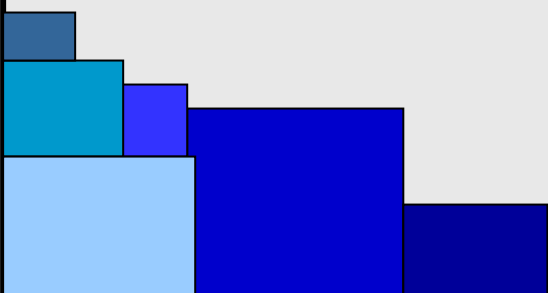


Study on  
Women's Land and Property Rights  
under Customary or Traditional  
Tenure Systems in Five Ethnic Groups  
in Lao PDR

Land Policy Study No. 13 under LLTP II

Mrs. Elizabeth Mann  
Mrs. Ny Luangkhot

Sponsored by: Lao-German Land Policy Development Project (German  
Contribution to the Lao Land Titling Project II in Lao PDR)



May 2008

This Study is part of a series of Land Policy Studies conducted in preparation for a coherent and comprehensive “National Land Policy Statement for Lao PDR”.

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**No. 1: Study on Land Allocation to Individual Households in Rural Areas of Lao PDR; December 2004**

Authors: Bouakham Soulivanh, Anothai Chanthalasy, Phounsavath Souphida, Florian Lintzmeyer, Florian Rock

**No. 2: Study on Land Markets in Urban and Rural Areas of Lao PDR; March 2005**

Authors: Bouakham Soulivanh, Anothai Chantalasy, Phounsavath Souphida, Florian Lintzmeyer, Florian Rock

**No. 3: Study on Land Tax and Fees Policy in Lao PDR; February 2006**

Authors: Simon Keith, Pheuiphanh Ngaosrivathana, Bouakham Soulivanh, Onsy Phimsomphou, Chanh Denuthai

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Authors: Pheuiphanh Ngaosrivathana, Khamfanh Keomanivong

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Authors: Babette Wehrmann, Nuantha Sithipanhya, Phounsavath Souphida

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Authors: Paul Rabe, Thenekham Thongbonh, Vongdeuane Vongsiharath

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**No. 12: Study on State Land Inventory and Management; January 2008**

Authors: Harald Finkemeyer, Noupanh Mahaphonh, Phonepaseuth Inthilath, Viphanxay Chansamouth

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## SELECTED ACRONYMS

AusAID	Australian International Development Agency
CES	Community Education Services
DAFO	District Agriculture & Forestry Office
DoL	Department of Lands
DHUP	Department of Housing and Urban Planning
DPI	Department of Planning & Investment
GoL	Government of the Lao People's Democratic Republic
GTZ	Deutsche Gesellschaft fuer Technische Zusammenarbeit GmbH – Germany Government Technical Assistance
IFI	International Financing Institution
LFAP	Land and Forest Allocation Programme
LNFC	Lao National Front for Construction
LTP	Land Titling Project
LTP-1	Land Titling Project Phase 1
LTP-2	Land Titling Project Phase 2
LUPLA	Land Use Planning and Land Allocation
LWU	Lao Women's Union
MAF	Ministry of Agriculture and Forestry
MoF	Ministry of Finance
M&E	Monitoring and Evaluation
NGD	National Geographic Department
NLMA	National Land Management Authority
NSC	National Statistical Centre
NTPF	Non-timber Forest Product
PLMA	Provincial Land Management Authority
PLO	Provincial Land Office
SAT	Systematic Adjudication Team
TA	Technical Assistance
TLUC	Temporary Land Use Certificate
ToR	Terms of Reference
WB	World Bank

## GLOSSARY

<p><i>Ai dai song, nong dai nung</i> <i>paa saa</i> <i>paa saksit</i></p> <p><i>chong</i> <i>heed khong</i> <i>het hai</i> <i>het suan</i> <i>khadong</i> <i>kha nam nom</i> <i>kha hua</i> <i>khao heed</i></p> <p><i>kong chum khong lah</i></p> <p><i>kumbaan patthana</i> <i>kumbaan pappoong am nat kan</i> <i>pokong</i> <i>khedchutsoom</i> <i>mia noy</i> <i>naa</i> <i>naibaan</i> <i>rong</i> <i>seng</i> <i>sing</i> <i>ta</i> <i>ta nok, ta neanh</i> <i>thoum</i></p>	<p>Elder brother 2 parts, younger 1 part (Tai Dam inheritance) cemeteries spirit forest clan (Trieng), usually taking the name of the clan elder responsible for safeguarding the clan's assets ghost rules doing upland rice crop cultivation sometimes used as a bride price or wedding price payment for mother's milk, i.e. brideprice literally, cost of the bride's head to practise the rules of his wife's family ghost's tradition (Tai Dam)</p> <p>gongs (Brao) merging administrations, but also means technical services consolidation via MAF</p> <p>party consolidation, administrative consolidation focal site (not yet abolished in some provinces) literally "little wife", not legally married, mistress paddy land village authority leader community house (Brao) clan (Hmong) clan (Tai Dam) Clan (Khmu) cymbals (Brao) large woven storage baskets (Brao, Trieng, Khmu)</p>
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<b>Kinship Terms used in this Study</b>	
bi-lineal	the tracing of descent or inheritance through either the father's or mother's family
bi-local	of or relating to, residence with either the wife's or the husband's family or clan
matriliny	the tracing of descent or inheritance through the mother's or female line
matrilocal (uxorilocal)	of or relating to, residence with the wife's family or clan
patriliney	the tracing of descent or inheritance through the father's or male line
patrilocal	of or relating to, residence with the husband's family or clan
polygamy	the practise of a husband or wife having more than one spouse at a time
polygyny	the practise of a man having more than one wife at a time
polyandry	the practise of a woman having more than one husband at a time
totem	a natural object, bird or animal, from which a group of related people or clan take their identity and consider themselves closely related; normally prohibitions are applied to totemic group members from use or, or reference to, the totem

