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**Post-socialist land reform in Lao PDR and its impact on community land and social equity**

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**Abstract**

Post-socialist land reform began to take place in Lao People's Democratic Republic (Lao PDR or Laos) during the mid 1990s, recognizing communal and private rights over lands and decentralizing management responsibilities. These are known as the Land and Forest Allocation (LFA) policy that recognizes both communal and private land use and management rights particularly in rural villages and the Land Titling policy, which provides legal documents for land parcels in urban and peri-urban areas securing long-term land use rights and efficient use of land.

Feudalistic relationship did not develop in Lao PDR prior to the socialist reform which began in 1975. The reform was focused on modernizing agricultural production and attaining food sufficiency. Development of formal institutions on lands only began to surge in the 1990s as the government decided to take a passage towards the market economy in 1986. This also gave a new meaning to land.

Our study takes an interdisciplinary approach to examine the effect of post-socialist land reform in rural areas of central Laos where land management policies have been implemented. We incorporate spatial analysis to understand the relations between demographic and resource use change. We also incorporate political ecology approach to understand the land use histories in two communities with diverse ethnic composition, and perspectives of different stakeholders with regards to their meaning of land and how they interpret the government policy. Finally, we examine how the new land policies affect access and use of the commons and consider the impact of current land policies on social equity in two communities.

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## I. Introduction

Land policy that regulates individual and communal access to land has been intermittent and never formally institutionalized in the Lao Peoples' Democratic Republic (hereafter Lao PDR or Laos) due to disturbance by war that lasted over two decades. Moreover, low population density and predominantly subsistence based agricultural production in the country inhibited development of a feudalistic relationship (Evans 1995, 2002). This meant that the socialist reform which began in 1975 was not focused on redistributing lands to peasants, but instead more on modernizing agricultural production to attain food sufficiency (Bourdet 1995). In order to achieve the purpose, the government called for collective agricultural production. Yet, the policy was short lived as the production basis was predominantly subsistence oriented (Worner 1997).

The development of formal institutions on land management only began in Laos after the government's decision to embrace market economy in 1986. By liberalizing the market, the government promoted private sector investment. Collectives and state farms were dismantled; instead the government gave tax breaks as an incentive for private farmers to make a productive use of their land, particularly the agricultural land.

During the mid 1990s, the government also developed legislations that promoted management of communal lands by defining official village boundaries and legally transferring the management responsibility of communal forest lands. The Land and Forest Allocation policy (LFA), which was formalized in 1996, recognized community and individual's rights to use and manage lands particularly in rural areas. The process not only delineated exclusive village boundary, but also distinguished village lands into agricultural and forest lands. Forest lands were classified into forest categories stipulated in the Forest Law including the protected forest, conservation forest, regeneration forest, production forest and utilization forest. All these forests were placed under the management of the village, while degraded forest lands and agricultural lands were subject to private use and management.

On the other hand, Land Titling (LT)<sup>5</sup> recognizes legal claims of individual land users by issuing title deeds and securing their long-term usufruct rights to land. While LFA is implemented by the Department of Forestry under the Ministry of Agriculture and Forestry, LT is initiated through the Department of Lands and Housing Management under the Ministry of Finance. Spatial domains of two policies were separated in the past as LFA focused in rural villages and LT concentrated in urban areas. However, there is an increasing convergence of two policies in both spatial and political domains as LT expands beyond the urban areas. Private rights to land are also gaining an importance in rural areas of Laos as they are increasingly integrated into the market economy. As a result, there is an increasing problem regarding resource tenure as the two policies converge as these policies affect not only who can access and use resources, but also who can manage the resources.

The main goal of our study is thus to understand the way local people's relationship with land and their rights to access and use resources have been affected through the implementation of the two land policies. In particular, we examine the impact of LFA and LT on private and

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<sup>5</sup> In the current paper, Land Titling refers to the government policy of issuing land titles that recognize use rights to private lands (*Kān Ōk Bai Tā Din*). In the meantime, Lao Land Titling Project (*Khongkān Ōk Bai Tā Din*) refers to the project supported by the World Bank, AusAID and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).

communal properties in two districts (i.e. Phonhong, Khamkeut) located in central Laos. Our objective is to understand the differential impact of land policies on the social relations to land in communities of different ethnic groups and across gender. We chose Lak 52 in Phonhong district of Vientiane province and Lak 20 in Khamkeut district of Bolikhamxay province as our case study sites (Figure 1). Both areas are centre of growth at the district level as its economic activities and population are growing<sup>6</sup>. It is also where the systematic adjudication has been recently conducted.

Our study shows also shows how LT, which aims to secure private rights to land, has affected different social groups including women and men from different ethnic groups in the two case study sites. We also examine whether LT has encouraged the development of land market, and led to improve land use practices in two communities (i.e. protection of forest, intensification of agricultural land use). Furthermore, the study also highlights the existing gap between different stakeholders on their perspectives regarding land management.

