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Communal land titles in the Lao PDR: Extracting lessons from pilot initiatives

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Acronyms

CliPAD	Climate Protection through Avoided Deforestation (GIZ)
CLT	Communal land title
DAFO	District Agriculture and Forestry Office
DONRE -	District Office of Natural Resources and the Environment
DLMA	District Land Management Office
DLUAO	District Land Use Allocation Office
FLA	Forest and Land Allocation
GDA	Gender Development Association (formerly Gender Development Group)
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (formerly GTZ – Deutsche Gesellschaft für Technische Zusammenarbeit)
GoL	Government of Lao
IFI	International Financial Institutions
KM	Khammouane province
LIWG	Land Issues Working Group
LMRP	Land Management and Registration Program (GIZ)
LNRRIC	Land and Natural Resources Research and Information Center
LTP	Lao Land Titling Project
LUPLA	Land Use Planning and Land Allocation
MAF	Ministry of Agriculture and Forestry
MONRE	Ministry of Natural Resources and the Environment
NA	National Assembly
NLMA	National Land Management Authority
NLMA.CAB	Cabinet Office of the National Land Management Authority
NT2	Nam Theun 2
NTFP	Non-timber forest product
NTPC	Nam Theun 2 Power Company
NUDP	Northern Uplands Development Program
NU-IRDP	Integrated Rural Development in Poverty Regions of Laos under the Northern Uplands Development Program (GIZ)
PLMA	Provincial Land Management Authority
PLUP	Participatory Land Use Planning
PMO	Prime Minister's Office
PO	President's Office
PONRE	Provincial Office of Natural Resources and the Environment
RECOFTC	The Center for People and Forests
RMU	Resettlement Management Unit
RRI	Rights and Resources Initiative
SNV	Netherlands Development Organisation
TLUC	Temporary Land Use Certificate

Foreword

Sustainable management of land resources has been recognized as one of the most important conditions for eradicating poverty and promoting inclusive socio-economic development, especially among rural populations. Forests similarly play a key role in sustaining local livelihoods and leading to improved living standards. This role has been described in the National Forestry Strategy 2020 of the Lao PDR. Likewise, the Forestry Law underlines the importance of forest land for rural people in the Lao PDR. The Forestry Strategy 2020 also outlines the key steps to achieving full-scale delineation of forest land on the ground, and for protection and sustainable use of forest resources in the future: moving forward with land use planning, improving interagency cooperation, and strengthening the legal framework for land and forest resources. These three central themes are currently the subject of policy debates in the Lao PDR, while the legal framework of the Lao PDR is being reshaped.

Communal land is one issue that will be further defined in these new and revised policies and laws. There has been significant interest in communal land since a partial legal framework for communal land was first introduced in the Lao PDR in 2007. Since then, collective land rights have been awarded to two sets of communities, first in Sangthong district, Vientiane capital, and later in Nakai district, in Khammouane province. These experiences call for an analysis and dissemination of lessons learned; in order to help the relevant government institutions and other stakeholders understand how these cases may inform future policy and legislation. While the two pilot cases described have only recently been established, and are still in the process of implementation, it is hoped that the information provided in this study can help inform policy discussions, as well as provide a framework for understanding how communal land rights are used in practice. Finally, some of the challenges and open questions remaining about communal land in the Lao PDR are summarized for further consideration and discussion.

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Thongphath VONGMANY

Executive Summary

This study provides an analysis and comparison of the two first cases in the Lao PDR in which communities received collective land rights to village land. In Sangthong district (Vientiane capital), five villages received temporary land use certificates to village forest in 2011 as part of a bamboo value chain project. In Nakai district (Khammouane province), 14 hamlets resettled because of the Nam Theun 2 hydropower dam received permanent title to agricultural land, forestland, and other village areas in 2013.

The study provides details on what types of land and how much was awarded, what rights the titles and certificates convey in these two cases, how communal tenure corresponds to community livelihoods, how the beneficiaries were defined, which process was followed, and how the rights are being implemented on the ground. The existing legal framework for communal and collective land titles is summarized, in addition to an overview of ongoing legislative drafting and revision processes for the National Land Policy, the Land Law, and the Forest Law. In addition, the implications of significant restructuring of institutions and responsibilities are discussed.

In comparing the two case studies, five main differences can be seen:

- **Permanence of titles:** temporary land use certificates were awarded in Sangthong, and permanent land titles were issued in Nakai.
- **Government authority:** the District Governor and the representative of the District Land Management Authority signed the certificates in Sangthong. In Nakai, the director of PONRE and the deputy director of the Provincial Land Management Authority signed the titles.
- **Decision-making body:** In Sangthong, the village authorities make decisions about the collective land. In Nakai, the resettled families have one vote per household to make decisions about the collective land.
- **Type of land:** In Sangthong, a specific area in each village was delineated as collective land, consisting of secondary forest primarily composed of bamboo. In Nakai, all village lands that were not explicitly designated as individual land or state land were included into the collective title, including village forests, community agricultural land, and conservation and production forestland.
- **Membership:** In Sangthong, the village authorities are in charge of making decisions but there is no clear definition of membership. In Nakai, the regulations on the collective land specify which families have voting rights to make decisions about the land.

In both cases, key pre-conditions helped achieve collective titles for the communities:

- A Participatory land use planning process (PLUP) had been completed, helping settle disputes about boundaries and proposed rules for access and use of the collective land.

- In Sangthong, an approved management plan for the village forest was already in place, providing information about the forest under title and defining harvest levels.
- Donor funding to finance the full project cost was available. The associated costs are significant and could probably not be paid by the communities.
- Support from local and provincial-level officials were essential for formalizing collective land rights in both cases. The relevant government agencies implemented all steps, and the projects provided financial and technical assistance.

Although the two main government agencies involved in land allocation and natural resource management (the NLMA (now MONRE), and MAF) underwent major changes to institutional structure and responsibilities during the time that both cases were being implemented, these two projects were able to successfully secure land rights for collective land. Both cases therefore could be seen as legal precedent, however, this study provides further support for arguments made by existing legal reviews: there are still a significant number of open questions about collective and communal tenure in the Lao PDR.

In both cases, the interest of the donor agencies seems to have significantly influenced the process and the implementation of the collective land rights. Thus, in Sangthong, collective land use certificates were issued for village bamboo forest. However, in interviews with community beneficiaries, it turned out that few respondents actually harvested bamboo from the collective land. In Nakai, the interest of the institutions managing and financing the NT2 hydropower project in securing the livelihoods for the resettled communities in the long term led to the focus on awarding permanent land titles.

The high level of divergence in the interpretation of existing legislation and in evaluating the existing collective land cases creates both barriers to replicating the collective land titles in Laos, as well as opportunities for testing different models. Based on the information collected, the following recommendations are made:

1. Ensure sufficient funding is available to cover the entire process since the associated costs can most likely not be covered by local communities.
2. Issue a general framework on communal land titles at the central level. Ideally, this would clarify that communal or collective titles can be issued, and would enable collective or communal titling in a few more cases to inform future national-level implementation guidelines.
3. Leave room for adaptation to local context to ensure that the types of land, institutions and rights associated with the collective and communal land match the needs of the beneficiary community, as well as the existing natural resource management practices and objectives.

4. Ensure active participation of women in discussion and decision-making since they exhibited less involvement in and knowledge about the management of collective land in Sangthong district.
5. Differentiate between economic use and conservation use. Since the issue of taxes and service fees associated with the collective or communal land is not yet explicitly resolved, it would be important to take the different objectives for the collective land into account. Levying taxes and fees for land primarily dedicated to conservation or resources used for constructing community building may be counterproductive. However, levying taxes for collective land can help strengthen tenure security and provide incentive to the government to issue more community titles. Discuss the possibility of calculating tax based on the value extracted, not the land area.
6. Strongly recommend follow-up activities, to ensure that the institutions managing the collective or communal land are functional, that benefits are distributed equitably, and that there are appropriate decision-making mechanisms in place. Follow-up should be combined with rural legal education about villager rights, especially in light of the dynamic legal and policy situation. At the very least, it should be ensured that one copy of the title document is kept in the village.
7. Clarify the need for a management plan for the different types of communal or collective land. Currently, the collective land in Sangthong is technically managed according to a previously compiled management plan, but it is not clear whether this is the case for all types of and for all institutions managing land. Joint management of forest products needs to be based on an assessment of the biology of the resource, and a management plan can ensure that extraction levels match capacity for regeneration.
8. Clarify the process and rules concerning communal land title. The main issues to be decided are summarized from policy recommendations proposed by the Land Issues Working Group. It may be useful to engage in a discussion about which institutions have the final interpretation authority over Lao legal documents, and whether a definitive interpretation can be reached.



1 Introduction

1.1. Study background

In 2011, the National Land Management Authority (NLMA) awarded the first collective land use certificates in the Lao PDR. These certificates, awarded for a section of village use forest in Sangthong district in Vientiane capital, were the product of a multi-year effort of NGOs, the NLMA, district authorities and local communities to secure their access to village bamboo forest. The Sangthong case was followed in January 2013 by collective land titles for communities resettled because of the Nam Theun 2 hydropower project in Nakai district in Khammouane province. Although in both cases communal tenure is hailed as a success, there are important differences in the processes followed and in the rights awarded by the two sets of documents. It is also still unclear how other villages in the Lao PDR can obtain communal land titles for agricultural and forest land. This study aims to provide an analysis of these two cases, and to extract lessons for other areas of the Lao PDR.