## SELECTED UNITS

ha	hectare
HH	household
yr	year
kg	kilogram
km	kilometre
km <sup>2</sup>	square kilometre
m	metre
m <sup>2</sup>	square metre
<i>Manh</i>	measurement of weight in a silver coin. 1 <i>manh</i> = 1,740,000 <i>kip</i>
n.a.	not applicable
n.d.	no data
n.r.	not relevant
<i>rai</i>	40 m x 40 m = 1,600 m <sup>2</sup>
<i>soy</i>	each soy is equal to 14 <i>manh</i>



## ACKNOWLEDGEMENTS

The duration of the study was 48 days. The team visited provincial and district offices in Oudomxay and Attapeu, and received great assistance in setting up and facilitating fieldwork. We met too many people to acknowledge individually, but key contacts and persons met are listed in Annex 2. We would, however, like to express our special thanks to the following:

In each Province and District, the team's activities and schedules were coordinated by Provincial and District officers of the Lao Women's Union (LWU). We would therefore like to acknowledge the very great assistance provided by Mrs. Amkha Syharath, Vice President of Attapeu LWU, Mrs. Thongsith Samongkham, President LWU Phouvong district, Ms. Viengmany Songphanit, Vice President LWU Sanxai district, Mrs. Khammy Souksavath, President LWU Oudomxay, Mrs. Sithone Moungmixay, Vice President of LWU Oudomxay and coordinator with NLMA, Mrs. Poukham Bouttaphong, Vice President LWU Beng district, Mrs. Bouaphone Keomany, President LWU Namou district, Mrs. Chanhsamone, LWU Xay district. Particular thanks to all those who helped us to select villages, who made all local logistical and visit arrangements, and who accompanied us to villages.

We also appreciate the special help of Mrs. Sivilay LWU Phouvong and Brao translator, Ms. Viengmany LWU Sanxai and Trieng translator, Ms. Yua (Buasy) facilitator and Hmong translator, whose help was invaluable.

Our thanks also to District Governors: Mr. Boun Noi Salankone, Phouvong, Mr. Bounhien Keobouapha, Sanxai, Mr. Khamphet Soutthivong (Deputy Governor) Beng, Mr. Somchanh Thavivanhach (acting Governor) Namou, who helped suggest and finalise village selection, and to make visit arrangements.

Provincial and district level agencies provided guidance and data, especially the Provincial Land Management Authorities (PLMAs) and Departments of Planning & Investment (DPI), for statistical material.

The team visited 15 villages, and met with village authorities, village elders, and men and women from 5 ethnic minorities. Our special thanks are to these community members who shared their culture, lives and experiences with us.

The study team would finally like to acknowledge the support and assistance provided by GTZ in helping this research to happen. In particular, to Florian Rock, who was instrumental in formulating the research topic and guiding the team before and during the study, and in commenting on various report drafts. Lastly, special thanks to team members Mrs. Kongkham Saysanith, who accompanied the team as translator, facilitated logistical and practical arrangements, and who formatted the final report version, prepared village profile annexes and translated into Lao, and Soukan Vongdeth, our driver, who was always cheerful no matter how difficult the road.

## SUMMARY

Many ethnic groups practice a system of land use and resource management which is uniquely adapted for upland areas. This has developed over generations as part of traditional ways of life, and is underpinned through ritual and customary practices. This study looks at how women's land and property rights are established and maintained under these customary or traditional tenure systems. Five different ethnic groups were studied: Brao, Trieng, Hmong, Khmu and Tai Dam.

Within upland land use and resource management systems, men and women have developed different concepts of gender-specific rights and responsibilities as a method of ensuring sustainability of their livelihoods, of their communities, and of their cultural identities. Among animist communities, the relationship of people to land accessed by an identified group for individual or joint purposes and over which that group might have a collective claim, has an important spiritual dimension which regulates access, gender use, and seasonality of use. These lands have been used by such communities for centuries and the inheritable right to use them is well understood in villages. However, these rights are not recognised in law under the modern Lao state.

The Government of Lao (GoL) has taken a position where the Land Law applies to all citizens of Lao PDR. Differences among and between ethnic minorities in Lao PDR are too great for statutory law and policies to accommodate. However, efforts must be made to understand different traditions and practice, some of which are in line with the Land Law, while others are not.

The fragility of different systems is demonstrated by their ability to respond to external influences. Where these can be absorbed and cushioned, gender-specific practices are maintained. Where they cannot, the focus of custom and practice shifts as do perceptions of land and property rights. Sometimes this provides more gender equity over land and property resources, more often it undermines it.

The study concludes that changes in land policies and legislation have over time detached people from many customary practices, land use and resource management that supported rural communities, ensured food sufficiency, and enabled a level of ability to meet basic material needs. This has resulted in declining productivity of upland agricultural systems, declining productivity of and access to non-timber forest products (NTFPs), arable land shortages, and disintegration of customary labour exchange.

Recommendations are made to improve understanding of customary practices and traditions and the unique situations of ethnic minority villages as a basis for preparing strategies more responsive to their needs.

# 1. Introduction

This section provides a background to the study and describes its objectives. It also outlines criteria for selecting ethnic groups as the study focus as well as suitable research locations. It concludes by describing the research methodology and process.

## 1.1 Background

Land titling activities by Land Titling Project Phase 2 (LTP2 – World Bank, AusAID, GTZ) in Lao PDR aim to provide equity in land user rights to men and women from all ethnic backgrounds<sup>1</sup>. Progressing land titling work and new land policies are affecting the complex nature of traditional land tenure systems, resource access rights, and differing property inheritance practices among different ethnic groups. In turn, this leads to changes in the way that land is used to negotiate relationships between men and women in the same community and between different communities.

