

Participatory Land Use Planning Manual Village and Village Cluster Levels – Draft, March 2009

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The *Participatory Land Use Planning Manual Village and Village Cluster Levels* outlines the GoL's new Participatory Land Use Planning and Land Allocation (PLUP-LA) guidelines. As the name indicates, the manual mandates greater participation with all stakeholders in planning and zoning at the local level. The "village cluster" or kumban is now an integral piece of PLUP and "village networks" will be utilized to further communication and shared planning between villages in common watersheds. PLUP-LA seeks to improve upon previous land use planning (LUP) programs while also incorporating procedures for land allocation that have been affected by new laws, decrees, and instructions issued since the creation of the National Land Management Authority (NLMA). However, in many ways PLUP-LA does not seek to supplement or amend previous LUP-LA but instead offers a "fresh start" for villages whether they have already completed LUP-LA in the past or have still never gone through the process.

A multi-stakeholder Working Group will oversee these new approaches. This Working Group has been lead by the Shifting Cultivation Stabilization Division (SCSD) of NAFES with the strong involvement of DoF, NAFRI, the NLMA, and an international advisor. The various stakeholders involved demonstrate the GoL's desire for a comprehensive and uniform approach to land use planning and land allocation. The manual intends to be used throughout the country, no matter whether the funding is sourced through the government, INGOs, or the private sector. This draft was produced in March 2009 and a final manual should be made available by October 2009.

Early LUP-LA programs were created to restrict shifting cultivation and manage natural resource use by defining village boundaries, land use zones, allocating family agricultural parcels, and preparing village land-use agreements. MAF has reported [MAF Rural Development Program Assessment Report (2005)] that LUP-LA has facilitated the reduction of shifting cultivation throughout the country. However, it is agreed that LUP inadequately addressed villagers' agricultural needs by zoning too little land for agricultural use, not granting enough land for families, and implementing rigid village land use plans that prevented villages from adapting to future challenges (i.e. increased population growth). These conditions have at times prevented poverty reduction.

PLUP-LA advocates land use planning and land allocation that balances the needs of village populations with the need to conserve natural resources. "Sufficient land would be made available for village livelihoods (agriculture, grazing, fruit trees, and use forest) while natural resources would be conserved". (Manual, 12). Agricultural areas would then need to be large enough to ensure food security and self-sufficiency as a means towards poverty alleviation. Also, the importance of providing families secure land tenure was previously overshadowed by the desire to control shifting cultivation. PLUP-LA emphasizes secure land tenure, specifically in increasing the opportunity of villagers to obtain land titles.

INCORPORATION OF VILLAGE CLUSTER INTO ZONING AND PLANNING

PLUP-LA emphasizes the incorporation of the “village cluster” or kumban into the planning and zoning process. The cluster is ‘an administrative grouping’ of villages at the ‘sub-district’ level. This provides some administrative substance to the village cluster, something that has largely been absent since their creation in 2004¹. Just as the planning and use of an individual or family’s land affects others in the village, the zoning and planning of a village greatly impacts surrounding villages. And conflict amongst different villages should decrease if boundaries, zoning, and planning is done with all villages within a kumban participating. It also provides a way, as long as such agreements are respected by local authorities, of further integrating the villages into the land and forest activities of district administration. “The land and forest activities and priorities in district plans for various village clusters and villages need to be known prior to undertaking PLUP at the village cluster and village level”. (Manual, 39). District plans for common use areas would then inform PLUP for the village cluster and village level, providing greater coordination between the district, kumban and villages. However, the PLUP process would also hope to be responsive to the needs of villages, using the village cluster as a mechanism to better represent any needs before the district administration.

Consistency should be sought in the classification of land use zones between villages within the village cluster. For example, protection forest areas in one village should as much as possible adjoin protection forest areas in other villages, and agricultural farming land in one village should not be adjacent to protection or conservation forest in a neighboring village. The involvement of villages within the village cluster will also promote greater understanding among neighboring villages that helps to prevent inter-village conflict and also increases information and resource sharing between villages, which would not occur otherwise.