## II. Objective and research question

In our research we address three critical questions on resource tenure and the effect of formal institutions on land.

- What are the customary uses of individual and common property lands and the resources located thereon, and how does exclusive private ownership affect access and use?
- What are customary tenure and inheritance arrangements for men and women, how do these vary between different ethnic groups, how have these been changing with relocation and economic changes, and how do the terms of Land Titling impact on these?
- What is the spatial development of land markets in each location ahead of, during and following the Land Titling process?

The first question addresses the issue of how a series of land policies in Laos has affected the private and communal resource tenure in two case study sites. In particular, we will review how different government policies on land management have been implemented in the case study sites, and what the impacts on customary resource tenure were. We also consider the nested interest of different agencies and stakeholders that have been part of the process in implementing government policies, and their perspectives on land tenure. The question, thus addresses the problem of overlapping property, and the gaps between perceptions of different stakeholders.

The second question addresses whether the incurred changes have differential impact on social groups, particularly among women and men, and between different ethnic groups. In particular, we question the diversity of local resource tenure within a community, and how this has evolved in two case study sites, and were affected by the government policies on land management.

The last question addresses the development of land markets prior to and after the implementation of LT. We aim to understand the customary practices of allocating and

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<sup>6</sup> *Lak* means kilometer in Lao. Lak 52 and Lak 20 therefore are sometimes called as Kilometre 52 and 20 villages. The name refers to the villages' location from the centre of Vientiane municipality, and from an old military post near the Vietnamese border (located in present day Napo village) respectively.

exchanging lands prior to the issuance of land title, and how this have changed after the issuance of land title deeds.

### III. Methods

Our study incorporates different methods to understand the differential impact of Land Titling on different members of communities, and changes in resource tenure prior to, and after the Land Titling. We have selected two research sites in Vientiane and Bolikhamxay provinces in central part of the country where Land Titling was recently completed. In Vientiane, we selected Lak 52 in Phonhong District. In Bolikhamxay, we selected Lak 20 in Khamkeut district (Figure 1).

In order to understand the history of land management institutions, and the process of implement LT we conducted a group interview at different levels of government offices in the study sites. This includes Provincial Planning Office, as well as Provincial Financial Division, and Provincial Agriculture and Forestry Office. At the district level, we also conducted group interviews at local government offices that were central in land administration including Planning Office, Agriculture and Forestry Office<sup>7</sup>, Finance Office and Transportation Office. Interviews at Planning Office in two districts focused on the history of the district, and the past government policies on land use land management. Meanwhile, at the District Transportation Offices, we focused on the development of infrastructure development plan or *pang meunag* and their involvement in the Land Titling Project. At Agricultural and Forestry Office, and Finance Office of two districts we interviewed about their past experiences in land management and their involvement in the Land Titling Project. We also conducted interviews with Systematic Adjudication Teams (SATs) under the supervision of the Provincial Land and Housing Management Office that conducted land surveys and issued land title deeds in the two research sites.

In each of the case study site, we selected several villages to conduct group interviews with village administrative and political leaders to understand the history of resource use and different land management policies that had been implemented in the village (Table 1). Members that participated in the group interview include village head and tax workers as well as members of the Women's Union. During the group interview, we incorporated sketch maps to facilitate discussions on spatial distribution, land use history and local people's relationship with lands

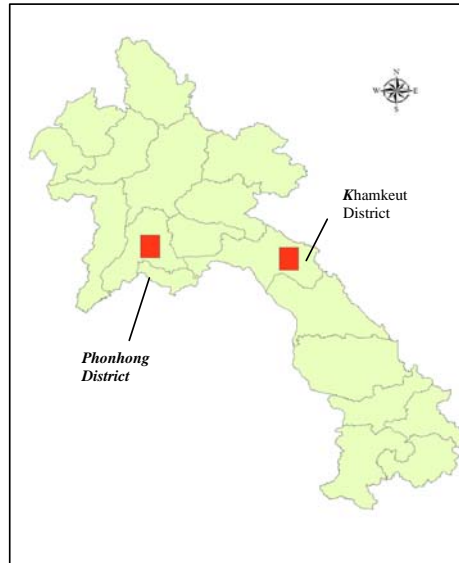


Figure 1 Study site

<sup>7</sup> This became the District Agriculture and Forestry Extension Office in August 2005. However, in the current report we will refer to the office as DAFO.

within the village. We also tried to understand the ways different village became involved in implementing government's land management policies. Furthermore, we selected several households within each village to understand their land use history, and customary resource use practices. Household survey was particularly aimed to understand local people's access to and use of land, prior to and after the implementation of Land Titling.

**Table 1 Household interviews in research sites**

District	Villages	No. of households	Male respondent	Female respondent*
Phonhong (Lak 52)	Nongnak	8	7	1
	Nalao	10	4	6
	Phonkhamtai	5	4	1
Khamkeut (Lak 20)	Namphao	5	4	1
	Phonpheng	7	6	1

\* Numbers of female and male respondents are those that were formally interviewed.