The collective land use certificates and titles in Sangthong and Nakai districts were awarded during a period of institutional transitions in the Lao PDR: in 2011, the NLMA and its line agencies at the provincial and district level were transitioned into the new Ministry of Natural Resources and the Environment (MONRE). Governance of forest resources is now split between MONRE, for protection and conservation forests, and the Ministry of Agriculture and Forestry (MAF), for production forests. Land allocation and management now falls under MONRE's responsibilities. In practice, both projects therefore had to navigate a highly complex and dynamic institutional environment. The administrative procedures followed and documents used are not necessarily still recognized, and in many cases new instructions have not yet been issued.

Also, a National Land Policy is being drafted and is currently still under discussion. Concurrently, the Land Law and Forest Law are being revised. These ongoing national policy discussions create an opportunity to analyze the two pilot projects in the wider context of land issues in Laos, and to understand how the experiences from these two cases can be devolved into policy recommendations and steps for securing communal titles in other communities.

The natural resources in the Lao PDR are coming under increasing pressure, especially from foreign investment in hydropower and concessions for cash crop plantations (Schönweger et al. 2012, LIWG 2012). There are concerns about the impact of a growing commercial interest in Lao land resources on tenure security, both on the individual and on the community level. To counter this pressure, communal land titles (for land used by a group of people, such as rotational swidden agricultural land, grazing land, and forests) have been proposed as possible mechanism to strengthen community tenure security and at the same time provide a basis for sustainable resource use (Andersen 2011). Researchers have suggested that community engagement in the governance of natural resources can provide a higher degree of ownership, leading to social accountability for upholding land use regulations at the community level and thus supporting forest protection efforts (Ostrom and Nagendra 2006, Larson et al. 2010). However, devolution of land tenure to local communities is only the first step in securing access rights to village land and resources. Tenure reforms in other countries have faced serious challenges in actually realizing the rights awarded, in establishing or strengthening institutions to exercise rights, and in defending

them from local and national-level competition. Further, the beneficiaries of communal tenure need to develop institutions and methods to securing access to resources, and ensuring equitable distribution of benefits (Larson 2011). This study therefore compares not only the rights awarded in both of the pilot cases but attempts to draw conclusions from the process followed, and the institutions charged with managing the communal land.

These two pilot cases in the Lao PDR build on extensive preparatory work completed by the Lao Land Titling Project (LTP), financed by World Bank, AUSAid and GTZ, as well as the ongoing projects on land use planning, land registration and titling financed by the GIZ Land Management and Registration Program (LMRP), and GIZ Project Integrated Rural Development in Poverty Regions of Laos (NU-IRDP) under the Northern Uplands Development Program (NUDP). The LTP conducted a number of land policy studies analyzing the legal, economic and political framework of land titling and land markets in urban and rural areas of the Lao PDR. The GIZ LMRP-successor project in Luang Namtha province has been working on surveying and adjudicating communal land in Vieng Phoukha district (primarily temple, village office, fish pond, and some paddy land and plantations).

These experiences, as well as the long-standing coordination efforts of the Land Issues Working Group helped provide a forum for exchanging information and lessons learned from working with official land use planning processes such as Forest and Land Allocation (FLA), Land Use Planning and Land Allocation (LUPLA) and Participatory Land Use Planning (PLUP), and helped to prepare the implementation of collective land use certificates in Sangthong district and collective land titles in Nakai district.

After the Sangthong certificates were awarded, several institutions organized information-sharing workshops and study tours, including the Land Issues Working Group (LIWG), SNV, RECOFTC, and the Rights and Resources Group (RRI), in collaboration with the District Office of Natural Resources and the Environment (DONRE) in Sangthong. However, there has not yet been an assessment of how the collective land is being used, nor how the rights conveyed in the land use certificates have been institutionalized in the villages. Since the Nakai titles were awarded only in January 2013, the implementation process of the collective titles is still ongoing. Village development planning is underway and is intended to clarify how the beneficiaries understand their rights, and how they intend to use the land under title. Since there is interest from a wide range of projects within the Lao PDR to replicate the community titling process, an analysis of the underlying conditions, the commonalities and differences in the Sangthong and Nakai cases, and a review of success factors are an important step towards promoting communal land tenure in Laos.

1.2. Objectives

This study aims to provide an analysis of these two cases, and to address the following questions:

- What type of land and how much of it was awarded?
- Which steps were followed in the process to obtain the collective land use certificates and titles?

- Which actors were involved in the process?
- What rights are conveyed by these documents on the ground?
- How does the communal tenure correspond to the community livelihood objectives?
- How are decisions made about the collective land?
- Is the process followed in Sangthong and Nakai applicable to other communities?
- What lessons can be extracted for other areas of the Lao PDR?
- Which recommendations follow from these lessons learned?

1.3. Methods

This study is based on a review of existing analyses of the legal and policy framework in the Lao PDR relating to communal land, as well as project reports and other information about the two collective land cases. Semi-structured formal and informal interviews with representatives from government, non-governmental organizations, Lao non-profit organizations, independent consultants, and the Nam Theun 2 Power Company (NTPC) were conducted to gain a deeper understanding of the conditions in place before collective certificates and titles were implemented in these two cases, and what rights and responsibilities these documents convey on the ground. Interviews were also conducted with 37 beneficiaries of the collective land from Sangthong district.

1.4. Constraints

There are two main constraints for this study. First, as stated above, since the draft National Land Policy and the revisions to the Land and Forest Laws are still under discussion, the legal and policy environment for land issues in the Lao PDR is dynamic. This complicates drawing conclusions about the applicability of the experiences from Sangthong and Nakai for other areas of the Lao PDR. The ongoing discussions are also seen to impede progress in replicating collective land titles in other projects. In some cases these projects have not been able to move forward with their own activities promoting communal land tenure because stakeholders from the government institutions involved are waiting for more definite information on communal land tenure. The prevailing opinion seems to be that collective land titling can only move forward once these three policy documents have been finalized and approved.

Also, while this study contains information collected in interviews with community beneficiaries of the collective land use certificates in Sangthong district, it was not possible to conduct similar interviews with beneficiaries in Nakai district. These titles were awarded in January and March 2013, during the study period, and the initial dissemination work of rights and responsibilities associated with the titles only began at the end of the study period. Since village institutions to manage the land under title are only now being set up, and final mapping of the land under collective title was only concluded after the study period finished, it was too early to assess the impact in Nakai of the collective titles on use of the area, on village institutions, and on perceptions of communal management of natural resources.



2 Legal basis for communal land titles

2.1. Review of legal documents defining communal land

Several legal reviews have already examined the legal basis and policy context for communal or collective land tenure in Laos¹. In this section, the findings from these reports are summarized and expanded by an overview of communal and collective tenure in the draft National Land Policy. However, since the land policy is still under discussion, and the Land and Forest laws are also currently being revised, the legal and policy framework will undergo further transformations in the near future. The implications are discussed in the recommendations section (4).

There are two terms covering land managed or held by a group of people: collective land (*din luam mu*), and communal land (*din xoum xon*). Although these terms have in some cases been used interchangeably, for example in some of the legal reviews summarized here, or only one of them is used (PM Decree No. 88/2008 only mentions collective land, whereas Instruction No. 1668/NLMA 2008 only mentions communal land²), the draft National Land Policy offers some guidance on how the Government of Lao (GoL) understands the difference: “communal” is defined as land “that is being used together by the communities within a village, group of villages, or ethnic people” (NA 2013, Draft National Land Policy, May 2, 2013). The draft policy further states that “the state is charged with the management of communal land” and assigns village or village clusters, as the nearest relevant administrative category of state structure, to administer and manage this land. However, the policy does not explicitly state how decisions can be made on how to use the land, instead, according to the draft policy, the state will develop specific guidelines for management and use in the future (NA 2013). In contrast, the draft land policy states that “collective” land refers to land used by “cooperatives, production groups or associations which collectively use land” (NA 2013). Collective does not denote a village or other state organization. It is possible that the underlying distinction between the GoL’s perception of collective and communal stems from which entities the GoL believes are in need of state involvement (like villages or ethnic groups), and which entities are seen as independent, such as producer groups or other collectives. However, exactly how the GoL interprets the rights of various types of groups and institutions to use communal or collective land remains unclear³.

Because the difference is not always acknowledged in reports or legal documents, and the term communal land is more frequently used internationally, this document will primarily refer to communal land (*din xoum xon*) in general cases, will follow the respective term used in the various legal documents summarized below, and will specify whether communal or collective land is meant wherever this has been defined or clearly indicated. The land documents awarded in both pilot districts only refer to collective land (*din luam mu*).

The documents listed in Table 1 provide the current legal framework that defines communal and collective land tenure in the Lao PDR:

1. LIWG 2012a - Communal Land Titling Draft Policy Recommendations; NLMA - LIWG 2012 - Draft Report on Policy Overview on Community Land Registration and Titling (CLRT); GIZ 2011 - Draft Guidelines for Titling of Communal or Collective Land in the Lao PDR, Land Management and Registration Program; N.A. - Draft Policy Brief Collective Land and Collective Title in the Lao PDR 2010; and Liu and Sigaty 2009 - Legal Analysis of Collective Land and Collective Title in the Lao PDR, Rights-LINK Project, Village Focus International
2. Some of these differences in use may be due to the translation.
3. Mike Dwyer, personal communication.

