involves identification, documentation, and conflict resolution through inclusive approaches. Utilize various legal instruments to acknowledge the rights of Indigenous peoples and local communities while preserving their legitimate customary tenure. Establishing clear rules in the ASEAN FAF sectors ensures fair investments, legal security, and responsible land and resource management, empowering communities in their development endeavors.



PRINCIPLE 6. The Right to Free Prior and Informed Consent

Governments must prioritize supporting Indigenous Peoples and local communities in determining their development priorities through FPIC for sustainable development. This involves providing culturally appropriate information on project risks and benefits. National FPIC guidelines should align with UN Voluntary Guidelines on Governance of Tenure (VGGT) and REDD+ Cancun safeguards, with community input. FPIC should be simple, affordable, and follow domestic regulations while respecting the right to return cultural property taken without consent.



PRINCIPLE 7. Inclusive Indigenous and Community Involvement in Land Resource Planning

Governments must involve Indigenous Peoples and local communities in land and resource planning to avoid vulnerabilities and discrimination. Participatory planning aligns with customary tenure practices, involving all genders and generations and establishing relevant institutions. The process should be inclusive, transparent, culturally appropriate, and respectful of self-determination. Through participatory processes, governments can create laws and policies that reflect the communities' knowledge and traditions in resource governance within forested landscapes.



PRINCIPLE 8. The Right to Equitably Benefit from Customary Tenure Systems

The guideline acknowledges the rights of Indigenous peoples and local communities to benefit from development activities on their customary lands. They should receive fair compensation for any losses and damage. The right to equitably benefit from customary tenure requires the strict implementation of FPIC, accurate and sensitive social and environmental impact assessments, gender and intergenerational equity, and a functioning due diligence and accountability mechanism for achieving justice.



PRINCIPLE 9. The Right to Resolve Conflict

Indigenous Peoples and local communities have customary practices for justice, accountability, and grievance resolution that should be recognized as alternative dispute resolution methods. They should also have access to legal assistance and formal grievance mechanisms. Governments are responsible for protecting the communities' rights to their customary tenure systems and should cease criminalizing their traditional practices and territorial defense.



PRINCIPLE 10. Provide Institutional and Operational Support for Customary Tenure with Adaptive and Multi-Stakeholder Approaches

ASEAN member-states should include common principles and standards in policies to address the lack of recognition of Indigenous and local communities' rights and practices. Governments need to establish dedicated offices for Indigenous peoples and local community concerns. Access points should be provided to enable these communities to communicate their interests and needs, including social, cultural, economic, and political issues. Support capacity-building programs from regional, national, sub-national, and community levels to facilitate an accurate understanding of customary tenure systems, the interconnected knowledge systems, cultural diversity, and gendered dynamics and foster a greater understanding of their importance.



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