Villages in each site were selected on the basis of their settlement history and ethnic composition. As shown in Table 1, total of 35 households were interviewed. These households were nominated during the group interview in each village, and were selected based on criteria including settlement history, access to land parcels, gender and ethnicity. While majority of the interviewees that were nominated by the village leaders were male, we made efforts to interview women informally to understand different perceptions on land tenure among men and women, as well as their level of participation during the Land Titling process. We also obtained demographic statistic of Phonhong and Khamkeut districts from the National Statistic Centre for 1995, 2000, 2003 and 2005 to understand population change in research sites. These data were incorporated into Geographic Information System to assess population density in two research sites.

#### IV. Research site

We selected five villages in two research sites for the current study (Table 2). In Lak 52 we selected three villages including Nongnak, Nalo and Phonkhamtai. Among the three, Nalao is one of the oldest villages located in Lak 52, which is predominantly Tai Phouan ethnic group. According to the oral history, the village is more than 800 years old. Meanwhile, two other villages including Nongnak and Phonkhamtai are new migrant villages established in 1973 and 1979 respectively by migrants of different ethnic groups from northern Laos (e.g. Hmong, Khmu, Tai Deng). These migrants were refugees from northern part of Lao PDR (i.e. Xiengkhouang, Huaphanh) and arrived to the area during the period between mid 1960s and 1970s.

Meanwhile, in Khamkeut district, we selected two villages including Namphao and Phonpheng village. Namphao village was first established in 1954 prior to the development of Lak 20. Namphao village is predominantly Saek ethnic group (Tai-Kadai ethno-linguistic family), but have been recently merged with neighbouring Tai Phouan village (Tai-Kadai ethno-

linguistic family)<sup>8</sup>. There are also new Hmong migrants residing in the village that arrived recently from another area of Khamkeut district, as part of the government efforts to consolidate small and scattered villages. The village is also expecting to receive new migrants from areas affected by the construction of Nam Theun 2 Hydropower in Nakai district. Phonpheng village was also selected for an interview in Lak 20. Unlike Namphao village, Phonpheng was established in 1984 when the army regiment 515 arrived to Lak 20. The ethnic composition is predominantly Lao. It was also recently merged with two neighbouring villages as a part of village consolidation process. However, the village has not received new migrants from outside of the area. Land Titling began in Lak 52 in 2004, and in 2005 in Lak 20. Prior to Land Titling all villages except for Nalao have undertaken LFA<sup>9</sup> which was led by the District Agriculture and Forestry Office during the early 2000<sup>10</sup>.

**Table 2 Research sites in Phonhong and Khamkeut districts**

District	Villages	No. Households (2005)	Population (2005)	Year of establishment	Year of LFA*
Phonhong (Lak 52)	Nongnak	424	2,944	1973	2000
	Nalao	430	2,628	800 years ago	-
	Phonkhamtai	269	1,612	1977	2000
Khamkeut (Lak 20)	Namphao	199	1,192	1954	2001
	Phonpheng	256	1,543	1987	2001

\* Land and Forest Allocation

**Table 3 Ethnic composition of three villages in 2005**

District	Villages	Ethnic composition	No. Households
Phonhong (Lak 52)	Nongnak	Hmong	417
		Lao	7
	Nalao	Hmong Tai Phouan Khmu	112 317 1
Phonkhamtai	Phonkhamtai	Hmong	212
		Tai Deng	49
		Khmu	8
Khamkeut (Lak 20)	Namphao	Hmong	10
		Lao	169
		Saek, Tho	20
	Phonpheng	Hmong	1
		Lao	227
	Saek, Tho	20	

Source: fieldwork (2005)

<sup>8</sup> Saek is among the Be-Tai ethno-linguistic family within the Tai-Kadai ethno-linguistic family (Chamberlain et al. 1995).

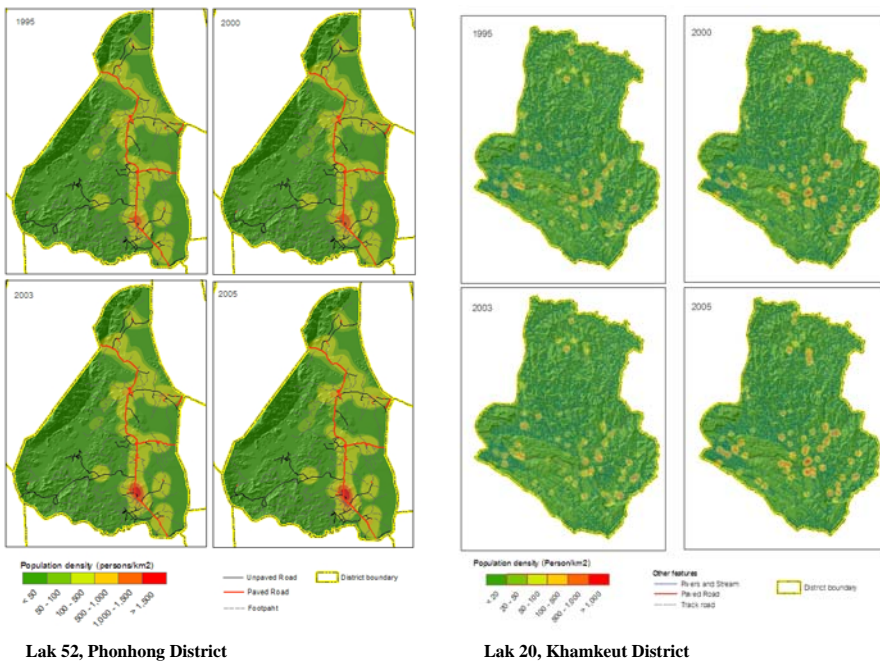
<sup>9</sup> While LFA was not conducted in Nalao, administrative boundary of villages has been agreed among its neighbouring villages