Table 1. Legislation defining communal/collective land tenure in the Lao PDR.

No.	Year	Institution	Title
25	2003	National Assembly	Constitution
	1990	National Assembly	Property Law
47	2003	National Assembly	Law on the Local Administration of the Lao PDR
04	2003	National Assembly	Land Law (under revision)
06	2007	National Assembly	Forestry Law (under revision)
03	2000	President	Decree on Land Tax
01	2007	President	Decree on Land Tax (replaced 03/PO 2000)
67	2004	Prime Minister	Decree on the Establishment of the NLMA
88	2008	Prime Minister	Decree on the Implementation of the Land Law
115	2009	Prime Minister	Decree on Associations
435	2011	Prime Minister	Decree on the Establishment and Activities of the Ministry of Natural Resources and the Environment (MONRE)
0054	1998	MAF	Ministerial Approval/Decision No. 0054 on Right and Traditional Uses of Natural Forest Resources
564	2007	NLMA	Instruction on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling
1668	2008	NLMA.CAB	Instruction on the Use of New Formats of Land Titles and New Registration Book
3204	2008	PMO.NLMA	Instruction on Collection of Fees and Service Charges by the Land Management Sector
012	2010	NLMA.CAB	Instruction on the Use of New Formats of Land Titles and New Registration Book (replaced 1668/NLMA.CAB 2008, but no significant changes)
	2013	National Assembly	National Land Policy (draft)

The NLMA/MONRE has issued three types of land title documentation. These are (i) state (bai ta din lat); (ii) individual (bai ta din buk kon, niti buk kon); and (iii) collective (bai ta din luam mu). The formats of these three titles are shown in Annex I.

While there is a legal basis for communal and collective land tenure in the legislation of the Lao PDR, there remain slight contradictions in the use of the terms collective land (din luam mu) and communal land (din xoum xon) in the different legal documents listed in Table 1. There are still some questions about what type of land can be classified as state, communal, collective or individual. Also, it is not entirely clear which type of entity is legally eligible to hold communal or collective land tenure. Collective land was defined most extensively in Instruction 564/NLMA 2007 on Adjudication, as:

“land of cooperatives, collective organizations, village communal land used in common by the community of persons, the various ethnic groups in the villages. The collective land comprises: land that the population had allocated to households for use for agricultural production during the season with nobody being the owner of the use right to the land, the forest for use, the production forest, cemeteries, sacred forests, land where rituals are held, land set for cattle raising and other lands that have the characteristics to be collectively used of the village.

The collective land is a land managed by the government but a collective title is issued to the cooperatives, the collective organizations, communities, groups of persons, ethnic groups that have the feature of been communally used with nobody having the land use right. The collective land is forbidden for sale, transfer, collateral, lease or concession. The collective land must be protected and developed for only the collective interests” (Instruction 564/NLMA 2007, Article 4.11)

As defined in this section, there is a differentiation between owning the land (through the title) and the responsibility over land management (remains with the government). This is a key distinction between transferring permanent full ownership, and transferring temporary use rights with limited decision-making powers. While collective land (as defined in the Instruction 564/NLMA 2007) cannot be sold, transferred, leased, or allocated to concession, it seems that this land can still be expropriated by the GoL whether titles have been awarded or not. As part of the drafting process of the National Land Policy, there has been an ongoing discussion about whether some types of land can be protected from requisition by government for public or private investment purpose, and how compensation will be made to the land holders. At present, it remains unclear how this issue will be resolved (NLMA-LIWG 2012, NA 2013).

Eligible entities for collective land title were defined most broadly in the Instruction 564/NLMA 2007 as “cooperatives, the collective organizations, communities, groups of persons, ethnic groups”. Decree 88/PM 2008 on the Implementation of the Land Law later provided a more narrow definition, thus restricting the rights to own land collectively to organizations that fall under Article 59 of the Land Law. These are “state organizations, political organizations, the Lao Front for National Construction, mass organizations and economic organizations of the state”. While the 2010 legal review makes the case that villages and associations fall under this definition, the review authors think that kumbans probably are not eligible based on these earlier legal documents (although kumbans are included as eligible entities in the draft National Land Policy, as described in the next section), because there is no explicit legal language about the status of kumbans in Article 59 of the Land Law (N.A. 2010) or in the Law on Local Administration. Liu and Sigaty (2009) agree with this interpretation, arguing that according to the Law on the Local Administration of the Lao PDR, villages are the smallest state organization and therefore eligible to hold communal tenure. They state that the case for kumbans is unclear. The Law on Associations explicitly includes land rights for associations, but since they cannot hold state or individual private land title, it seems likely that they could be eligible for communal or collective tenure (Liu and Sigaty 2009). However, according to Decree 88/PM 2008 on the Implementation of the Land Law, all land and natural resources that are not covered by a land title are state land. This includes land managed by state authorities. It could be argued that this includes villages (NLMA - LIWG 2012).

There is no currently practiced national-level standardized procedure for the registration and adjudication of communal land, although the NLMA.CAB Instruction 1668/2008 advises on the implementation of new land title formats and survey approaches. The document contains a separate title format only for communal land. It also contains instructions for what type of information needs to be recorded:

- Name of village where located,
- Purpose of use (school, hospital, temple, cemetery, sacred forest, rice production, horticulture, grazing)
- Type of land – construction, agricultural, forest
- Other information – registration book, sheet no., cadastral map no., place, date, signature by head of PLMA/PLO

The process and title format outlined in this document further shows that the basis for communal land does exist in the Lao PDR. However, despite the fact that these title formats exist, and that some types of agriculture and forest areas are included in the “purpose of use” categories, the question of communal land rights is still seen as open. Since the NLMA.CAB Instruction 1668 was issued in 2008, it has been replaced by NLMA.CAB Instruction 012/2010, but it appears as if there are no significant changes concerning communal land (NLMA-LIWG 2012).

Based on Presidential Decree No. 01/PO 2007 on Land Tax, it could be argued that communal land is exempt from land tax payment, according to paragraphs 5 a and b on exemptions for certain types of forest and agriculture land as well as state construction land. However, the tax exemption for communal land is not clearly spelled out and under current government interpretation, commercial use of communal land should be taxable. This means that resources harvested from communal land for household use should not be taxed, but that the profit from selling resources harvested from communal land should be taxed. Exemption from service charges is clearly stated in Instruction No. 3204/NLMA 2008 on Collection of Fees and Service Charges by the Land Management Sector “for state land use and collective land to state organization [...], state economic organization, as specified in the Land Law”.

There remain several questions regarding forest areas under communal and collective title, since the wording in NLMA Instruction 564 (2007) and PM Decree 88 (2008) differs slightly. Instruction 564 states that collective land includes:

“the forest for use, the production forest, cemeteries, sacred forests, land where rituals are held, land set for cattle raising and other lands that have the characteristics to be collectively used of the village” (NLMA Instruction 564, Article 4.11)

This can be interpreted in two ways. On one hand, collective land could include only production forests. On the other hand, according to the Forestry Law (2007) it could also include protection and conservation forests, as long as they are zoned as village protection and conservation forests. However, PM Decree 88 states that land use rights cannot be granted to local entities for “protected forest, preserved forest, and un-exploited forest land...” (PM Decree 88, Article 7). The GoL, as of 2010, according to the Draft Policy Brief Collective Land and Collective Title in the Lao PDR 2010, follows the second interpretation found in PM Decree 88, with protection and conservation forests remaining as state land and not being eligible for collective land titles. Communities do not have utilization rights, even when they lie within village boundaries. This strict interpretation is also reflected in the 2009 PLUP manual, in which villagers are not given use rights to protection and conservation forests within village boundaries (N.A. 2010).

This contradicts other legal documents. In the MAF Ministerial Decision No. 0054 on Right and Traditional Uses of Natural Forest Resources (1998), the state recognizes the customary use rights to forests, forest land and forest products, including the right to harvest forest products

for household needs. It also affirms the right to harvest resources for sale that are specified in district forest management contracts (NLMA-LIWG 2012). Also, as mentioned above, the Forestry Law (2007) states that protection and conservation forests can be classified as village protection forest and village conservation forest. While the Forestry Law also grants villagers NTFP collection rights in “controlled use zones” within protection and conservation forests (Liu and Sigaty 2009), it explicitly prohibits commercial logging by villages and individuals, since the state is charged with managing all commercial timber harvesting.

Both the LIWG (2012a) and Liu and Sigaty (2009) strongly support promoting communal land titles to enhance tenure security in rural areas. Liu and Sigaty argue that under communal titles, neighbors will not sell or lease land that belongs to the community. Also, the communal titling process is seen as an educational tool to strengthen villagers’ understanding of their rights. The details of both the implementation process, as well as the rights awarded in each specific case, will determine whether land rights will be more secure.