The Lao-German Land Policy Development Project supports NLMA in the elaboration of a consistent and comprehensive land policy for Lao PDR. In its first phase this project is funding up to 15 land policy studies which will help to collect relevant data, describe the present status and analyse policy matters in various aspects of land management and administration. This study on land and property rights in various ethnic groups of Lao PDR forms part of this series of land policy studies.

## 1.2 Study Objectives

The study's overall objective was to "undertake an assessment of culturally- and gender-defined access to different forms of land, its resources and property, in order to understand the regulatory role of land and its resources in inter-ethnic and gender relationships." Additionally, the team was asked to investigate how men and women from different ethnic groups view gender equity in land ownership as applied under the expanding land titling project, compared to pre-titling indigenous land use and inheritance practices.

To understand the impacts of change, the team was asked to assess the following:

1. Cultural- and gender-defined access to different forms of land and its resources including buildings on the land among five sample ethnic groups;
2. The regulatory role of land and resource access in inter-ethnic and gender relationships, and how gender equity as applied under LTP2 changes this;
3. The role of customary and inheritance practices in maintaining inter- and intra-village agreements on land and its resources.
4. The change over time of customary and traditional practices with regard to women's land and property rights in the sample ethnic groups due to relocation of people, influences of the other ethnic groups and the modern Lao State.

Detailed TOR are included in Annex 1.

The study team consisted of the following members:

Dr. Elizabeth Mann	Social Policy Advisor
Ms. Ny Luangkhot	Community Development Advisor
Mrs. Kongkham Saysanith	Translator and Administrator
Mr. Soukan Vongdeth	Driver

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<sup>1</sup> Project Appraisal Document, Report 259221-LA, World Bank

### **1.3 Ethnic Group Selection and Study Areas**

**Five ethnic groups** were selected for the study from the 49 officially recognised groups in Lao PDR. These were: Hmong, Tai Dam, Khmu, Brao (Lavé) and Trieng (Talieng). Within each main group there are many sub-groups, clans and kin clusters<sup>2</sup>. This study focused on the main named group. This meant that different sub-groups within a main group were surveyed. An effort was made to select sub-groups consistently across the five ethnic minorities, but adjustment was needed as the dispersal of communities has been great, and co-residence with other ethnic groups is common, while intermarriage also occurs.

The duration of the study was not long enough to identify substantial differences between sub-groups except where specified. Limited research time meant that what the team thought it understood may in fact be nuanced somewhat differently if more opportunities had been available to explore topics further. We hope therefore, the reader will see this document as a contribution to knowledge rather than a definitive ethnographic statement. For more comprehensive ethnographies for each of the five selected ethnic groups, readers may refer to some listed under References (Annex 6).

Moreover, change has affected ethnic minorities so significantly, it can be difficult to determine what is "traditional" to a group and what is not. Differences from village to village may mean that differences within and between neighbouring ethnic groups may well have already been in evidence before the modern Lao state. Certainly there are differences in cultural and social practices between sub-groups of the same ethnic group. Nonetheless, some issues were indisputably common to all ethnic groups, and these are explored in this document.

**The study area** was in 2 provinces, Oudomxay in the north and Attapeu in the south. In consultation with provincial LWU, five districts were chosen where the five ethnic groups are well represented. These were: Phouvong and Sanxai districts (Attapeu) and Beng, Namor and Xay districts (Oudomxay).

For each ethnic group, 3 different villages were selected in consultation with district authorities and LWU. The selection of villages at each location was not easy and some compromises had to be made. Accessibility also influenced choices. The final selection was based on the following criteria:

- "resettled" village: defined for purposes of this study as a village resettled by order of authority in line with national policy to reduce shifting cultivation, having taken place within the previous 10 years. Only Tai Dam had not been resettled in this way and the selected "resettled" village was of a fairly mobile population of mixed ethnicity (Lue, Hor, Lao, Yang, and migrants from other province of different ethnicity).
- "traditional" village: located in quite isolated areas, not resettled by authority's order though maybe migrated voluntarily, and its people are living with traditional practices in their daily life. Due to distance of many villages and resettlement of more accessible villages, this criterion was modified to "village settled in new location for more than 10 years"
- "merged" village: merged administrative authority in line of Instruction 09 of Party issued in 2004. This could include several villages of mixed ethnicity, and new households may have been resettled or the administrative boundaries may have simply been redrawn without requiring resettlement.

This resulted in selected study villages being varied in character, location and composition, including traditional locations and resettled villages (both voluntary and compulsory), located in very remote rural areas and in urban locations, mixed and mono-ethnic villages (Table 1). Interviews were conducted in a total of 15 villages.

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<sup>2</sup> More details on these aspects of ethnic identity are provided in Village Profiles, Annex 3.

**Table 1: Ethnic Groups and Fieldwork Villages**

Ethnic Group	Type of Village			
	Traditional	Resettled	Merged	District
Brao	Vang-nhang	Vonglakhone	Vangkhene	Phouvong
Trieng	Dakkanath	Vanxay	Chaleunxay	Sanxai
Hmong Khao	Senhxy	Phoxay	Phakeo	Beng
Khmu Rok/Khmu Lue	Houay Hok	Kieusangvanh	Mang	Beng
Tai Dam	Na Kham	Namoe Tai		Namo
			Donekeo	Xay

### **1.4 Approach and Study Design**

The team used both qualitative and quantitative methodologies to research the study topics. A desk review of available literature on the 5 ethnic groups and land issues was conducted. Interviews were also held with informants, agencies and institutions with particular knowledge of rural ethnic groups and land issues.