<sup>10</sup> District Agriculture and Forestry Office (DAFO) has been restructured as the District Agriculture and Forestry Extension Office (DAFEO).

In the meantime, Table 3 indicates ethnic composition in five villages. In all villages, we found a mixture of ethnic groups including Lao and other sub-groups of Tai-Kadai ethno-linguistic family, Hmong ethnic group and Khmu ethnic group which is part of the Mon-Khmer ethno-linguistic family. Hmong is dominant in new villages of Lak 52, while Lao is dominant in two villages of Lak 20. Hmong in both research sites are new migrants that migrated from Xienkhouang Province and Xaysomboun Special Zone in the northeast Laos. Population in Lak 52 particularly increased during the wartime arrived to the region in the 1960s. On the other hand, people in Lak 20 arrived with an army regiment during the 1980s.

Figure 2 indicates population changes in Phonhong and Khamkeut districts during 1995 and 2005. Population density maps in the two districts indicate concentration of village population in Lak 52 and Lak 20 particularly during the period between 2003 and 2005. While the population density in central areas of Lak 52 has increased up to 1,500 people per square kilometre, general population in the areas of Lak 52 and Lak 20 remain lower than 500 people per square kilometre. Figure 2 also indicates that population distribution in Khamkeut is still very sparse compared to Phonhong district.

**Figure 2 Demographic changes in research sites**



## V. Land reform in Laos

Unlike in other socialist countries in Asia, land reform was never a central government agenda in Lao PDR due to little development of feudalistic relationship. After the establishment of the socialist regime in 1975, the new government encouraged collectivization of agricultural production (1976 and 1979) to modernize agricultural production. There was little focus in redistributing lands due to predominantly subsistence based agricultural production throughout the country.

Development of land institutions gained importance as the government initiated economic reform in 1986, shifting from a centrally planned economy to a more open market economy (Viravong 1999). In 1990, agricultural tax was abolished and was replaced by land tax, requiring private households to register their lands. Furthermore, by the mid 1990s, the government recognized community and individuals' legal rights to use resources. In parallel, the government began to issue land title deeds to private land holders during the mid 1990s in order to ensure formal rights to land, and promote productive use of lands.

### 5.1 Land Titling

Introduction of Land Titling began in the mid 1990s to replace *Bai Cheng Thī Din* with *Bai Tā Din* or Land Certificate. The pilot phase began in July 1995 and was funded by the Australian government through the World Bank until June 1997. This was followed by initiation of the Lao Land Titling Project (LLTP) in July 1997 (Table 4). LLTP was specifically aimed to improve the economic use of land particularly in areas of high population density, by securing rights to private property.

**Table 4 Project history of Land Titling**

Project phase	Period	Areas of intervention
Pilot phase	July 1995-June 1997	Vientiane Municipality
Phase I	June 1997- September 2003	Vientiane Municipality and four provinces (i.e. Vientiane, Savannakhet, Champassak, Luang Prabang)
Phase II	October 2003-September 2008	Vientiane Municipality, Bolikhamxay, Khammouan, Savannakhet, Champhassak, Salavan, Vientine Province, Luangprabang, Xayyabouli

Land Titling was not intended to create any new rights for individuals, as most individuals already had access to land. Instead, it formally recognized the exclusive land use rights of the private entity. Land use rights are secured through the formal registration of land and the issuance of *Bai Tā Din* or land title deed. *Bai Tā Din* is the highest form of legal document in Lao PDR to this date, and was intended to assure private entity's land use rights including the rights to transfer, sell, inherit, concede, lend and use for collateral.

In order to obtain a land title deed, landholder must register and have their land parcels surveyed. The process of registering and issuing land title is called adjudication. Currently adjudication of land title is administered through the Provincial Office of Lands and Housing Management. There are two types of adjudication process: systematic and sporadic adjudication



processes. Ministerial Directions No.996, 997 and 998, issued by the Ministry of Finance in 1998 claims the importance of adjudication process, and defines how each process is implemented. Figure 3 also illustrates the general processes of the two adjudication system.