2.2. Ongoing legal revisions

The GoL is currently drafting a National Land Policy in order to address current gaps in the legislative base, and to clarify and define the government’s strategic objectives for land development, use, and protection in the Lao PDR. Further, the National Land Policy will inform the revision of the Land and Forest Laws. Various iterations of the draft policy have been discussed, but a final draft has not yet been approved by the National Assembly. While numerous drafts have been circulated, the last draft that was obtained in English translation (dated May 2, 2013) shows no major changes from previous drafts in the description of collective and communal land rights, and only differs in the approval and compensation mechanisms proposed for land requisitioned by the government.

Based on the May 2, 2013 draft, the land policy differentiates between land use rights, which include the right to sell, transfer, or inherit the land; and land utilization rights, which do not include these rights. However, if the majority of the members of the community agree, the land can be given as concession.

The draft land policy states that collective land applies to cooperatives, production groups, or associations, and includes the following rights: use, protection, benefit, transfer and inheritance of the land under title. Decisions about changes and transfer have to be made by a majority of the members of the group, and must conform to the state purposes, laws, and regulations.

In contrast, communal land as defined by the draft land policy applies to villages, kumbans (now included in a reversal of the trend identified by earlier legal reviews, as cited above), and ethnic groups, for joint management of lands that do not have one single owner, such as temples, village ponds, village forests, cultivation areas, grazing areas, and cemeteries, among others. The state formally owns all land in the Lao PDR, and is responsible for allocation of use and

utilization rights to the village authorities and their management units. Rights conveyed include use, protection and development rights. Use must comply with the state's purposes, laws and regulations. The draft National Land Policy mentions that specific regulations on management of communal land will be defined.

The draft National Land Policy does not provide any details on which line agencies or state institutions (such as villages) are authorized to propose, delineate, and approve communal and collective land. However, land titling and both systematic and sporadic adjudication would fall under the responsibility of MONRE and its line agencies, according to its mandate. Land and forest survey falls under both MAF and MONRE mandates. The draft policy does not also clarify whether the land eligible for title can include village level or national level protection, conservation or unassigned forestland within village boundaries, and whether harvesting of forest resources is permitted for household or commercial use. These are issues which need to be determined by MAF and MONRE (depending on the forest category). There is also no mention of the need to issue temporary land use certificates before issuing permanent title (as in the Sangthong case, see below). No specific information is given in the draft land policy on which land documents convey which rights. It is possible that the need for temporary land use certificates for communal or collective land is not mentioned because in the past the TLUCs were used primarily for individual use land. Due to the changes in the institutional landscape and updates to the land allocation and registration procedures, temporary certificates are no longer awarded at this point.

Further, there is no clarification in the draft land policy about the exemption from taxes and fees for communal and collective land, or whether the state can requisition land under permanent communal or collective title for public or investment purposes. Since the draft policy document in section 4 only includes requirements for group majority approval over the amount of compensation, and not over the decision to agree to give up the communal land in the first place, it would be helpful if more clarity could be provided in the final version.

Finally, the draft National Land Policy recognizes customary land use and utilization rights for

“all ethnic groups who have occupied, protected, developed and used the land in a peaceful, continuous and long-term manner but do not have official documents certifying the land acquisition right, and do not fall under the conditions of land encroachment as stated in related laws and regulations”
(NA 2013, Article 1.4)

However, the draft policy does not address exactly which groups are eligible for this recognition of land use and utilization right, and in which cases land use right would apply.

2.3. Summary of legal basis for communal land tenure

In summary, there clearly is a legal basis for communal and collective land tenure from the existing legislation. However, there are a few differences in how communal and collective land rights are defined in the documents that make up the legal framework, and open questions about the following issues:

- which entities are eligible for communal title
- which institutions at which level have the right to propose and approve these titles
- which process should be followed
- which types of (forest) land may be included
- whether permanent land titles can be issued directly
- who is responsible for managing such titled land, particularly in the case of administratively merged villages
- in which cases customary rights apply to which groups under which conditions





3 Pilot initiatives: review of experiences

This section provides details on the two existing collective land cases in the Lao PDR. In the case of Sangthong district, the results from the community interviews are also included. The section concludes with a comparison of the main contrasting points that differentiate the Sangthong from the Nakai case, and a review of the success factors identified.

3.1. Sangthong district

3.1.1. PROJECT BACKGROUND

In Sangthong district, land use certificates for collective land (din luam mu) were issued as a side project under the sustainable bamboo value chain work of the international non-profit organization SNV and the Lao non-profit association GDA (Gender Development Association)⁴. The SNV-GDA project worked with villages and local government agencies to support the development of enterprise groups and increased income from bamboo resources. The bamboo project based its engagement on the participatory land use planning (PLUP) process from 2007-2008. The NLMA had chosen Sangthong as pilot district for trialing land use planning and land titling. Many villagers in Sangthong therefore already have received temporary certificates for agricultural land, and permanent titles for housing land. SNV and GDA built on this work to compile a management plan for areas zoned as village use forests during PLUP. The management plan was drawn up for four villages in collaboration with the District Agriculture and Forestry Office (DAFO), with support from the District Land Use and Allocation Office (DLUAO) for bamboo and rattan handicraft groups, and included annual harvesting limits based on forest inventories, as well as proposed management and decision-making structures (Green Gold Consulting 2010). Based on these management plans, and the legal basis for collective land provided in the 2007 NLMA Instruction 564 as well as the Prime Minister's Decree 88 from 2008, the project decided to pursue collective land registration. In August 2011, temporary land use certificates for a period of 3 years for collective land (din luam mu) were awarded for the village production forests (paa palit kawng ban) of four villages in Sangthong district: Napo, Kouay, Xor and Vangma. In November 2011, certificates were also issued for collective land in Houayhang village. The total area under collective temporary land use certificates for all five villages was 2,189 ha (Sayalath et al. 2011, SNV 2012).

3.1.2. PROCESS FOLLOWED

Since no clear instructions existed at the time of project inception on how to transform the legal definition of communal land in legislation into actual land use certificates for collective land, the project conducted a desk review and held meetings with central-level government agencies prior to engaging at the local level. The project created a field team that included

4. The Gender Development Association was formerly called Gender Development Group (until 2012).

various members of the Land and Natural Resource Research and Information Center (LNRRIC) of the NLMA. Then, the project organized a meeting with representatives from the target villages in Sangthong district, and after determining that the villages were interested in collective land tenure, undertook participatory action research in the villages, in cooperation with the District Land Management Authority (DLMA). Project representatives see the early involvement of DLMA (later transitioned into DONRE) in the process as key step to secure buy-in for the process from the local government. After village consultation on which areas would be appropriate for joint management, the field team demarcated the collective land with GPS units together with village representatives and neighboring landowners to resolve any boundary issues. The team adapted the existing formats for individual land titles for the collective land certificate, with supporting documents including a land map, justification, and the temporary land use certificate specifying “village production forest” as parcel type (Annex 2). The declaration certificate used during verification of the application specifies that the group with land rights is the bamboo handicraft group, and that it is currently used by the bamboo handicraft group as bamboo and rattan production forest. However, the land use certificate, labeled “map of state land” (penti din lat) is made out in the name of the village, not in the name of the bamboo group. The land use certificates were signed by the District Governor of Sangthong and the representative of the DLMA in Sangthong (Sayalath et al. 2011).

The area under land use certificate was chosen from the overall village lands, specifically to be included in the collective land area. The land under title consists of village bamboo forests because of the SNV-GDA project’s focus on bamboo. Other areas the villagers identified as potential land areas for collective titles were the land of the school, village office, cemetery, health center, temple, and village conservation forests. Reasons given for suggesting these types of land were conflict prevention between individual villagers and the community about borders, and to secure these areas for the future use of the village (Sayalath et al. 2011). The land parcels were awarded as temporary land use certificate. If no conflicts emerge about boundaries and no complaints are made, the certificates will be transitioned into permanent titles after 3 years. However, due to the ongoing drafting process of the National Land Policy for Laos, and the concurrent revisions to the Land and Forestry laws, it is as yet unclear which process needs to be followed to convert the temporary to permanent titles. The District Office of Natural Resources and the Environment (DONRE) in Sangthong (reformed from DLMA in 2011) is waiting for instructions on how to proceed.

Since the Sangthong case constitutes the first instance in which collective land was awarded through formal documents, extensive discussions about objectives, procedures and format of documents with government institutions at several levels were essential. Both DONRE at district level, as well as the LNRRIC at national level supported the idea of collective tenure for the bamboo forest, and implemented the process, with SNV and GDA providing financial and technical assistance. One of the questions discussed was how and whether to tax the collective land. As stated in section 3, there is legislation that could be interpreted to provide for tax exemption for communal or collective land, but there is a prevailing opinion in the government

that land put to economic use should also contribute to the state economy. In the end, the decision was made to not tax the communal land, according to Presidential Decree No. 01/2007 PO on Land Tax. The SNV-GDA project paid for the service charges and land registration fees. The Sangthong DONRE office is interested in replicating the collective land use certificates in other villages and for other types of land, but currently lacks funding for staff time and field work.