Also, a “Village Network” would be formed around “a group of villages that may or may not be located in the same kumban but which share similar ecological conditions normally within the same small watershed”. Such networks would provide greater resources and communication at the villagers’ disposal, while filling in some of the gaps left by a village cluster since villages within the same kumban may not necessarily belong to the same watershed. DAFO staff would be responsible for facilitating the networking meetings and addressing the land issues that are identified.

ROLES OF MAF AND NLMA

Many of MAF’s responsibilities under traditional planning and zoning procedures will continue in PLUP-LA, with the major change being that MAF will not disperse any documents certifying land utilization or use rights and the NLMA will entirely be responsible for all parcel registration within village boundaries. DAFO will focus on the zoning and management of village agricultural and forestland, though subsequent updates to the manual have also included DLMA and district officials in the planning and zoning stages. PLUP-LA requires the coordination between MAF, NLMA, and District Authorities throughout all stages of the process. Ideally, local DAFO would reallocate resources towards land use planning, while the DLMA would prepare village land use plans for lands other than agriculture and forestry. District Authorities will help coordinate the development activities of village clusters, facilitate

¹ The village cluster was created in 2004 by the GoL’s Directive No. 13/PM 2008 on *Village Cluster Development Policy (Kumban Pattana)*. See also Instruction No. 09/PM on *Building Villages and Village Development Clusters*.

communication between MAF and NLMA, and mediate any village or inter-village conflicts not resolved by DAFO and DLMA.

Planning would begin at the earliest stages of the PLUP-LA process. DAFO, supported by DLMA and District Authorities, would first hold village orientation meetings to elicit the participation of the entire village, and only then would a Village Land and Forest Management Committee (LFMC) be formed. Also, educating villagers regarding their land rights is required, though there is little in the manual itself about how such education would be done.² DAFO's responsibilities during the planning process are very similar to the LUP work done previously, which include preparing forest and agricultural land management plans, digitally mapping the village and village cluster agriculture and forest land zones with support from central agencies, and monitoring the results and impacts of PLUP. Because the DLMA will be conducting the land registration, the information collected by DAFO, including The Family Land Tenure Analysis Form, will need to be stored securely and shared with the DLMA.

LAND REGISTRATION

The GoL continues to affirm NLMA's legal power to register and manage land within the Lao PDR. The DLMA will be charged with registering all land and issuing government documents certifying an individual or family's use rights. During PLUP-LA, systematic registration or "adjudication" of land parcels will be done, utilizing DAFO's zoning and land management plans to register state, communal and individual land parcels. This information, which includes cadastral maps, would preferably be stored electronically at the central or where GIS capability exists at the provincial level. However, alternative methods of storing information are also advocated at the local level.

PLUP-LA emphasizes the need for villages to be granted land title when possible³. Land Title would be granted to those eligible without the need to first issue Certificates certifying utilization rights. The manual advocates that MAF will no longer issue Temporary Land Use Certificates (TLUC) to recognize an individual or family's utilization right for agricultural land. Under the previous LUP, TLUCs were legal documents that recognized a right to use a parcel of land for three years. Then, if the land was developed and used in accordance with the land use recorded on a contract accompanying the TLUC and village's planning and zoning restrictions, the individual or family would be eligible to apply for land title. However, mechanisms to actually progress from a TLUC to a land title were not established and district authorities often did not return to complete the registration process, leaving many of the provisional certificates to expire with villagers still not having secure land tenure.

The DLMA would use the Family Land Tenure Analysis Form prepared by DAFO to "understand land ownership and land parcel claim status" of individuals or families within the village. (Draft, 81). Individual and family Land Titles will be issued only for 1) agricultural land parcels that are located in the village agricultural land use zones designated by the village

² The manual does list the *Handbook on Village Rights and Responsibilities* as the type of materials to be used during stage 1 of the PLUP process.

³ Lao PDR's *Resolution of the National Land Meeting 07 – 08th* (May 2007). ("Accelerate and expand land titling in each province, district and village throughout the country, including the urban, outskirts of town areas and the rural areas. In each province there should be registration to be able to reflect the main objective of the land titling program. That is 1) to form part of the poverty eradication program, 2) to certify permanent land use rights, and reflect the policy of assets capitalization, 3) to increase the value of land in each province, 4) to encourage and support land users to carry out their obligations to the state comprehensively and according to the law.")

land use zoning and land use planning process; and 2) have been developed for three years or more; and for 3) residential land.