Under the Ministerial Direction No. 997, the Department of Lands, and the Provincial Office of Lands and Housing Management, in coordination with the provincial and district administrative leaders are the authorities that are responsible in determining the area suited for systematic adjudication (Chapter 3, Article 5). When the Land Titling Project began in 1997, criteria for selecting areas appropriate for Land Titling included: minimum forest cover, high population growth, high numbers of establishments employing more than 10 people, high rate of land tax payment, large areas of agricultural land, and amount of registration fees paid. However, as Land Titling began to expand beyond the urban areas, other criteria are now being considered to select the target areas for systematic adjudication such as good infrastructure, potential to resolve high rate of land disputes, need for accessing credit, potential for land transaction and development (See also Lao Consulting Group 2003, Moss 2003).

Under the systematic adjudication process, adjudication unit under the command of the Provincial Office of Lands and Housing Management organizes systematic adjudication team (SAT) which is responsible for registering, surveying and issuing land title. After areas suited for systematic adjudication are selected, areas are mapped with the cooperation of the National Geographic Centre. At the same time, the local authorities began to make public announcement of Land Titling (i.e. radio, newspapers, TV, announcement board, etc.) and send specific notification to individuals residing in the area. In parallel, Provincial Office of Lands and Housing Management also organise a series of trainings and meetings for local government officials as well as villagers in the target area to understand the notion of land use rights, and the importance of registering their lands.

Meanwhile, sporadic adjudication is conducted on demand. Adjudication is done by adjudication unit under the Provincial Office of Lands and Housing Management. According to the Ministerial Decrees, sporadic adjudication can not be conducted in parallel with systematic adjudication in a same area. It is principally conducted in designated areas which is not covered by systematic adjudication or was not registered during systematic adjudication. Fees for systematic adjudication include land survey and issuance of land title. Individual pays total sum of 17,000 kip per parcel when they receive their land title deed (12,000 kip registration, and 5,000 kip for a plastic case to secure land title documents). The cost for systematic adjudication is significantly cheaper compared to sporadic adjudication (PM Decree No.52, based on land valuation). This is because costs of issuing land title through sporadic adjudication are borne by individuals, while costs of issuing land title under systematic adjudication are subsidized by the Project. The lower costs of land registration under systematic adjudication allow more people to register their lands, particularly in rural areas where people have never paid any fees to register their lands in the past.

Under the new land registration system, landholders must provide adjudication team with evidence to show one's legitimacy of land use. According to the Ministerial Direction No. 997 any documents or written records, as well as oral testimony can be used to justify one's legitimate claim to lands (Article 14). Furthermore, adjudication unit must consult village leaders, tax workers, as well as district financial office and others to review the land use history, and ownership of the land. Land surveys are conducted only for those properties without conflicts.

During the systematic adjudication, the adjudication team distinguishes land parcels into four general categories. These include 1) land parcels where *Bai Tā Din* can be issued, 2) where provisional land certificate<sup>11</sup> is issued, 3) state land, and 4) land where no document can be issued. The first category is further classified into areas with complete documentation and incomplete documentation or evidences to prove one's claim to land. Land survey is conducted all categories except for the fourth one.

An area in which provisional land certificate is issued is likely to be a former state land occupied by individuals for some duration, or an area where a boundary dispute exist. After a period of a year, the landholder may apply for the issuance of *Bai Tā Din* at the Provincial Office of Lands and Housing Management. The third category is also surveyed during the systematic adjudication; however, the registration papers are issued under the state, and the records are kept at the Provincial Office of State Property under the Provincial Finance Division.

In areas where land certificates (including provisional land certificates) are issued, all information are kept in an individual land file or *Peum Samnao Thī Din* (often called *Samnao Thī Din*), which is stored at the Provincial Office of Lands and Housing Management. The individual file includes documents such as registration papers (*Peum Thabian Thī Din*) with the actual location and area of the land, land use history document (*Salaban Phoum Thī Din*), land certificate (*Bai Tā Din* or *Bai Yangyeun Xuakhao*), land map and land parcel map which describes distance between cement markers, and signatures of land users surrounding the concerned land parcel.

After the land survey, adjudication unit announces the results in public. Under the systematic adjudication process, results are posted at the temporary office for the adjudication unit for a period of one month before issuing *Bai Tā Din*. Anybody can make an objection of the results during this public notification period. Although it was planned in the beginning that individuals had to collect their *Bai Tā Din* from the Provincial Office of Lands and Housing Management, they decided to send the land title deeds to villages in Lak 52 in order to minimize their costs of collecting title deeds. Villagers were called upon in their villages when the provincial staff delivered the documents to the villages in Lak 52. When they collected their title deeds, they were told to keep it carefully, but without any explanation on detail about what had been written on the document.

Unlike *Bai Cheng Thī Din*, the new land certificate specifies the name of the landholder. An individual or a group of individuals can make a claim to the land based on their customary land use rights. Therefore, husband and/or wife can write their names to legitimize their legal claims to the land. For a property jointly held property (*Din Xuamsang*), the couple can register it under both their names.