At provincial and district levels, the study team held talks at the Provincial Land Management Authorities (PLMA), Provincial LWU, District authorities and District LWU. There are no District Land Management Offices yet established in Attapeu and Oudomxay. Visits were also made to development agencies working in the province.

At village level the team focused on semi-structured group interviews, key informant interviews, and a mapping exercise. Group interviews were carried out with male and female villagers separately, and with village authorities<sup>3</sup>. Mapping was conducted with male groups, and with women's groups checking results afterwards.

Women of some ethnic groups did not speak Lao (Trieng, Hmong, Khmu, Brao), and the study team worked through local translators of the same ethnicity as respondents.

A consultative workshop was subsequently held in Vientiane with invited stakeholders to review the report, key findings and recommendations.

Primary data gathered from each interviewed group is recorded and reported as a Village Profile (Annex 3).

Time available to the team was very limited, and therefore information about the different target ethnic groups is necessarily a rapid appraisal rather than an in-depth study. The team had a total of 48 days for the study, of which 30 were spent in provinces and districts.

<sup>3</sup> Checklists are included in Annex 4.

## 2. Dimensions of Ethnic Identity

### 2.1 Ethnic Groups of Lao PDR

The Lao PDR officially recognizes 49 ethnic groups<sup>4</sup>, classified in four ethno-linguistic families<sup>5</sup>: Lao-Tai (Tai-K'dai)<sup>6</sup>, Mon-Khmer, Sino-Tibetan, and Hmong-Mien<sup>7</sup>. Members of the latter three ethno-linguistic families (i.e. the non Lao-Tai speaking people) comprise about half of the country's population.

For the purpose of this report, the term 'ethnic groups' and 'ethnic peoples' (i.e. the English equivalent to the Lao term commonly used) will refer to the 5 ethnic groups which are the focus of the study.

The largest of the ethnic minority groups in the country is Khmu (11%) followed by Hmong (8%). Other ethnic groups have relatively small populations, with Brao estimated at 0.4% of the national population, Trieng as 0.5%, and Tai (including all the Tai sub-groups such as Phouthay, Tai Lue, Tai Dam) as 3.8%<sup>8</sup>.

**Table 2: Ethnic Classifications in Lao PDR**

No.	Groups	Subgroups	Summary Characteristics
1.	Lao-Tai (Tai-Kadai; old classification: Lao Loum/Lowland) 8 ethnic groups	Xaek, Nhouan, Tai, Thaneua, Phouthay, Yang, Lao, Lue	<ul style="list-style-type: none"> <li>▪ 65% of the population, living mostly along the well-connected Mekong corridor along the Thai border or in Northern lowlands;</li> <li>▪ settled cultivators with or urban dwellers; migrated to Lao PDR from 13th century onwards; Buddhist and animist</li> </ul>
2.	Mon-Khmer (old classification: Lao Theung/ Midlander) 32 ethnic groups	Khmu, Katang, K'tu, Kriang, Kree, Khmer, Ngouan, Pray, Cheng, Phong, Samtao, Oy, S'dang, Xuay, Xingmoun, Nhaheun, Ta Oi, Triang, Tri, Toum, Thaen, Bid, Brao, Pa Co, Makong, Moy, Yrou, Yae, Lamed, Lavi, Oedou, Harak	<ul style="list-style-type: none"> <li>▪ 24% of the population, living mainly in highland areas in the North and Central South, and smaller groups (Khmou) in the Northern lowlands;</li> <li>▪ the most diverse ethnic group and the first to inhabit large areas of Lao PDR;</li> <li>▪ animist and shifting cultivators;</li> <li>▪ fairly assimilated due to hundreds of years of interaction with Lao-Tai,</li> <li>▪ other communities live in isolation as huntergatherers</li> </ul>
3.	Chine-Tibet (old classification: Lao Sung) 7 ethnic groups	Singsily, Sila, Lahu, LoLo, Hor, Akha, Hanyi	<ul style="list-style-type: none"> <li>▪ 3% of the population, living mainly in poorlyconnected upland areas in the North;</li> <li>▪ animist and shifting cultivators; migrated to Lao PDR in 19th century</li> </ul>
4.	Hmong-Iu Mien (also Hmong Mien, Miao-Yao; old: Lao Sung/ Highlander) 2 ethnic groups	Hmong and Iu Mien	<ul style="list-style-type: none"> <li>▪ 8% of the population, living mainly in mid-and upland areas in the North; Hmong as largest subgroup;</li> <li>▪ animist with strong ancestor cults, although many converted to Christianity</li> </ul>

Sources: NSC/CPI, ADB, SIDA and the World Bank, 2006.

<sup>4</sup> Population & Housing Census 2005

<sup>5</sup> Classifications and numbers vary greatly depending on the system applied; one survey revealed 236 ethnic groups and subgroups (Chamberlain et. al.1996)

<sup>6</sup> Officially referred to the Lao-Tai group within Laos, generally referred to as Tai-K'dai by linguistic sources

<sup>7</sup> Also known as Hmong-Yao or Hmong-Iu Mien

<sup>8</sup> The 2005 census provides figures for their respective populations, although it is important to keep in mind that language mapping has not yet been conducted.

Linguistic mapping and analysis has not yet been conducted throughout the country to determine the numbers of languages in the country, and resettlement and migration have increased village heterogeneity. Thus while different villages may be categorized as having the same language, households of different ethnic groups in the same village may have to use Lao as the common language of communication. Classification of four major ethno-linguistic groups and 49 officially accepted ethnic groups of Lao PDR <sup>9</sup> is shown in Table 2. However, data and percentages must be considered as broad guides rather than statistically accurate<sup>10</sup>.

