

ORDER ON CUSTOMARY RIGHTS AND THE USE  
OF FOREST RESOURCES

~~-Based on the Constitution of the Lao PDR;~~

- Pursuant to the Prime Minister's Decree No169/PM dated 03 November 1993 on the Management and Use of Forests and Forest Land ;
- Pursuant to the Prime Minister's Decree No102/PM dated 05 July 1993 on the Organisation and the Administration of the Village ;
- Pursuant to the Prime Minister's Decree No 99/PM dated 19 December 1992 on Land ;

The Minister of Agriculture and Forestry issues the following Order :

PART I  
GENERAL PROVISIONS

Art. 1 : PURPOSE OF THE ORDER

The purpose of this Order is to interpret and clarify the provisions of the decrees listed above that relate to the exercise of customary rights regarding the use of forest land and forest products by the holders and users of those rights ( "users" and "holders" from now on )Part I of this Order is based in particular on the third paragraph of article 4 of Decree No 169/Pm which says that the "the State recognizes the right to use forests , forest land and forest produces in accordance with the custom of villagers" .

Also covered in the Order are the means of implementing various elements of the Decrees, in particular those relating to the role with respect to customary rights of the Land and Forest Land Distribution Committee that was created by Decree No169/PM .

**Art. 2 : DEFINITION OF CUSTOMARY RIGHTS**

Customary or traditional rights are those rights and obligations held by an individual, a group, or a community which have their root in custom.

Different than laws in their origin and generally not written, customary rights are nonetheless true rights that exist on their own merit . Thus they have the force of law according to the law and legal doctrine of most if not all States .

**Art. 3 : DEFINITION OF CUSTOM**

Custom is the result of practices and usages which have the following characteristics :

- the practices and usages are constant and regular being repeated time and again
- they are old (at least one generation of 20 years)
- they are general, widespread within the group or community
- they are seen by the individual, group, or community as creating rights and obligations among themselves .

**Art. 4 : CUSTOMARY RIGHTS TO BE EXERCIZED FREELY**

Customary rights regarding the use of forest land and forest products are to be exercised freely by their holders within the bounds set by custom . Limitations on their exercise through controls and authorizations should be kept to the minimum judged necessary by the State .

**ART 5 : CUSTOMARY TRANSFER WITHIN COMMUNITY ONLY**

~~Customary rights to forest resources can be transferred through inheritance, marriage and other means accepted by the custom prevailing within the group or community. In general, they cannot be ceded to a person or group from outside the community.~~

**ART 6 : LIMITATION OR REMOVAL OF CUSTOMARY RIGHT**

Customary rights can be recognized, limited, expanded, or otherwise affected by the following means only :

- a) by the gradual lapsing of the custom which gave birth to the right in the first place
- b) by explicit agreement by the holder of the right to limit, expand, exchange or abandon the right.
- c) by law .

**ART 7 : CONDITIONS FOR LIMITATION OR REMOVAL OF  
CUSTOMARY RIGHTS BY LAW**

- a ) The law may restrict or remove customary rights only when the means of article 6,b above , principally in the form of Forest Management Contracts as defined in Decree No169/PM, have been tried and exhausted .
- b ) In addition, the highest interest of the nation must also be at stake .  
In the case of forestry resources, the highest interest of the nation may be at stake when the continuing exercise of the right is likely to result in a degradation so severe that the resource cannot self-regenerate .  
The severity of the degradation is to be assessed with the help of established international standards and the National Forestry Action Plan.  
Development of hydro power, communications and transportation may also be judged to be of the highest national interest .
- c) Limitation or removal of such rights shall be done on a district by district basis .
- d ) Before the rights are limited or removed , the Land and Forest Land Distribution Committee (the " Committee " from now on) established by Decree No169/PM shall enlarge its membership and function as a Special Committee as provided in art 12 .The Special Committee shall assess the facts surrounding such a possibility and make recommendations to that effect to the district governmental authorities .

**ART 8 : COMPENSATION IN ALL CASES**

The law that limits or removes customary rights relating to the use of forest land and resources will necessarily provide for full compensation ~~where the means of livelihood of the user are affected . Compensation may~~ be of a monetary nature or in kind through provision by the State to the user of an equivalent means of livelihood such as land .