3.1.3. IMPLEMENTATION OF RIGHTS

While the management plan compiled in 2010 put the bamboo user groups working with SNV and GDA on the value chain project in charge of the management of the bamboo forest, the temporary land use certificates were issued in the name of the village, and are administered by the village authorities. This separation of management and title holding was explored further in community interviews in Sangthong district. While the management plan mapped out institutional arrangements for decision-making, in reality the village forest management committee now makes the decisions about the collective land. Since the titles were granted in name of the village, no separate legal entity was created to manage the collective forest, and no bylaws or institutional rules were drafted. The rights awarded include access, withdrawal, management, and exclusion rights (Schlager and Ostrom 1992), but no alienation rights.. It is also not clear how membership is conferred or removed, especially among relatives of current villagers and new village members.

3.1.4. RESULTS FROM COMMUNITY INTERVIEWS IN SANGTHONG

In May and June 2013, interviews were conducted with 37 of the beneficiaries (at least 7 respondents for each of the 5 villages) that received temporary land use certificates for village use forest: Napo, Kouay, Houayhang, Xor, and Vangma. The interviews were set up and facilitated by the GDA, with support from DONRE. A representative from both institutions were part of the field team, in addition to the study author and a translator. The interviews followed a set of pre-defined questions, which were asked in the same order in every interview. However, a few additional questions were included in the later interviews, since it became clear after the first set of interviews that some additional topics should be covered. The responses were translated and written down in English. Table 2 gives an overview over the respondents and the responses to quantifiable questions by village.

In general, management of the village bamboo forest under collective land use certificate was set up similarly across all villages. In each village, there was a village forest management committee, which was charged with decision-making about the collective land. The committee was composed of representatives of the Lao state organizations and volunteer village officers: village chief, village forester, village land management officer, village police, village defense, Lao Women's Union, Lao Elder Union, Lao Youth Union, and representative of the Party or Lao Front for National Construction.

Responses about the rules for accessing and harvesting from the collective land area varied widely between and even within the villages. It was therefore difficult to establish exactly what the process was, and whether it was actually enforced by the committee. Depending on the village, a community member who wanted to harvest bamboo from the collective land has to write a request letter or request permission orally. The request would then be discussed among the members of the village forest management committee. In some villages, respondents stated that permission was granted by the village committee, depending on the acceptable annual harvest levels outlined in the management plan, compiled in 2010 by the villagers with support from DAFO, Green Gold Consulting, WWF, SNV and GDA. In contrast, in some villages, some respondents believed that additional permission from DAFO was required before harvesting.

However, in two of the five villages, no one had asked for harvesting permission since the land was put under title, as the households in these villages stated that they had access to sufficient bamboo resources on their own land. In one village, Ban Xor, the community had even decided to designate the entire forest area under collective certificate as village protection forest. No one was allowed to harvest bamboo from the forest, and people reported harvesting from their own land instead. In two villages, Ban Napo and Ban Vangma, respondents reported that bamboo harvest for household use was free but that a fee had to be paid to the village if harvest was for commercial use. Respondents from Ban Xor also stated that there was a fee for commercially used bamboo from the collective area, but since they put the entire area under protection status, there has been no bamboo harvest there. In none of the villages was the bamboo harvest organized through the bamboo handicraft group, as proposed in the management plan. The bamboo group members harvest individually, and keep the money they earn from bamboo handicraft sales. No process for benefit sharing had been developed as part of the management rules, and there was no evidence of benefit sharing in practice.

Regulations for members of other villages varied. Some respondents stated that non-village members would not be allowed to use the collective land at all. Others stated that non-village members would potentially be allowed to access and harvest bamboo from the collective land area, but would have to request (written) permission, maybe even from the district level, and would have to pay for the resources harvested. No such requests had ever been made, and no respondent knew of any illegal incursion into the bamboo forest or illegal cutting of bamboo.

Each village had a village forester and deputy village forester. Depending on the village, their tasks varied slightly but included annual forest survey, periodic patrolling of the forest boundaries and investigation of reports about illegal harvesting. In addition, the forester or another village officer would be sent along with villagers that had received permission to harvest bamboo, to ensure they harvested the correct amount, and from the correct age class of harvestable bamboo. Other members of the inspection team included the village police officer and the village defense officer. No respondents in any of the villages reported knowing of any trespassing or encroachment into the collective land. The respondents stated that the participatory village meetings before the land titling, and the clear demarcation of the borders to the collective land area helped avoid misunderstandings and conflict.

Although there were participatory village meetings to prepare the collective land use certificates, there has been no follow up from government or NGO-side since, at least not specifically concerning the collective land (GDA still conducts projects in Sangthong district about gender and value chain development). The villages stated that the Sangthong DONRE office keeps the collective land use certificates for the villages. Few respondents reported having seen the actual certificates before (only 7 respondents, most of them village chiefs), and only 4 respondents were aware of the fact that the collective land was awarded under temporary land use certificates. 16 thought they would never expire, and 17 respondents answered that they did not know whether and when the certificates would expire. All respondents, however, knew that they did not have to pay land tax for the collective land, and that they were not allowed to sell the land. Almost all of the respondents (30 out of 37) stated that they had been part of the discussions about how to manage the village collective land, and which rules should apply to it. In all villages, the collective land was reported to have been village use forest before the certificates were awarded. In Ban Xor, Ban Kouay and Ban Houayhang villages, 13 respondents stated that there had been some form of rules governing the use of the forest before. Although almost all of them described them as less strict than the current rules, the description of these former rules differed widely between respondents and it is unclear to what degree they were actually enforced. In Ban Vangma, which is the most recently established village, located furthest away from the district center, and with poor road access, there were no rules about access and use of forest resources before the land use certificates were awarded.

All of the respondents reported that they were satisfied with the collective land certificates. Of 37 respondents, 35 responded that they were interested in putting other kinds of community land under title as well, to ensure protection and to avoid conflict within the village, and between the village and outsiders. The villagers proposed different types of land for additional collective title or certificate, with school, temple, and cemetery mentioned most frequently. A few respondents were interested in pursuing titles for village agricultural land, such as common grazing areas, and for other types of village forests, such as village conservation and protection forest.

When asked about the benefits of the collective titles, five types of benefits were named: 1) easier and more systematic management of resources, 2) clarity about boundaries and conflict prevention, 3) protection from outsiders and companies trying to buy or illegally access resources, 4) construction material for young families or for village buildings (temple, temporary constructions for festivals, etc.), and 5) forest protection and conservation of the village natural resources for the next generation. Since many respondents stated that they were not harvesting any resources from the collective land, instead relying on their own land, the team asked what the benefit was for the respondents personally. The respondents who do not use the land reiterated the same type of responses already mentioned (ease of management, avoiding conflict, protection from outsiders, construction material for village buildings, and conservation of resources), and that they still thought of the collective land as a positive development, even if there was no direct tangible benefit for them. Of course an interview bias must be expected (especially for subjective questions), and it is likely that some respondents do use the collective land anyway. It was striking, however, how many of the respondents insisted that they were

not harvesting anything from this land, even after the team followed various different lines of inquiry. In the initial questions about the respondents' households the team established that everyone harvests NTFPs and bamboo resources for family use, if not for sale. The later questions about use of the communal land tried to make clear that the team was interested not only in NTFP and bamboo harvest for sale but also counted NTFP harvest for family use.

The low level of bamboo resource extraction from the village collective land was surprising, since the SNV-GDA bamboo value chain project pursued collective land titles to secure access to resources. However, while some respondents had chosen to pursue bamboo handicrafts as their main source of income, many respondents who claimed to be village bamboo group members also stated that they did not produce any bamboo handicraft. Reasons given for this were either lack of time or lack of skill. In Ban Xor and Ban Vangma, there was interest in producing bamboo handicraft, but these villages did not currently have access to a market for bamboo handicrafts. In Ban Xor, there used to be traders that would order products, but for some time they have not returned to order, for unknown reasons. In Ban Vangma, the bamboo group was not currently in touch with traders either and stated that they were in the process of re-organizing the bamboo group. In Ban Napo, more villagers reported working in bamboo handicrafts for sale. In this village, according to the district land officials, there was less private land, so villagers relied more on the collective land for bamboo supplies.

The number of interviewees per village is not high enough to support a statistical analysis of the responses. However, a few trends emerge:

1) The collective land was used to a different degree across the five villages

There seems to be a connection between access to forest resources on private land and use of the collective land. In Ban Napo, a smaller village, more villagers relied on bamboo resources for sale, and people collect more of their resources from the collective land. On the other hand, Ban Xor (which contains by far the largest parcel of collective land under certificate, with 1,887 ha of 2,189 ha) decided to declare their collective land area a village conservation forest, prohibiting any harvesting. In Ban Kouay, another larger village, all respondents stated that they relied on their own land for bamboo resources, and only 3 respondents reported having been to the collective area.

2) Women across all villages were less involved in management decisions

The women interviewed knew less about the rules and institutions than men, and were only represented in 3 types of roles: Lao Women's Union representative, Lao Youth Union representative, and handicraft or bamboo group representative.

3) Support for the collective land use certificates was universal, but most benefits mentioned were not tangible

Although only few respondents (6 out of 37) confirmed that they harvested NTFPs or bamboo from the collective land, all 37 respondents stated that they supported the collective titles. When asked about the benefits of the collective land for them personally, and for the village, few of the points mentioned were related to economic or tangible benefits: resources for the next generation, or for constructing village buildings. Other than that, benefits mentioned centered around ease of management, avoiding conflict, protecting the village land from outsiders, and protecting the environment.