The Family Land Tenure Analysis Form would allow the DLMA to see how long a parcel has been developed, whether the type of land is “permanent” or “non permanent”, and any documents that could be provided as evidence of the family’s occupation and use of the land. The land must have been occupied and developed for at least three years, as would be often evidenced by a Land Development Certificate. Also, only “permanent” land would be eligible for registration, such as paddy, garden, orchard, plantations, and grazing, while “non permanent” land such as swidden would be ineligible. Finally, any documents that could show evidence of occupancy and land development, such as TLUCs, Land Development Certificates, Certificates of Land Ownership History or Customary Use Verification by Village Head would be listed. The possession of any one of these documents by themselves is not sufficient to demonstrate the occupancy and development of land parcels to be eligible for registration. Thus, the possession of unexpired TLUCs does not automatically qualify someone for parcel registration, while expired TLUCs may still be used as evidence of an individual’s use of the parcel. The Family Land Tenure Analysis Form would then allow the DLMA to determine which parcels would be eligible proceed to be given land title through registration.

However, for those parcels that are not immediately eligible for land registration, land utilization rights will not be recognized through TLUCs, as was done previously. The NLMA will only issue Land Development Certificates and Land Title. Instead of providing TLUCs to recognize utilization rights, the manual proposes that land not immediately eligible for registration be managed by villagers and Village Authorities through a new system of “village managed land allocation”, reflecting traditional land use distribution and management systems. No surveys will be required. Instead, this system is based upon the land parcel identification numbers and the land use information recorded on the Family Land Tenure Analysis Form. These utilization rights would be “informally” allocated to villagers without the issuance of a certificate but are recognized through the village land allocation and land management plans that would be endorsed by the District Governor or District Administration. Any “spare” or “reserved” land that is set aside for future population growth would also be a part of the village managed land allocation system.

Like the TLUCs before, those individuals or families recognized with utilization rights will be encouraged to develop their land according to village use plans and would be eligible for land title in the future. The manual proposes that the time spent developing the land would be exempt for paying taxes until land is eligible for registration. Also, like previous LUP-LA procedures the granting of utilization rights is predicated upon District or DLMA officials returning every three years to provide adjudications.

PLUP-LA would also begin to recognize and register communal/collective land. Villagers would identify land that would be eligible for communal title such as village sacred areas, village forest use zones and village common grazing land. Such land would then be surveyed by DLMA at the same time as systematic adjudication of agricultural parcels. The manual does not limit the communal land to only be registered in the name of the entire village, but leaves open the possibility that other associations or user groups also be eligible for title.⁴

⁴ Further discussion concerning collective/communal land see VFI’s “LaoPDR Collective Land Legal Analysis”.

GEOGRAPHIC INFORMATION SYSTEMS (GIS) TOOLS

An important issue is "developing systems for storage and retrieval of PLUP information at central provincial and district levels, through the improvement of staff capacity in the application of Geographic Information Systems (GIS) tools." (Manual, 19). This requires that digital maps and land use plans of villages, village clusters, districts, and district clusters be collected and stored at the central level. The manual speaks extensively about the different types of planning tools available like topographic maps, satellite imagery, GPS, aerial photography; listing expenses and both positive and negative aspects of each.

FLEXIBLE APPROACH AND PROCEDURES FOR SPECIAL SITUATIONS

The standard PLUP-LA procedures will be flexible when dealing with six different situations: 1) Villages in Production Forests Areas (PFAs), 2) Villages in National Protected Areas (NPAs), 3) Villages in National Protection Forests (NPFs), 4) Villages that have Relocated or Merged, 5) Villages in Agricultural Land Concession Areas, and 6) Villages that have been Resettled due to Industrial, Mining or Hydro Power Development. In each of these situations, "flexibility and adaptation" are built into the standard procedures, highlighting important steps that must be considered in each of the special situations.