## 5.2 Land and Forest Allocation

In parallel with Land Titling, the government also began to initiate land management in rural areas through a policy which is known as the Land and Forest Allocation (*Kān Bēng Din Bēng Pa* or *Mōp Din Mōp Pā*). Land and Forest Allocation or LFA was initiated in the early 1990s through the Ministry of Agriculture and Forestry as a way to promote tree plantation in degraded forest areas through community efforts (Eggertz 1996, Eklind and Johansson 1997). Two major

<sup>11</sup> This is different from the Temporary Land Use Certificate or *Bai Mōp Khamasit Xuakhao* which is issued by DAFO through the Land and Forest Allocation. This is a temporary land title deed issued by the Provincial Office of Lands and Housing Management in areas where Land Title or *Bai Tā Din* can not be issued. After limited time period, it is to be exchanged for a Land Title. According to Schenk-Sandbergen et al. (1997), after 20 years of occupation the landholder can claim for legal rights.

legislations shaped LFA during the early 1990s including the Prime Minister Decree No. 169 and 186. Decree No. 169 is one of the first pieces of national legislation that elaborates on principles of co-management, and recognises local people's rights to access and use natural resources. It also calls for co-management of resources (Hirsch et al. 1996).

Decree No.169 came into effect in 1993, providing a new definition of forest and prescribing ways resources should be managed in the best interest of the national economy. Meanwhile, Decree No.186 on Zoning Land and Forest for Tree Planting and Forest Protection<sup>12</sup> was legislated in the following year, recognising individual, collective and private investors' efforts to manage degraded forest<sup>13</sup>. This decree offered incentives to those individuals and groups that sought to plant trees in degraded forest (Section IV, Article 14)<sup>14</sup>. It also decentralised the right to allocate degraded forest land to local authorities (Section V). Furthermore, Decree No.186 accentuated the importance of classification and zoning. In particular, 'degraded forest land' was defined as an area which included forest fallow (*pā lao*), grass land (*pā khang*), degraded land (*din pok lōn*) as well as deteriorated forest due to logging (*din pā mai xut xom*).

LFA became a national policy under the Prime Minister Order No. 3 in 1996<sup>15</sup>. The Order called for a wider application of delineating territorial boundaries at the village level. At the same time, this allowed the government to control expansion of shifting cultivation, and promote forest conservation at the village level by defining territorial boundaries, and management responsibility of the village organisation.

LFA not only recognised communal rights to manage forest lands, but also recognised individual rights to agricultural land and degraded forests by issuing the Temporary Land Use Certificate or *Bai Mōp Khammasit Xuakhao* (See also Soulivanh et al. 2004). The certificate was issued by the District Agriculture and Forestry Office with the approval of the District Chief without any charge. Households were eligible to apply for a permanent certificate after three years if their land use practices have been in accordance with the government policy. However, as noted by Soulivanh et al. (2004), there has been hardly any effort made by the District Agricultural and Forestry Offices across the country to review the status of Temporary Land Use Certificates. Therefore, most of *Bai Mōp Khammasit Xuakhao* remains in the same state after three years since its issuance.

In the mean time, Department of National Land Use Planning and Development was established through the Prime Minister Decree No. 237 in 2001 under the Prime Minister's Office. This was developed from the Central Committee for LFA. Its main mandate is to coordinate national agencies that are involved in the implementation of land management, as well as developing legislations on land and administering land surveys and land use planning across the country. However, the coordination has not been successful so far, and the Department of Lands and Housing Management, and the Ministry of Agriculture and Forestry continues to play key roles in the land management.

<sup>12</sup> Prime Minister Decree no. 186 or *dam lat wā duai kām bēng din bēng pā phoua kām puk mai le kām pok pak hak sā pā mai* was signed by the Prime Minister Khamtay Siphandone on 12 October 1994.

<sup>13</sup> Section 1 Article 2 of the decree recognizes use of forest fallow (*pā lao*) by a collective group of people, government agencies, private individual or companies from Laos or outside of Laos. The article defines *pā lao* as an area where there is no commercially valuable tree. It is also considered an equivalent of degraded land (*din pok lōn*), grassland (*pā khang*) and degraded forest land (*din pā mai xut xom*). Common understanding of *pā lao* in villages and in forestry offices are forest fallow which was once used for shifting cultivation. Meanwhile, *din pā mai xut xom* generally refers to a degraded forest where degradation was caused by logging.

<sup>14</sup> Those that plant more than 1,100 trees per ha in their degraded forest can seek tax break.

<sup>15</sup> The Prime Minister Decree on Continuation and Expansion of Land Management and Land and Forest Allocation (*kham sang nēnam wā duai kām soup tō phankhanyāi viak gān chatsan thī din le mōp din mōp pa*) came into effect on 25 June 1996.