**Table 3: Statistical Data on 5 Ethnic Groups in Attapeu and Oudomxay**

Ethnicity		Districts		Provinces	
Ethnic group	Ethno-linguistic Family	% in District	Survey District*	% in Attapeu province	% in Oudomxay province
Brao	Language family: Austro-Asiatic	95 %	Phouvong	16.5 %	-
Trieng	Language group : Mon-Khmer Language branch : Bahnaric/Katuic	40 %	Sanxai	8.8 %	-
Khmu	Language family : Austro-Asiatic Language group : Mon-Khmer Language branch : Bahnaric/Khmuic	53.38 %	Beng	-	58.89 % (all Khmu sub-groups)
Hmong Khao	Language family : Austro-Thai Language group : Hmong Mien Language branch : West Hmongic	11.92 %	Beng	-	13.88 % (all Hmong sub-groups)
Tai Dam	Language family : Austro-Thai Language group : Tai-Kadai Language branch : Tai Southwestern	4.18 %	Namo	-	2.07 % (all Tai sub-groups)

Source: Lao Women's Union & Departments of Planning & Investment, Attapeu & Oudomxay provinces & study districts, Chamberlain et al. \* no data available for Xay district

About 1% of the population is made up of ethnic Vietnamese and Chinese populations<sup>11</sup>. Ethnic Lao proper, the socio-politically dominant group, comprise an estimated 35 % of the total population and are distributed in the lowlands, primarily along the Mekong and Nam Ou Rivers. Other lowland areas are inhabited by ethnic groups related to the Lao who speak a variety of Tai-Kadai languages. Members of the

<sup>9</sup> Final report of Poverty and Social Impacts Assessment (PSIA), part 1, page 41-42, Hans-Dieter Bechstedt and Valery Gilbos, Chiang Mai, March 2007

<sup>10</sup> A more comprehensive listing of ethnic groups along linguistic lines can be found in James Chamberlain & Panh Phomsombath, *Policy Study on Ethnic Minority Issues in Rural Development [Lao PDR]*, International Labour Organisation, Geneva, February 2000, Annex 1: Classification of Lao Ethnic Groups

<sup>11</sup> Bounthay and Taillard 2000

Mon-Khmer (Austro Asiatic) family are found throughout the country in both uplands and lowlands. Tibeto-Burman speakers arrived more recently from south-west China, while the Hmong-Mien (Miao-Yao) peoples, likewise recent arrivals, came from southern and south-east China. These latter two families are confined primarily to highland areas in northern provinces<sup>12</sup>.

Non Lao-Tai ethnic groups generally occupy the more impoverished and geographically remote mountainous regions of the country, and constitute the majority of the population in 10 of the 18 provinces of Lao PDR<sup>13</sup>, including the two study provinces.

The study selected three Mon-Khmer groups (Brao, Trieng, Khmu), one Hmong-lu Mien (Hmong Khao), and one Lao-Tai (Tai Dam). Statistical data in study areas are presented in Table 3. Some data were difficult to obtain as some provincial and district authorities still use the old classifications of Lao Loum, Lao Sung and Lao Theung. More up-to-date statistics were provided by district and provincial LWU offices.

## 2.2 *Origins of Five Ethnic Groups in Study Provinces*

This section very briefly outlines the origins and concepts of identity of the 5 ethnic groups of this study as explained by respondents<sup>14</sup>.

**Brao** ancestral lands can be found at the juncture where Laos, Vietnam and Cambodia meet. Some Brao claim their origins are in Rattanakiri, Cambodia, while others claim they originated in northern Laos in modern Xiang Khouang province and gradually migrated southwards some 500 years ago<sup>15</sup>. Phouvong district borders Cambodia, its population is predominantly Brao, and respondents trace contemporary family migration from Cambodia to Laos and still maintain social relations with kin in Rattanakiri. Split into northern and southern areas during the 20<sup>th</sup> century, Phouvong district was administered by different regimes until 1975 and Brao were accordingly split into northern and southern Brao under the respective regimes. After 1975 the different administrative units were amalgamated into one district.

Brao people have strong associations with the natural characteristics of the landscape, and depend heavily on help from the spirit world to determine where they will live and how and when they will cultivate the land. Traditionally semi-nomadic but now more settled in upland villages, they moved within mountainous areas partly to escape successive conflicts in the region, and partly to dwell near rivers which have their own spirits, and from which they derive names of sub-groups such as Brao Kanying, Brao Kavet, Brao Hamong, Brao Andrak, Brao Dri, Brao La Ba<sup>16</sup>. The importance of rivers to Brao is further reflected in the part they play in negotiating the brideprice at marriage (see Annex 3). Brao regional dialects are similar and they can understand each other, but all respondents commented on differences between northern Brao and southern Brao, not only in dialects but with respect to some customs and traditions (for example, northerners continue buffalo sacrifice while southerners claim to have ceased this practice). An alternative name for Brao is Lavé but most prefer to be called Brao.

Preferring to be called "Trieng" rather than the official rendition of "Talieng", **Trieng** claim to have arrived in the modern Lao state during the Lao-Siam war some centuries ago as followers of the Thai army. Other researchers put their origins in Vietnam, and the ethnic group is distributed across borders in both Laos and Vietnam. Trieng also live in locations severely affected by successive wars (Lao-Siam/Thai, Japanese,

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<sup>12</sup> UNDP study, op cit, and Vatthana Pholsena, *The Politics of Culture, History & Identity*, Institute of Southeast Asian Studies, Singapore, NIAS Press, Silkworm Books, Thailand, 2006

<sup>13</sup> UNFPA study report on Gender and Ethnic Issues that affect the knowledge and use of the reproductive health services in six ethnic villages of Lao PDR

<sup>14</sup> For more comprehensive ethnographies on the 5 groups, see Annex 6.