**Art. 9 : NON - LIMITING LIST OF CUSTOMARY RIGHTS  
AND FOREST RESOURCES**

While the rights and responsibilities of village communities vary according to ethnic group and locality, some of the more common are the following :

- a) Within the VILLAGE FORESTS :
- i) right to harvest forest products for the community's own needs as specified in the Village Forest Management Contract, without the need to obtain a permit from the Ministry of Agriculture and Forestry
  - ii) right to harvest for sale such types of forest products which are abundant in the area in volumes sustainable for the area
  - iii) right to obtain with the consent of the village committee a plot for shifting cultivation within the village forest area set aside for that purpose

- iv) right to hunt non-protected animals and to fish by legal means
- v) right to obtain with the consent of the village committee a plot of forest land (2-5 hectares) for forestry purposes
- vi) right to form a user group for the harvesting and selling of non-wood products
- vii) right and responsibility to prevent outsiders from harvesting any product in the village forest .

b) **OUTSIDE THE VILLAGE FOREST**, and as long as the rights of neighbouring villages are respected, the following shall be exercised with the consent of the Committee :

- i) right to fish and hunt by legal means in State forests that allow such activities
- ii) right to obtain a plot for shifting cultivation , for tree plantation or for other allowed activities
- iii) right to gather for community use, or for sale, forest products not protected by law .

**ART 10 : PROTECTION AGAINST ENCROACHERS**

The Committee shall ensure that customary rights are respected in all dealings between users and third parties and shall act on behalf of users when necessary .

**PART II**

**THE LAND AND FOREST LAND DISTRIBUTION COMMITTEE**

**ART 11 : ROLE OF THE COMMITTEE**

The Committee's tasks, in addition to those contained in Decree No.169/PM, are the following :

- 1) To act generally as the local body entrusted with the mandate of ensuring that the rights of tenure and use of forests lands and products by users are secured for their own benefit. At the same time, the Committee ensures respect, by customary and all other users, of government policies expressed by law and the National Forestry Action Plan on the sustainable use of forest resources .
- 2) More specifically, the Committee promotes and actively contributes to ~~the rapid and equitable conclusion of the Forest Management Plans and Forest Management Contracts~~ contained in Decree No169/PM that directly involve users . The Committee shall to that effect encourage the Ministry to target in priority, in its forestry management planning activities , those strategic areas (heads and banks of streams, steep slopes, key biodiversity

conservation areas) where natural resources appear most threatened . Also, in the delineation of Forest Management Planning Areas, the Committee shall assist the Ministry in keeping in reserve for customary land use sufficient areas to allow for demographic growth.

#### ART 12 : THE SPECIAL COMMITTEE

In those cases where it has to make a recommendation on the limitation or removal of rights as called for in article 7,d , the Committee will enlarge its membership and become a Special Committee composed of the following :

- i) the chairperson of the Committee appointed by the Ministry
- ii) the deputy chairperson to be appointed by the district Front organisation
- iii) three members nominated by the Village administrative committees most concerned by the issue under consideration
- iv) a representative of the forestry operators of the district  
-on a consultative basis, a representative of non-governmental organisations active in the forestry sector in the District , if any .

#### ART 13 : ROLE OF SPECIAL COMMITTEE

The special Committee shall :

- a) initiate or fully participate in approve studies of an ecological and socio-economic nature on both the state of the forest resource and the consequences on the users of limiting or removing their rights to the resource
- b) assess the compensation to be paid to the user, make recommendations on its nature, form and modes of payment and monitor the payment or attribution
- c) encourage and contribute if need be to the settlement of disputes concerning all the above through non-judiciary means as provided for in article 16 .

#### ART 14 : FULL PARTICIPATION BY USERS

The users shall participate fully in all dealings concerning forest lands or other forest resources to which they have customary rights of access tenure and use. Thus they shall participate in the activities tied to the roles of the Special Committee contained under article 13. For the studies called for in article 13,a , they shall have equal voice respecting the Special Committee's decisions on:

- the establishment of the terms of reference and expected results
- the budget
- the choice of human resources

- monitoring and evaluation
- and the eventual acceptance of the final report and its implementation .

#### ART 15 : CRITERIA FOR COMPENSATION

When determining compensation due to the users for loss of means of livelihood , the Special Committee shall base its recommendation to the government on its assessment of the following :

- i) the effect of the removal or the restriction of the customary right on the socio-economic condition of the users
- ii) the capacity of the State to offer ~~monetary~~ or other forms of compensation in the concerned district
- iii) the extent to which both the State and the users have in good faith attempted to come to a contractual agreement concerning management of the resource, before decision was taken by the State to proceed by law.
- iv) the magnitude of the degradation of the resource according to the technical studies .

### PART III DISPUTE SETTLEMENT

#### ART 16 : CUSTOM PREVAILS IN DISPUTES

The validity of a custom giving claim to a right, or the validity of ~~the right~~ claimed by a person or a group, is best assessed and resolved through customary means by the community where ~~the custom is practiced~~ or the right is claimed .

Failing the above , the means of reconciliation in dispute settlement in the villages called for in article 8 paragraph 7 of Decree No 102 /PM apply .

### PART IV FINAL PROVISIONS

#### ART 17 :

This Order becomes effective on the day it is signed .

#### ART 18 :

This Order shall be published in the Official Gazette and disseminated by all possible means .