5) Villages in Agricultural Land Concession Areas⁵

The manual asserts that PLUP can "facilitate the planning and management of commercial land development activity". Commercial agriculture can be better managed and controlled by having accurate land zoning and planning information. PLUP would provide information to investors that demonstrate the potential investment opportunities and constraints. The hope is that by strengthening the land zoning and land use planning process future development decisions must take into account such plans. This provides greater accountability to district and provincial authorities while empowering the villages that developed the initial plans. There would surely be times when PLUP plans are ignored, but accurate, digital, government-signed plans should provide greater protection than previous LUP plans.

In areas that have a high likelihood of being affected by concessions PLUP should identify land potentially available for commercial or industrial tree planting in villages after the forest and agricultural land requirements for village livelihoods have been determined. Areas of degraded forest land, bare land, or land in excess of village agricultural requirements for future populations, with slopes less than 25 degrees would be identified, mapped, and classified as "potentially suitable" for plantation development and indicated on the land use map.

This is not to encourage the use of the land for plantations. Instead, it includes villagers in the decision-making process where often times they are only bystanders as decisions came from district or provincial authorities, as well as from central authorities. The collection of land information that could legally be suitable for concessions should help develop greater interaction between the three stakeholders; villagers, district authorities, and investment companies. It is hoped that district officials become facilitators between investors and villagers, not decision makers.

These areas on the land use map would then provide another level of protection to villagers. The law sets requirements on what land could be used for concessions, the GoL has

⁵ There are sufficient talking points for all six "situations", yet land concessions is the only area that I had any experience researching or was able to discuss with those working on the manual. Many of these topics would be applicable to the work VFI has been doing in Salavan.

made repeated statements about the need to control concessions, and the land use map would be certified by district authorities. It basically says that “this is what the law says, the government says this, *and* your office certified that this land, and only this land, could be used for concessions.”

CHALLENGES:

BREADTH OF MANUAL

The manual itself is not bulky, not highly technical, nor does it seek to be exhaustive. However, the increased emphasis on coordination of villages, land rights education, land use monitoring, digital collection and storage, etc. may make the manual appear to be overly ambitious. It rightly sees the PLUP-LA process as an opportunity to tackle many of the land issues that currently burden villagers in Laos, but there are questions, as always, regarding capacity and implementation. The manual’s current proposals would require massive amounts of donor support at all levels of the country.

The Working Group overseeing the manual’s development envisions that, with the support of funding, the program will initially start within focused pilot communities. This will allow procedures to be tested while building understanding and capacities amongst stakeholders. This process will not be implemented immediately, as it is well understood the amount of time that such an endeavor requires.

MAF AND NLMA COORDINATION

As one official from NAFES said, “You cannot separate the work of MAF and NLMA” and such coordination will provide many challenges. First, the delegation of responsibilities is continued to be debated, though the decrees and instructions over the last several years have reiterated NLMA’s lead role in registering and managing land allocation throughout the country. Yet, while having the overall mandate for delineation of land uses, the NLMA has indicted that the management of the agricultural land and forest land resources after zoning is the responsibility of MAF. The manual endeavors to reflect this at the local level by suggesting that in some activities they work together and in others the responsibilities are divided based on mandates. Still, the NLMA has been charged with “filling in the gaps” of MAF and district authorities, and there will continue to be debates as to where those gaps are and how they should be addressed.

Second, even if the roles of MAF and NLMA are clearly defined and agreed upon, PLUPLA’s success will largely hinge upon the effectiveness of MAF and NLMA’s cooperation. Local DAFO and DLMA may have experience working together (many DLMA may have once worked for MAF) and these commonalities must be recognized by central authorities, encouraging such coordination in areas where collaboration is not as natural or popular. Cooperation is essential because DAFO and DLMA will be working together from the very first stages of PLUP. DAFO will be charged with compiling the land management plans, village zoning, and Family Land Tenure Analysis Forms that will be essential for District Land Management Authorities’ work of land adjudication. The DLMA’s basis for determining who is eligible for adjudication is based upon these forms, and the process could become greatly hampered if this information is not sufficiently and timely shared. Also, District and Provincial Authorities would be required to be at times facilitators between the two agencies and it is not clear if such local authorities would be able to provide such a role.