<sup>15</sup> Baird dismisses this claim, Ian G. Baird, *Various Forms of Colonialism: The Social and Spatial Re-Organisation of the Brao in Southern Laos and Northern Cambodia*, Ph.D. Thesis submission, University of British Columbia, February 2008

<sup>16</sup> Baird identifies a total of 8 Brao sub-groups and discusses whether other ethnic groups could be also considered Brao *ibid*



French, and revolution). The two main locations where most now live are Dak Cheung district in Sekong province, and Sanxai district of Attapeu province.

Trieng are traditionally migratory, depending on kin ties to form dwelling clusters and relying on the assistance of the spirit world to guide them through the events of daily life. Kin groups are called "*chong*". The *chong* takes its name from the group elder who guides the group in maintaining traditions, guards the shared assets of community (especially gongs) used for different ritual activities associated with healing and seasonal festivities, and takes precedence in selecting the best land to cultivate each year. They commonly live in mixed villages with Alak, Ngae and Co Tu, with whom they may intermarry. Villages visited in this study included two of mixed Trieng/Alak.

**Khmu** are said to be the oldest inhabitants of northern Laos, and are now settled throughout all northern provinces and as far as Bolikhamxay province. They are numerically the largest ethnic minority in the country. They have several sub-groups which co-reside, including Rok, Luu, Ou, and Khrong<sup>17</sup>. Khmu are strongly governed by spirits, both benevolent and dangerous, which influence foundations of customary law. The world of the spirits consistently influences gender relations, land use and property rights, and change disturbs the relationship between the Khmu and the other world. Different levels of spirits govern different choices of men and women - some spirits are territorial, associated with particular places or locations, others are associated with the village and under the authority of the territorial spirit. The study team saw how this belief in the way spirits govern the choices of daily routine, seasonal activities, property rights and relationships between the sexes, even to influencing women's choices when they will work as labour on rubber plantations. Other spirits govern the structure of the household and are normally ancestral who continue to protect the well-being of families. Lastly, there are individual spirits, linked to the household.

Each sub-group may be composed of several patrilineal clans called "*ta*"<sup>18</sup>. *Ta* names are totemic, meaning they are taken from a natural object, or animal, or bird, to which the clan considers itself closely related and usually has prohibitions associated with the totem. Among Khmu Lue in Oudomxay *ta* may include Teu Mong (a kind of civet cat), Teu va (a kind of fern), Teu Kok (a species of bird), etc. The totem is the household spirit, and membership of a *ta* depends in which house a child is born. *Ta* membership determines marriage choices and by association, property rights.

**Hmong Khao** ("White" Hmong) is one of 5 Hmong subgroups present in Lao<sup>19</sup>. After Khmu, Hmong has the largest population of all ethnic minorities in the country. Hmong trace their origins in Laos to waves of migration from China in the early years of the 19th century<sup>20</sup>. Causes for this migration attributed by both Hmong respondents and research sources include historical conflict between Hmong and Han Chinese, population growth, unacceptable burden of taxation and refusal to integrate with Han Chinese. Migrated Hmong are now found throughout the northern provinces of Laos, southern Yunnan, northern Vietnam and northern Thailand.

Typically Hmong have settled in the highest areas of the upland, even preferring to be buried on mountain tops. They have the reputation of being both hard working and more recently, assertive in Oudomxay over acquiring land and property<sup>21</sup>. Hmong Khao are also structured by clans, or *seng* (e.g. Toe, Veu, Tsieng, Moa, Lee, Va, Ya,

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<sup>17</sup> For a list of Khmu and other ethnic sub-groups, see James Chamberlain, *Policy Study on Ethnic Minority Issues in Rural Development: Project to Promote ILO Policy on Indigenous and Tribal Peoples*, International Labour Office, Geneva, February 2000, Appendices I & II, and *Ethnic Groups, Gender and Poverty Eradication: Case study from a Khmou Lue community in Oudomxay province*, World Bank 2003

<sup>18</sup> Ibid

<sup>19</sup> Information gathered during fieldwork among Hmong Khao is thus not necessarily relevant to other Hmong groups such as Hmong Jua (colourful Hmong), Hmong Dam (black Hmong).

<sup>20</sup> Jean Michaud, *From Southwest China into Upper Indochina: an overview of Hmong (Miao) migrations*, Asia Pacific Viewpoint, Vol. 38, No. 2, August 1997. Also affirmed by respondents in village Senhxy.

<sup>21</sup> Research Management Component, NAFRI, *Research Report on the Effect of Village Re-location on Previous Land Allocation in Phonexay, Luang Prabang and Namou, Oudomxay*, Upland Research & Capacity Development Programme, August 2007

Ha, Ja, Keu). The study did not focus on a particular *seng* as each villages consisted of a mix of clans and respondents said *seng* identity has no bearing on how each functions. However, the *seng* does determine the boundaries of land and property rights, and protects the role of men as transmitters of those rights by constraining women's choices, particularly as to who and when she may marry.

**Tai Dam**<sup>22</sup> respondents provide a clear tradition of movement from Dien Bien Phu in VietNam into Lao land two generations ago due to the war between Tai Dam and Tai Khao (Tai Lai), which Tai Dam lost. They tell the story of 3 leaders bringing village Meung Then to Luang Namtha. They rested in Namo district, found it good, and remained there.

Tai Dam have often been classified in Laos as Lao Loum, and were grouped in this category under the old three-level classification. This is an error, as Tai Dam customs and traditions, and with respect to gender rights to land and property, are significantly different from those of Lao, and their spiritual practices are animist and spirit-centred rather than Buddhist. Traditionally concentrated in valleys and along rivers which they used as trade highways, Tai Dam have always depended more on irrigated flatland rice cultivation than the other four ethnic groups of this study. However, they also rely on livelihood diversification by accessing forest products and cultivate upland rice in swidden plots.