## **VI. Local people's social relations to land**

In this section, we will review customary resource tenure in two research sites to understand the customary relationship between local people and their lands. As development of land management policy is still a recent phenomenon in Lao PDR, informal property institutions have played the leading important role in defining people's relationship with lands. We will review two types of informal practices that define one's relationship to private and customary lands in our research sites. The first is the inheritance practices of the local community. Different ethnic groups follow different inheritance practices, thus it is important to examine how their practices have been affected by the changing socio-economic situation, and moreover through introduction of new legislations that define how one can transfer their rights to resources.

Secondly, we will review the communal property. Communal property is another type of local institution, which is transferred to the new generations of community members. Unlike the case of inherited property, which applies to individual property, communal property is a property held in common by members of the village, allowing their access and use of lands and resources therein. Traditionally, members of the community generally had a consensus of where the communal property is located. In most instances, there are simple rules that are mutually agreed among the members without any written statement. However, rules for accessing and using communal property are often dynamic and flexible.

### **6.1 Inheritance practice**

Current Land Titling follows the Inheritance Law in 1991, which recognizes equal rights of all the children of both sexes to inherit their parent's property upon their will. In all villages, members of households attended meetings that explained their rights to land. During the land survey, the adjudication team often discussed with the landholder about whose name should be on the title deed.

In all villages, the local financial offices invited women in the titling process, and explained about their women's rights to land. While all female interviewed during the fieldwork mentioned that the process was easy to understand, their understanding on land use rights and their capacity to exercise these right remained highly variable regardless of their ethnicity. Some women were unable to read any letters, while others were not familiar with participating in village meetings to voice their opinions.

For Hmong ethnic group, one of the significant changes introduced by the Land Titling is registration of land title jointly with their husband. Traditionally, Hmong follows patrilineal inheritance system where sons inherit family properties (Schnek-Sandbergen et al. 1997). Women generally receive movable assets (i.e. livestock) from her parents at the time of the marriage as she leaves her father's clan to join a new clan or '*xeng*' belonging to her husband. Immovable assets such as land are traditionally inherited to sons who look after the parents in a patrilineal inheritance system.

Another aspect that had changed for a Hmong ethnic group is the transfer of land after the death of the husband. Traditionally, when a husband passed away, decisions on reallocating resources including land was made by a clan leader of the husband's family. Often, properties were transferred to the husband's male sibling. Although introduction of land certificate did not change women's ability to exercise her rights over land after the death of the partner, it made sure that the land belonging to the couple were inherited directly to the couple's children in accordance with the Inheritance Law.

Introduction of land title thus introduced a new notion of joint-ownership of land. Furthermore, it also introduced the notion of dividing land rights equally among male and female children based on the Inheritance Law. Although Hmong communities retain patrilineal inheritance system in general, families with access to lands are adopting new inheritance practices based on the Law. While clan leaders continue to play strong role in decision making process in Hmong communities (especially in times of disputes), the new notion of property rights is also being adopted in the decision making process.

One of the important considerations on the changing relationship with lands in a Hmong community is that permanent residency and women's ability to generate income have contributed in building their confidence, and ability to make decisions within the family. Many of the women's occupation in Lak 52 have changed significantly from the subsistence based agricultural labour to commercial trading. Furthermore, integration to the lowland Lao culture has opened educational opportunities for younger generation of Hmong females and is changing their traditional role in the family.

The inheritance practices of the lowland Lao communities that were interviewed in both Lak 52 and Lak 20 on the contrary were predominantly matrilineal although Tai Phouan is generally known to be patrilineal (Smuckarn and Breazeale 1988; Schnek-Sandbergen et al. 1997). This means that the youngest child, often a daughter that stays home and looks after the parents until their death inherits residential land and other properties from the parents. Women who have access to inherited property thus retain their rights to make final decisions over land transfer. Yet, many women who inherited the land from their parents in Lak 52 and Lak 20 tended to pass administrative responsibility of land management to their husband (i.e. tax payments, preparation of documents, attending meetings on village land management, etc.). This was largely due to the fact that they were generally unaccustomed to attending village meetings and dealing with administrative matters. Older women in both Hmong and Lao communities had difficult time reading documents written in Lao. These females, thus delegated tasks to male members or their children.

Meanwhile, in lowland Lao communities, family feuds over inherited property began to increase. Although customary inheritance practice recognizes the legitimate rights of the youngest daughter who takes care of the parents in old age, the new Inheritance Law grants equal rights to all children. In places where land is scarce, this caused tensions among siblings as they began to make claims to lands referring to the legal rights.

## ***6.2 Communal property***

Based on household interviews, we learnt that government policies on land management and population changes had a significant impact on local resource tenure in two communities. Increased population density in central areas of Lak 52 and Lak 20 meant that access to productive land was becoming highly competitive. Development of roads and market areas also facilitated conversion of agricultural lands along the major roads into construction lands. As land became scarce, local people began to fence and mark their lands to exclude other people from accessing and using their lands and resources.