4) The respondents were interested in extending the area under collective land use certificates

Other lands the villagers mentioned included the temple and school land, village agriculture and grazing land, and in some cases the remaining forest land (village use forest, village conservation and protection forest, and cemetery forest).

5) Only few respondents knew that the title documents were temporary and use certificates.

Surprisingly, only 4 villagers were aware that the collective land is not under permanent title, but that the land was awarded through temporary land use certificates. While this potentially endangers the communities' long-term access to the land, the DONRE representative is aware of the upcoming expiration (in 2014) and is waiting for directions from the central government on how to convert the certificates into permanent titles.

6) Respondents frequently stated concerns about threats from outsiders stealing resources or land

However, only 9 respondents knew about any actual instances of attempted land purchase or lease in the past. No illegal resource use or trespassing on the collective land was reported by anyone in any of the villages. The pervasive concern about outsiders taking village land could help safeguard the collective land from possible future attempts from enterprises to purchase or lease land in the area. While responses to other questions varied across the respondents, all community members interviewed knew that the collective land could not be sold or leased.

Table 2. Interview respondents by village

	Napo	Kouay	Houayhang	Xor	Vangma
Collective land area (ha)	43.77	138.48	81.35	1887.01	38.39
Respondents	7	7	9	7	7
Male	5	4	5	6	6
Female	2	3	4	1	1
Bamboo group members	3	2	6	5	3
Bamboo product sale	6	4	1	3	0
Collective land use	Question not asked (6 had been to the bamboo forest)	0 (3 had been to the bamboo forest)	4 (7 had been to the bamboo forest)	0 (5 had been to the bamboo forest)	2 (7 had been to the bamboo forest)
Level of knowledge about rules ⁵	1 – poor, 3 – medium, 3 – good	3 – poor, 3 – medium, 1 – good	3 – poor, 4 – medium, 2 – good	7 – medium	3 – medium, 4 – good
Boundary issues	0	1 instance	0	0	1 instance
Past attempts to buy land resources mentioned ⁶	0	2 instances	1 instance	3 instances	3 instances
Payment for bamboo harvested	Only if for commercial use	No	No	Yes, but designated protection forest	Only if for commercial use

3.2. Nakai district

3.2.1. PROJECT BACKGROUND⁷

Following consultations with government, community and donor stakeholders as well as the Nam Theun 2 Power Company (NTPC), permanent land titles for collective land (din luam mu) were awarded to families resettled on the Nakai plateau from the reservoir area of the Nam Theun 2 (NT2) hydropower project. The titles were based on the decision of the Khammouane Provincial Governor from March 2012 that collective land titles should be issued to the 14 resettled hamlets (Nongbouakham, Thalang, Sop Phene, Sop Hia, Nam Nian, Sop Ma, Nakai Tai, Nakai Neua, Nongboua, Bouama, Phonsavang, Sop On, Ban Done, and Khon Kaen). The concession agreement underlying NT2 did not specify that collective titles had to be sought, since collective tenure was not under discussion in Laos at the time the agreement was negotiated. However, the CA did require individual land titles for a residential plot and 0.66 ha of agricultural land to be issued to resettled families to ensure secure livelihoods. The affected 1,310 households were resettled between 2007-2009, and it then became clear that some of the resettled families were not able to subsist on the allocated individual agricultural land. There were also concerns about the security of tenure over the allocated entire resettlement area. The provincial government therefore agreed to implement collective land titles as a test case, and tasked the Resettlement Management Unit (RMU) of the Khammouane provincial government and district authorities to implement the process. Part of the degraded forestland within the resettlement area was also allocated as additional agricultural land for food-insecure families, as provided for in the concession agreement.

5. Based on answers to 3 questions about access rules, harvesting rules, and decision-making.

6. Number of respondents who knew of any instance of outside interest in purchasing or leasing land

7. Text has also been reviewed by Elizabeth Mann, independent consultant advising on land tenure issues.

3.2.2. PROCESS FOLLOWED

The concession agreement also required a Participatory Land Use Planning process (PLUP), which was conducted in Nakai between 2009 and 2011 to ensure individual land was allocated in the appropriate use areas, to choose appropriate additional areas for agricultural land, and to establish different land use zones and boundaries, including collective land areas. The PLUP team drafted use rights and responsibilities for the different land types within each hamlet boundary in the resettlement area in a set of draft Community Land Title Regulations, which were then discussed with provincial and district authorities, before revision and final approval by the District and Provincial Governors. The regulations define which areas are covered by collective titles for each hamlet, and defines users, their rights, safeguards, and consequences for misuse.

The process was led by the Resettlement Management Unit (RMU) of the Khammouane provincial government. The NTPC provided funding for technical assistance, PLUP and RMU staff as required by the concession agreement. Support from the provincial governor and the district governor were considered essential to a successful titling process. In January and March 2013, the permanent land titles for collective land (*din luam mu*) were awarded for different types of land, including village forest land (*din paa mai saoban*) and additional agriculture land, as well as “public benefit land” for village buildings such as market, school buildings, rice mills, and ware houses. A total of 2,780 ha of additional agricultural area and a total of 17,428 ha of forestland in Nakai were issued under collective titles. The titles were awarded through official “gold frame” format following the new title format issued by Article 5 on format of communal titles of the NLMA Instruction No. 1668/2008 on the Use of New Formats of Land Titles. The titles were issued in the name of each of the 14 resettled hamlets, and signed by the director of Khammouane PONRE and the deputy director of the provincial land management section (Annex III). The communal land is tax exempt, and all services charges and titling fees were paid for by the NTPC (Nakai District Administrative Bureau 2012).

3.2.3. IMPLEMENTATION OF RIGHTS

The original 14 resettled hamlets have since been consolidated into 10 administrative village units. To prevent conflicts between some ethnically uniform hamlets that have been joined in a new consolidated village, the collective titles were issued in the name of the original resettled hamlets. The village authorities are represented by the elders and community leaders in each hamlet, not by the leadership of the consolidated villages. This was assessed as acceptable by district and provincial authorities, as each hamlet could be designated as a *khum*, or *Ong Karn Jat Tang Ban*, literally “village unit”, about 15-20 households per unit. This means that authority of “original” villages can be represented in situations of village consolidation of 2 or more villages. The use of the collectively titled land is limited to the project’s confirmed list of affected households in the 14 original hamlets, as defined in the list of affected persons (with names, birthdates, and relationship to head of household), and their natural descendants (Household Booklet for Community Land Titles 2013). As currently defined, relatives or other families who move into the area have no use rights to the collective land. Decisions on use and management of the area need 70% of the vote of the eligible households, with one vote per eligible household. Requests for the use of the collective land are made in writing. The collective

land titles in Nakai convey access, management, withdrawal, and exclusion rights, but not alienation rights of the land. The land cannot be sold, transferred, leased, loaned, inherited or used as collateral (Nakai District Administrative Bureau 2012).

In contrast to Sangthong, all land delineated as village land in the PLUP process is collectively held land, unless previously awarded as individual land, or designated as state-managed land. The collective land includes cemeteries, agricultural land (unless individually owned as part of the 0.66 ha household plot, or other individually held land) and forestland, and community infrastructure areas as specified by the village. Other areas were titled to the state, such as administrative buildings, clinics, schools and teachers' housing. This was to ensure future state responsibility towards use and upkeep. Based on PLUP, additional agricultural land was allocated to food-insecure resettler families. This land was taken from degraded forests in the resettlement area and is included under the collective titles. The additional agricultural areas are not awarded to families permanently, and the families cannot trade, sell, rent, loan or use the allocated land as collateral. Use of community agricultural land is approved with issuance of a land use certificate. This does not, however, confer the same rights as a land use certificate elsewhere in Laos⁸. The collective land is awarded to the hamlet with one title for each land parcel, except in the case of forestland, which is titled as one zone per hamlet (Nakai District Administrative Bureau 2012). Forestland, according to the Forestry Law and the Khammouane Governor Decision No. 0085/KM.GOV of 09/02/2005 on the Management and Use of the Resettlement Area, should be accessed in accordance with the forest management plan, and can be used for fuel wood, grazing, and NTFPs for home use or sale. NTFP harvests are monitored by members of the Village Forestry Group. No commercial NTFP harvesting is allowed in designated protection forest. Hunting, and commercial harvesting of high-value timber species are not allowed. Resettled families may use degraded forest areas for agro-forestry, silvopastoral systems and enrichment planting of NTFP species (Nakai District Administrative Bureau 2012).

3.3. Comparison and summary of key points

There are five main differences between the two cases:

- **Permanence of titles:** In Sangthong, the collective land was awarded through temporary land use certificates. These certificates were introduced in Laos as a preliminary step in the process of land registration and titling, and award use, management, and exclusion rights (but not alienation rights) to the community. In Nakai, the collective land was awarded permanent title without the preliminary step of awarding temporary land use certificates first.
- **Government authority:** In Sangthong, the certificates were signed by the District Governor and the representative of the District Land Management Authority, and the certificates were awarded in the name of the village. As stated above, the Sangthong certificates were awarded in a period of major

8. The specific rights and responsibilities in obtaining and using additional agricultural land are outlined in section B2 of the Nakai District Administrative Bureau Approved CLT Regulations. As opposed to temporary land use certificates issued by the GoL to individuals, the TLUCs issued for additional agricultural land as part of the collective land cannot be used as collateral for a loan.

institutional changes in the land and natural resource management sector. It is unclear to what extent the approval authorities and processes followed in Sangthong are still current. In Nakai, the director of PONRE and the deputy director of the Provincial Land Management Authority signed the titles after initial endorsement by District authorities. The titles were awarded in the name of the 14 original resettled hamlets (as opposed to the 10 consolidated administrative village units). The beneficiaries (members) are defined as the original resettled households affected by Nam Theun 2, and their direct descendants.