Tai Dam also have several totemic clans (*sing*) named after animals, birds or plants. *Sing* in villages surveyed by the team include Vy, Lohh Kham Luang, Lohh Kham Noy, Thong, Kha, Kwang, Lo Luang, Lokun, Lu. Use of the totem is forbidden by members of the totemic group. Thus members of *Sing* Vy (fan) may not use a fan to cool rice or cooked food, *Sing* Thong (copper) may not use copper utensils or household items. This study focus on Tai Dam as a group, not on specific *sing*.

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<sup>22</sup> An interesting review of Black Tai was undertaken by K. G. Izikowitz in 1938 and included in his ethnography of Lamet, Lamet - Hill peasants in French Indochina. (Etnologiska Studier, vol. 17, Goteborg 1951. P. 247.). Subsequent work on Tai Dam linguistics has been undertaken by James Chamberlain, most recently: Chamberlain, James R. 1991d. "The Black Tai Chronicle of Meuang Mouay, Part I: Mythology." *Journal of Mon-Khmer Studies* XXI..19-55..

### **3. Formal and Customary Land and Property Rights**

This section starts by briefly outlining the statutory policy and legal framework governing land titling, inheritance and protection of customary rights of ethnic minorities. It analyses provisions in laws, decrees and directives concerning gender equity in titling as well as in inheritance practices for all ethnic groups.

The section then describes the regulatory role of land and property in relationships between women and men of the same ethnic group and between different ethnic groups as applied in study villages. Differences between customary rights and practices compared to what is now called "modern" law are identified, and reasons for discrepancies described.

#### **3.1 Regulatory and Legal Framework**

Lao PDR has a number of legal instruments governing land, property, inheritance and ethnic groups, as well as other policies which have consequences on how men and women in Laos make decisions over land, property and inheritance.

##### **3.1.1 Land and Property**

The relevant legal instruments relating to land (including residential, agricultural and forest) and property, include:

1. The Constitution of the Lao PDR (amended 2003)
2. Law on Land, 01/97/NA, amended 21<sup>st</sup> October 2003, No. 61/PO and Decree 101/PM 2005 on implementation
3. Ministerial Direction 564, addressing Directions on Land Titling Regulations 997 (Systematic Adjudication) and 998 (Sporadic Adjudication)
4. Several Forestry legal and policy documents, including Decree 169/PM (1992) Management & Use of Forests, Order on Customary Rights & the Use of Forest Resources (1995), Decree 01-96/PM (1996) Forestry Law, Decree 59/PM Sustainable Use of Production Forests, Regulation 0204/MAF (2003) to implement Decree 59, and the Forestry Law(2005)
5. Family Law No. 97/P (1990)
6. Inheritance Law No. 03/90 PSA (1990)
7. Property Law (1990)
8. Law on Development and Protection of Women, No. 70/PO (2004)

These legal instruments protect and promote all forms of property rights, including possession, use, inheritance and gender equality. The state claims overall ownership of land, with the right to devolve user rights to individuals, families, state and economic organisations. The Constitution (Article 5) also confirms the State's responsibility to protect the legal interests of land use rights holders.

The amended Land Law specifies that a Land Title is now the only legal document "considered as main evidence for permanent land use rights" (Article 49). This means that until eligible land is titled, all other documents may not provide permanent tenure security.

Nonetheless, the Land Law does clarify that groups or individuals can acquire land legally in 3 ways: allocation by the state, transfer (defined as "sale, transfer or exchange"), and inheritance (Articles 52, 57 and 58).

Both forest and land legislation define land classifications, but these are quite generalised and do not provide categories which reflect ethnic groups' indigenous knowledge of different land types, nor soil and environmental differences of agro-ecological zones, nor local land management systems. Land classifications were developed by foresters and assumed the eradication of swidden agriculture.

This presents future challenges to the land titling programme which only addresses legal tenure of individual land parcels, mainly residential plots. "Communal" land over which a village community may have a customary or collective claim, is not recognised in law, and all land not registered to an individual or organisation is classified as belonging to the state.

Rights of inheritance for both men and women, as well as disposition of assets in the event of divorce, desertion or widowhood, are supported by the Constitution (Article 17), Family Law, Inheritance Law, Property Law, the Law on Development and Protection of Women and the Land Law.

Specific provisions in legal regulations are listed in Annex 5.

### 3.1.2 Ethnic Minorities

**International Conventions:** as of October 2007, Laos is a signatory to the Convention on the Elimination of all Forms of Racial Discrimination 1965 (CERD) and the International Covenant on Economic, Social and Cultural Rights 1965 (CESCR) and the Convention on the Elimination of all Forms of Discrimination against Women 1979. It has not yet, however, signed ILO 169 Convention Concerning Indigenous and Tribal Peoples in Independent Countries 1989. Reasons suggested for this include: lack of practical measures to enforce practical protection of ethnic minorities, legislation in several Lao domestic laws that contradict favourable provisions for ethnic minorities (e.g. rights to land), limited information provided to ethnic minorities about their existing rights, and dependence on local authorities<sup>23</sup>.