Prior to the introduction of the Land and Forest Allocation, customary resource boundary was mutually agreed between the neighbouring villages. Usually, natural landmark is used to distinguish territorial boundaries of the village. Access to and use of resources by neighbouring villagers in an outskirts of the customary village territory, or 'outer zone' had been based on

mutual agreements and therefore inclusive, so far as the resources were used for household consumption. Rules regarding conversion of forest lands and commercial extraction of forest products from 'outer zone' varied among villages, and the value of resource. On the other hand, resource tenure of 'core zone' or central part of the village tended to be more defined as they often belonged to private individuals and families. Informal customary institutions and customary practices (i.e. inheritance) often governed the ways in which resources in the 'core zone' are accessed, used and transferred.

Government policies including the Land and Forest Allocation and Land Titling bore impact on both 'outer' and 'core' zones. In particular, LFA distinguished exclusive village boundary, and further imposed territorial distinctions of different forests in 'outer zone'<sup>16</sup> and suggested ways to manage each category of forests. Village authority headed by the village leader was legally in charge of protecting and managing village forests. This allowed village authorities to exclude non-village resource users. Meanwhile, Land Titling was focused in the 'core zone.' While land titles respected customary ownership of land parcels, it also promoted privatization of lands. For instance, many individuals in Lak 52 and Lak 20 began to register their reserved lands (*din chap chong*) which had been used as swidden in the past.

While encroachment and extraction of resources due to lack of clear boundary had been key problems in the past, new land policies instigated overlapping resource. During the systematic adjudication, areas of *din luam bān* which were located in the target areas were officially classified as state property. However, notion of *din luam bān* was often perceived differently among the villagers. The village authority saw this land as the communal land, the Provincial Office of Lands and Housing Management, as well as the District Finance Office perceived the same land as the state property.

In Lak 52, the village leader faced and state owned company in Lak 20. Unlike the *din luam bān*, jurisdiction and management responsibility of these state lands rested outside of the village authority despite the fact that area had been part of the customary village territory where local people accessed and used resources in the past. The management status of this state land became precarious due to the overlapping property rights, particularly as there was an increased demand for lands.

## VII. Conclusion

Based on our study, we conclude that LT stimulated people's sense of private land ownership in Lak 52 as well as in Lak 20. Dissemination of information on legal statutes preceding land surveys had raised people's interest to legal rights to lands. The initially low cost of applying for a land title also invite villagers to register their lands. However, migrant families with limited access to land and capital resources that have been using communal land faced difficulty in obtaining a long-term land title as they were often unable to pay land taxes from previous years in order to apply for *Bai Tā Din*.

Moreover, as there was no limit on how many land title deed one can possess, there was a sense of inequality in redistribution of land parcels within a village. While better off families with political connections were advantaged to register more land parcels under their family names, poor and migrant families often faced difficulty in registering their lands.

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<sup>16</sup> Five official categories of forest according to the Forest Law include protected forest (*pā pongkan*), conservation forest (*pā saguan*), regeneration forest (*pā feunfu*), utilization forest (*pā namxai*), and degraded forest (*pā xutxom*).

Meanwhile, the systematic adjudication process allowed increased numbers of land parcels that were registered. This significantly contributed in improving the government revenue. However, the tax collection in rural areas remained a confusing task as the District Finance Office had to deal with lands with tile deed and those that continued to use other documents such as *Bai Cheng Thī Din*. In the meantime, neither the District Agriculture and Forestry Office or the District Finance Office has reviewed the status of *Bai Mōp Khammasit Xuakhao*.

Issuance of land title deeds in Lak 52 and Lak 20 has not yet increased improved land use or development. Land transactions have been limited in areas near the town centres and along the major roads. It has not increased investment on agricultural land, due to limited business and market opportunities, as well as due to the lack of adequate credit system. Instead, economic development in two sites promoted conversion of agricultural lands along the major roads into construction lands. The land conversions, however, incurred problems as other lands were inundated due to lack of adequate sewage system. Furthermore, it also incurred conflicts among land holders inside the village in terms of the development of access roads.

Weak land administration also meant that introduction land title did not lower the transaction costs of land after the issuance of land title deeds, but instead increased the formal costs compared to the past when lands were traded and transferred on informal basis. The fact that all records are kept at the Provincial Office of Lands and Housing Management incurred more time and costs for individuals to re-register their lands after the issuance of the title deeds. The lack of judiciary mechanism to resolve conflicts over land also incurred more costs for individuals claiming their legal rights to land.

Securing long-term rights to land has become an important factor for individuals in rural areas where land is increasingly becoming scarce. However, the ability to mobilize land for economic activities is still limited among rural households in places such as Lak 52 and Lak 20. This is due to numbers of factors including the limited market opportunities, as well as lack of adequate credit system, but more importantly still limited understanding of the local people on property rights. It is also important to reconsider the efficiency and adaptive quality of the customary resource tenure as increased sense of private property rights have resulted in diminishing areas of communal property. The trend has been particularly accelerated in areas where systematic adjudication is being conducted as it focuses on the issuance of private land parcels without considerations to social dynamics and the divergent local resource tenure in the village.

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