- **Decision-making body:** In Sangthong, the village forest management committee makes decisions about management of the village forest under collective land use certificate, following the management plan compiled on the basis of land allocation in collaboration with DAFO and DLMA. In Nakai, the original resettled families in each pre-consolidated hamlet have one vote per household to make decisions about the collective land. Use must comply with the approved regulations.
- **Type of land granted title:** In Sangthong, a specific area in each village was delineated as collective land, based on a management plan compiled for village bamboo forests, and the PLUP process that defined boundaries and zones of different village, state and individual lands within the village. The village forest area under land use certificate is secondary forest primarily composed of bamboo. The villagers have the right to harvest NTFPs and bamboo after receiving approval from the Village Forest Management Committee on the basis of the management plan finalized in 2010. In Nakai, all village lands that were not explicitly designated as individual land or state land (for clinic, government office, etc.) were included into the collective title. Separate titles were issued for each land use zone (in the case of forest land) and for each parcel. The area under collective title includes village forests, community agricultural land, and conservation and production forestland. While the beneficiary households do not have commercial timber harvest rights in the collectively titled forestland, they do have the right to use degraded land for pasture, NTFP harvest, and agroforestry activities.
- **Membership definition:** In Sangthong, the village authorities are in charge of making decisions on access to and use of resources in the collective land area, through the village forest management committee. However, there is no clear definition of membership. It is unclear how relatives, or families from other areas moving to these villages will be integrated. In Nakai, the regulations on the collective land specify which families have voting rights to make decisions about the land. The regulations clearly set out reserved housing land for direct descendants of the resettled families, who are also entitled to decision-making rights.

3.4. Success factors

As seen above, these two cases both successfully formalized collective tenure to village land, and thereby secured village rights. This should be seen as a significant achievement, especially in light of the unclear legal basis for collective land titles in the Lao PDR and the shifting institutional landscape at the time of project implementation. These cases provide an important learning opportunity for future collective land projects. Although there are significant differences (as outlined in the previous section), and in some cases the documents used or procedures followed may no longer be the currently valid version, elements from both approaches should be considered as inputs for the national discussion on collective land titles, as well as local replication efforts. Also, despite the differences described above, in both of these cases several conditions were in place that facilitated the awarding of formal collective land rights:

- Participatory land use planning process (PLUP)

Clear boundaries and designated land use types are a pre-requisite for any village-level land management. However, PLUP also served another purpose in these cases: participatory meetings with the village members were a key step in discussing the proposed boundaries, establishing what benefit the villagers were going to receive from the collective land documents, and drafting a set of rules for accessing and using the collective land. In this way, potential conflicts seem to have been mostly defused before the actual titling process.

- In addition, an approved management plan for the village forest was already in place in the case of Sangthong

The management plan complemented the PLUP process in Sangthong, since forest inventory, annual harvest volumes, and baseline information had already been established for the bamboo forest, and validated by community members and local government officials. As seen above, it is not clear to what extent the management plan is being followed (especially in the villages where households seem to harvest from their own land), but village forest management capacity is built through the processes involved in generating this knowledge, conducting field work, and discussing the results.

- Donor funding to finance the full project cost

The total cost of the certification/titling process was significant, since it could be argued to include PLUP and the management plan (in Sangthong), as well as survey, mapping, and demarcation of the collective land, participatory discussions with the communities, title registration, and staff costs. It seems highly unlikely that any village could finance this process by themselves.

- Support from local and provincial-level officials

In both the Sangthong and Nakai district cases, the support of local as well as higher-level government institutions was seen as key pre-requisite for formalized collective land rights by the respective project. In both cases, the government undertook all steps, with the projects providing financial and technical assistance. In Nakai district, the long-standing involvement of the World Bank, Asian Development Bank, and the existence of the NTPC, a private sector institution with an obligation to follow the requirements of the concession agreement, provided significant political pressure. The institutional backing also provided the funding to enable a multi-year process to develop the knowledge base and capacity, and to follow through on implementation of the collective titles. The RMU is currently working with the villages to draft village development plans for the land awarded with the goal to secure the long-term livelihoods of the resettled villages.



4 Recommendations

In comparing these two pilot cases on collective land tenure in Laos, it becomes clear that there remains a lot of room for interpretation about the legal basis for collective and communal tenure in the Lao legislation. As seen in section 2, there is not yet a clearly defined and accepted implementation process for communal land titles in the Lao PDR. Still, representatives from both projects stated in interviews that due legal procedures were followed in issuing the land documents for collective areas, at least as far as it was possible to establish a legal framework in a period of significant institutional restructuring and redefinition of ministerial responsibilities. Further, in both cases the local and provincial government institutions actually implemented the titling, as required by Lao law. This means that both cases, in their own way, could theoretically be used as legal precedent for other communities in Laos. However, as seen in the preceding section, there are significant differences in how the collective certificates and titles were obtained, which rights they convey, and how decisions are made about the collective land. It should also be underlined that the objectives of the project donors in both cases shaped the land rights awarded, more so than villager input. In the case of Sangthong, the collective land use certificates were issued as part of a bamboo value chain project, and therefore were centered on the management of bamboo forest. In Nakai, the IFIs' interest in permanent tenure to the entire resettlement area to promote secure livelihoods led to their focus on permanent land titles for those parts of the resettlement area that were not designated individual land or state-managed land.

Further, very different levels of knowledge and interest in communal and collective titles among local and provincial government partners were reported in informal and semi-structured formal interviews with representatives from a range of international non-governmental organizations and Lao non-profit associations. Several institutions reported that government representatives had either not been willing to allow communal titling in their jurisdiction, or had indicated that they saw the Nakai collective titles as an extraordinary case based on special legislation applied to the resettlement area. Some representatives indicated that it would be impossible for their project to apply the experiences from Sangthong and Nakai without national-level instructions specifying the steps to be followed to obtain communal land titles. In contrast, other interviewees thought that the lack of such detailed instructions provided room for experimentation with communal titles in Laos, which would be an important opportunity to learn from experiences before drafting binding nationwide guidelines based on only two cases.

The high level of divergence in the interpretation of existing legislation therefore creates both barriers to replicating the collective land titles in Laos, as well as opportunities for testing different models. The diversity in local context should be taken into account when discussing potential central-level guidelines for how to implement communal land titles in the future.

Based on the information collected, the following recommendations are proposed:

1. Ensure sufficient funding is available to cover the entire process

As seen in the two existing collective land cases, donor institutions carried the entire cost of the process, including preparatory outreach and discussions among stakeholders, land survey, adjudication, registration, and demarcation, as well as workshops and meetings to define community access and management rules and to follow up on the implementation of the rules

(in Nakai). Since local communities are unlikely to have access to the necessary funds to support this process, other possible funding sources should be mapped out. Unless a village already has contact to a potential donor institution, it would be difficult for them to find resources to finance the process.

2. Issue a general framework on communal land titles at the central level

It could be difficult to draft conclusive national-level guidelines for communal land titles based on these two very different existing cases. However, since central-level guidance is seen as important step in providing a legal framework for implementing communal land titles, one solution could be to issue a general framework to clarify and confirm the most important aspects⁹: that communal or collective land titles can be obtained, which institutions can propose titles, whether communal/collective land titles can be issued directly as permanent titles, and which institution is in charge of approving management plans for these areas. If more villages are able to obtain communal or collective titles within the next two years, their experiences could be included in a more comprehensive national-level policy.

3. Leave room for adaptation to local context

The Lao PDR is highly diverse in geographies, cultures, land use strategies, and socio-economic make-up. In national guidelines on communal land titles, enough room should be left for future communal and collective land titling projects to adapt to the local context. This should extend to the types of land that can be included in these land titles, in the groups that have the rights to manage the communal or collective land, and in the access, use rules, and decision-making structures. These should be defined on the local level to match beneficiary objectives and land use strategies, in accordance with government laws and regulations. One important aspect in particular is the differentiation between induced common property management (as seen in Sangthong and Nakai), and customary communal management, as found in southern Laos and some areas in the north, where the entire community jointly manages fallows and rotational upland cultivation areas. The community traditions of land management need to be taken into account to ensure an appropriate resource management system through communal or collective titles.

4. Ensure active participation of women

In Sangthong district, women were formally included in the decision-making and management of the collective land area, through representatives in the village meetings, and through the Lao Women's Union. However, it turned out that the level of knowledge among women interviewed on the collective land, on the rules for accessing and harvesting from the area, and on the institutions making decisions about the collective land was much less developed. Their active participation in the governance of communal and collective land resources needs to be promoted.