Finally, even if there is agreement and cooperation amongst MAF and the NLMA, there are still doubts about whether the NLMA can perform the responsibilities it has been given. The NLMA is seen by many to be understaffed and does not have the presence on the ground that MAF has had, nor does the NLMA have the same amount of funding and human resources at the national level as MAF. Training with GIS tools and digital instrumentation is greatly needed by both MAF and NLMA if the GoL continues to pursue a comprehensive digital imagery of Lao PDR. And DLMA officers will need training to fulfill their responsibilities for surveying parcels for adjudication. In addition, PLUP-LA places a greater emphasis upon education at the earliest stages of the planning process and the NLMA has advocated for greater participation in such meetings and trainings at the village level. These responsibilities will only add to those already placed upon it for land registration.

CONCESSIONS

PLUP-LA proposes to empower local communities to understand their rights so they can make more objective decisions about providing land to outside investors by engaging villagers early on about areas that could be used for commercial development at a later date. By using the land use plan it allows further district and provincial certification of pre-existing law regarding what land would be potentially available for concessions. This subject must be expanded upon in future training materials to address how such areas will be delineated, but more importantly how the rights of villagers concerning concessions will be explained. Support may prove difficult because 1) donors or INGOs may believe that such acknowledgement may produce more abuse and manipulation of villagers' rights and 2) the government may be unwilling to further approve the kinds of educational materials that would have to accompany any village-wide discussions regarding the rights and responsibilities of villagers concerning concession land. Such educational materials and teachings should come from a variety of sources, not just GoL representatives. The actual requirements regarding what land could be available for concessions is rather straightforward, but the sensitivity of the subject would require much training for those implementing PLUP-LA. If private investors were to fund PLUP-LA, then there would be additional questions regarding how such information is communicated to villagers.

Though resistance might be met, the idea provides positive steps in trying to bring the decision-making to the villagers themselves. The land use planning developed through PLUP is often the only way villagers can control or voice the planned use of their land. Also, there are few opportunities that villagers are able to engage with DAFO, DLMA, and District Authorities, so it makes sense to use such a time to also plan and address future conflicts. If such a discussion were inappropriate during PLUP, then the question would still remain when such discussion would be feasible.

HOW ARE VILLAGES SELECTED?

Prioritizing which villages will be first targeted has not been determined, though the manual and individuals that I spoke with seem to advocate that "pressure points" be identified within districts and those village clusters receive priority. Examples may come from the six different situations that deviate from the standard PLUP-LA stages, but other factors such as poverty caused by improper zoning by previous LUP-LA may be just as important. Such decisions will, hopefully, be made as PLUP-LA begins to be implemented and it is important that participating ministries prioritize villages based upon PLUP-LA's current aims (i.e. shifting cultivation not be a

controlling factor, issues of equitable land zoning or increasing land tenure security are most needed, where there is project support from the government or INGO, etc.)

3 – YEAR RETURN FOR ADJUDICATION

There is much hope that adjudication, registration, and monitoring will occur after the PLUP-LA process has finished, just as previous LUP-LA depended upon. The “village managed land allocation” system heavily relies on the fact that those parcels that are not currently eligible for registration will be able to be registered in three years, as long as the parcel is developed. Yet, there is little to show that the three-year timetable is more likely to be obtained, though it is hoped that the divided responsibilities between DAFO and DLMA will allow the DLMA the freedom to focus upon returning to villages for sporadic or systematic adjudication. Also, like PLUP-LA, any return to villages for systematic adjudication will heavily rely on project support, whether from the government, private investors, or INGOs.

However, unlike previous LUP-LA that relied upon TLUC’s that by their very nature expired after three years, no such Certificates will be issued and there is no expiration for an individual or family’s utilization rights to expire under the village managed land allocation system. Because of this, the manual does account for the possibility/probability that the three-year goals are not met. But considering the NLMA’s lack of local manpower and resources, coupled with the experiences of previous LUP-LA, it seems like expecting such a close time frame may be overly ambitious.