5. Differentiate between economic use and conservation use

When deciding whether or not taxes and fees should be waived for the communal land, it seems relevant to consider that different villages have different objectives in obtaining

9. Nishan Disanayake, CIDSE, personal communication

communal and collective land titles. In Ban Xor, in Sangthong district, the villagers decided to treat the collective land area as a village protection forest. In this case, it would seem misguided to collect land tax from the village, since no commercial use is planned. Land tax requirements in this context might have the opposite effect of encouraging extraction in order to cover the costs of taxation. In other villages, the main use reported was resource extraction to support village development and to strengthen village cohesion, for collecting construction materials for village buildings, or for supporting young families without their own land. It is questionable if these communities would support collective land titles if there was an obligation to pay taxes on the land. At the same time, there are substantial benefits for the Lao government through communally titled land, even though there is no tax revenue: land is better protected from encroachment, from illegal harvesting, from mismanagement, and the land can help support the livelihoods and food security of rural communities.

On the other hand, levying a small tax on communal land could strengthen the tenure security and provide a stronger incentive to the government to support the issuing of more communal and collective land titles. Since villagers currently often see tax as one-sided extraction of money by the state, a village education effort might help explain the social contract involved: the villagers receive government services in return for paying taxes. Similarly, it would be interesting to discuss whether communal or collective land could be taxed on the basis of the value extracted, instead of the land area.

6. Strongly recommend follow-up activities

As seen in Sangthong, due to the SNV-GDA project end date and lack of continued funding, no follow up activities specifically about the collective land were conducted after the certificates were issued, neither by local government, nor by the projects involved. This is probably one reason for the variance in answers about the collective land. However, certain points were still very well understood by all respondents – they cannot sell or lease the land, and they don't have to pay taxes. They all had also clearly learned about the benefits of forest and land conservation, as well. As seen in Sangthong, the implementation of rights on the ground can vary according to the local context, and could potentially pose obstacles to equitable access and use of communal resources in the future. Therefore, it seems important to ensure that budget is set aside for follow-up activities to monitor implementation of communal and collective land titles, and build the capacity of villagers and institutions.

In Nakai, the Resettlement Management Unit has the objective to ensure that the livelihoods of the resettled communities are secure. They therefore have the ability to engage with the communities after the titles have been issued, and can spend more time working with the communities on building equitable and well-informed village institutions. Especially a clear distinction of the rights to land and the rights to the resource growing on the land is important. In the case of Nakai, the permanent land titles convey rights to the land, but extraction rights to only some of the forest resources on the land (NTFPs and some timber for domestic use). In Sangthong, most respondents had not seen the actual certificate and did not know the rights awarded were temporary. One copy of the title documents should be kept in the village to allow easy access in case questions are raised.

The follow up should be combined with or build on experiences with rural legal education programs, which try to provide information about laws and regulations to villagers, and educate them about what their rights are. In the current dynamic policy and legal context, it would be especially important to expand such efforts, so that villagers can learn about communal and collective titles, and the opportunities for requesting titles. The Integrated Rural Development in Poverty Regions of Laos under the Northern Uplands Development Program (NU-IRDP) has been working on community legal education, and their experiences in implementing this project could provide lessons for how to effectively convey information.

7. Clarify the need for a management plan for the communal land

In Sangthong, the collective land registration and certification process was facilitated significantly by the existing management plan for the bamboo resources of 4 of the 5 villages. However, different responses were recorded among the villagers about what role this management plan plays now. Some respondents thought that cutting limits for bamboo were determined in the management plan. Others cited only DAFO and DONRE as decision-making authorities. It was unclear whether or not the management plan will be updated, or how much it is consulted.

The management plan plays a fundamental role in setting up sustainable management of natural resources, in setting use levels match the biological productivity of the resource, and the institutional framework governing the resource can ensure compliance with the use and withdrawal rights defined. Thus, the role of the management plan should be clarified, whether it will be a necessary prerequisite for communal and collective tenure, for which type of areas (village forest, village grazing land, village agricultural land, etc.), which agency needs to approve such a management plan, how it will be implemented, and who will finance and carry out updates to the plan.

8. Clarify the process and rules concerning communal land titles

As described in section 3, there remain important questions about who can obtain communal title for what types of land, with which rights, following which process, and under which tax and fee obligations. However, instead of maintaining an ongoing debate of all the possible interpretations of these legal documents, one suggestion would be to ask the Lao government and legislative institutions to clarify how they intend to use the regulations related to communal and collective land issued so far, and to discuss with Lao lawyers and government representatives which agency has the final authority to offer legal interpretations of government regulations. If a conclusive answer can be reached, it may be worth considering how to move towards clarification on some of the most pressing questions. While it may not be possible to reach a final interpretation, this approach would engage key Lao institutions, charged with legislative drafting, in an important political discussion process.

One of the most important processes to be clarified is how the institutional structure to manage communal or collective land should be set up, and who decides on this structure. Further, the process of creating bylaws or other institutional rules as well as membership should be decided upon. Equally important is to define a process for making changes to the current institutional set up.

In the existing policy and legal reviews, the most relevant policy recommendations have already been summarized. Since the LIWG conducted a stakeholder discussion process about communal land title policy recommendations, and has been actively involved in the discussions about the draft land policy, their recommendations are presented here (LIWG 2012a, LIWG 2013). The main points they raise have not yet been defined further in legislation.

1. Eligible lands: clarify whether production, protection and conservation forest inside village boundaries can be included in communal land titles. In addition, clarify the policy towards communal tenure for upland rotational agriculture plots. Instruction No. 564/NLMA 2007 expressly includes rotational agricultural cropping land, but other legal documents do not. The LIWG recommends that all land areas included in the village area during land use planning should be eligible, with the exception of designated individual or state lands.
2. Eligible entities: clarify which entities have the right to hold communal title – for example, villages, kumbans, associations, cooperatives, and farmer or business groups. In addition, confirm which is the lowest legal entity to hold a communal land title and to manage it, and whether this is a village or a lower level. Allow villagers to initiate the communal land titling and registration process. Clarify that villages located inside state forest areas can obtain communal land tenure as well, although on temporary basis only since this land is already designated for permanent ownership by the state (LIWG 2012a). These temporary communal land certificates could be based on the long-term leases on state forestland to communities in state forests by SUFORD. Following the experience in Nakai, the khum should also be confirmed as eligible entity for holding communal or collective title.
3. Titleholder: clarify if communal titles should only be issued in the name of the village, to which all villagers share equal rights, or in the name of a collective or association, or farmer or business operations. Clarify how membership can be defined and changed, and how subgroups can be defined. The LIWG recommends that persons living in the village for 3 or more years, or with recognizable customary rights, be awarded resource use rights in the communal area, as defined by the village or titleholders (LIWG 2012a).
4. Permanence: clarify that communal land titles can be issued directly as permanent land titles. As stated above, Sangthong issued temporary 3-year land use certificates (Sayalath et al. 2011) and Nakai issued permanent titles (Nakai District Administrative Bureau 2012). Also, clarify how the concept of change can be incorporated over time, based on community consent.
5. Process: clarify that communal land will be registered on the basis of land survey and land use planning, boundary demarcation and definition of land category, boundary, and target of use.
6. Rights: define which rights are included in communal titles:
 - Access to the area
 - Withdrawal of resources or products from the area
 - Management, by regulating internal use patterns and make improvements
 - Exclusion, by determining who has access and withdrawal rights and how rights can be transferred

Communal titleholders do not have alienation rights, i.e. they cannot sell, loan, or use the land as collateral. This aims at protecting the community rights long-term. However, the LIWG recommends that if 80% of all the titleholders agree, the communal land can be given as a concession. They recommend that other changes need an 80% majority as well.

10. Mike Dwyer, CIFOR, personal communication

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6 Annexes

6.1 Annex I – Current MONRE land title formats





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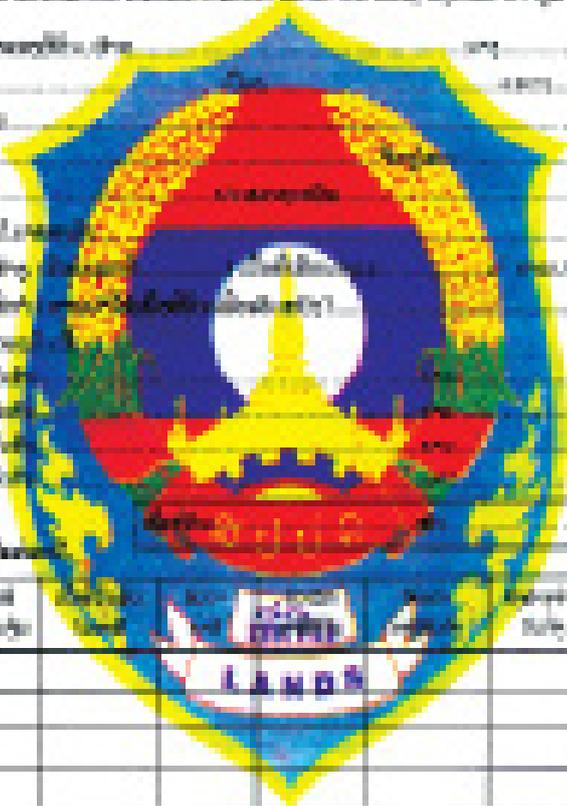
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6.3 Annex III – Collective permanent land title, Nakai district
 (Source: unofficial translation of document obtained from
 Resettlement Management Unit of Khammouane province)





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