**National Legislation & Policies:** while the amended Constitution remains the prime document stressing the State's multi-ethnic character and the right of all ethnic groups to protect their culture and traditions, it also mentions (Article 8) that the State will implement every measure to "develop and upgrade the socio-economic levels of all ethnic groups." The legal and policy instruments to effect this directly and primarily affect ethnic minorities. These include:

1. Resolution of the Central Party Organisation Concerning Ethnic Minority Affairs in the New Era (1992). According to an ILO report<sup>24</sup>, this policy is the cornerstone of current ethnic minority policy in Laos and has motivated many of the subsequent Decrees relating to village organisation and administration.
2. Resolution of the Political Bureau Concerning the Affairs of Various Minorities, Especially the Hmong Minority (1981). This document was created in response to a concern over the growing insurgency movement led by this ethnic group<sup>25</sup>. Apart from law and order issues, the document focuses on the need to improve Hmong livelihoods, including agricultural practices. In 1981 the aim was not to eradicate shifting cultivation but to stabilise it.
3. Decree 102/PM (1995) on the Organisation & Administration of Villages
4. Law on Local Administration, No. 60/PO (2003)
5. 8<sup>th</sup> Party Congress and Directive Order No. 9 of the Politburo, 8<sup>th</sup> June 2004, Instruction Order on the Establishment of Village and Village Cluster for Merging Administration (*kumban patthana*)

These last three policies affect ethnic minorities more than others because not only do they specify how many people constitute the minimum-sanctioned dwelling cluster of a village, but they reinforce other efforts to provide socio-economic and infrastructure facilities to remote populations.

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<sup>23</sup> *Land Rights of Indigenous Peoples*, by Alexandra Xanthaki, Melbourne Journal of International Law, vol 4, (2003)

<sup>24</sup> Taken from Appendix III, *Policy Study on Ethnic Minority Issues in Rural Development*, Project to Promote ILO Policy on Indigenous and Tribal Peoples, by Dr. James R. Chamberlain, Mr. Panh Phomsombath and Ms. Vatthana Phorsena, February 2000, International Labour Office, Geneva

<sup>25</sup> Ibid

Directive 09 is the latest in a series of decrees and directives attempting to address poverty reduction, including the establishment of rural development committee (RDC, now abolished) via Decree 010/PMO of 2000 on decentralisation, which was felt to have been implemented inconsistently. The RDC previously organised focal sites (*khedchutsoom*) which still persist in some provinces such as Savannakhet, Luang Prabang among others. In order to accelerate the reform of local governance and public administration, the decree of Party 09 of 2004 superseded the decree 010/PMO of 2000. Decree 09's additionally requires, apart the formulation of *kummaan phatthana*, for each district in each province to identify priority zones, which are sometimes called focal sites "*khedchutsoom*". In the survey provinces of Attapeu and Oudomxay, districts tend to take the label of *khedchutsoom* and *kummaan patthana* as used by MAF to describe technical services consolidation, and apply it to *kummaan patthana* as proposed under Directive 09.

Directive 09 is now the principal policy document cited by provinces and districts to authorise concessions with the aim of turning land into funding opportunities to speed up national development, as well as to resettle villages already previously resettled under Decree 102 and Law 60<sup>26</sup>. A cited objective is for "ethnic people in the village cluster to live together with love and solidarity under the Party's guidance." (see Annex 5 for specific provisions).

**Responsibilities:** implementation of the Party's policy on ethnic minorities is the responsibility of the Lao National Front for Construction (LNFC). The Ethnic Minorities Committee under the National Assembly is charged with drafting and evaluating proposed legislation concerning ethnic minorities, plus lobbying for its implementation as well as that of socio-economic development plans. Ethnic minority research is the responsibility of the Institute for Cultural Research under the Ministry of Information and Culture. The lead institution for ethnic affairs is the LNFC<sup>27</sup>.

Responsibility for eradicating shifting cultivation belongs to the National Programme for Shifting Cultivation Stabilisation under MAF, but the party committees of province and district levels are responsible for implementing Directive 09.

### ***3.2 Role of Land and Property in Gender and Social Relationships***

While traditional land tenure and property ownership are subordinate to State laws and policies, customary practices still regulate relationships between the sexes, between households, and between different ethnic groups. There are clear differences between customary rights and practices compared to what is now called "modern" law.

In villages surveyed by the team, there are two levels by which traditional land tenure and property ownership can be understood: (i) family and (ii) village. In several ethnic groups the kin group (or clan) plays a role, but this helps to define family boundaries and is thus discussed in the first section.

#### **3.2.1 Gender Dimensions of Customary Land and Property Rights**

Land and property rights in the first instance are regulated within a kin group (family or household) through inheritance practices, marriage agreements, labour contributions, and expectations over who cares for elders. Disputes are settled by household heads or village elders.

Table 4 provides a generalised view of marriage, land and property inheritance patterns among the 5 surveyed ethnic groups. However, in every village there were exceptions and conditions which make it increasingly difficult to determine what is "traditional" and what is not. For example, the Brao "traditional" village demonstrated

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<sup>26</sup> Villages are either resettled, or administrative boundaries re-drawn without resettlement, to meet the latest definition of a village, which the Law on Local Administration (repeated by Directive 09) gives as at least 200 people in highland areas, at least 500 people in lowland areas, and at least 1,000 people in urban areas. This updates Decree 102 which defines a village irrespective of location as being "over 20 households or a population of over 100 co-existing persons", and which regulated resettlement between 1995 and 2003.

<sup>27</sup> Quoted from the International Work Group for Indigenous Affairs, <http://www.iwgia.org/sw17151.asp>

bi-local and bilineal inheritance patterns more associated with change, while the "resettled" village demonstrated more traditional matrilocal and matrilineal inheritance practices<sup>28</sup>.

Land and property that can be transferred on marriage, death or divorce includes fixed paddy land, residential land and its house, and garden land immediately adjacent to a primary residence. These are considered to belong to "individuals" or "households". Each household in all 5 groups has two living spaces, one of more solid construction located at the fixed place which is called living house, the second at the swidden plot where they may live for several months of the year at a time, and even longer than the duration that they live in the fixed house. Each year a new swidden plot shelter is made or the old one deconstructed and reconstructed at the new site.

**Table 4: Inheritance and Marriage Residence Patterns**

Marriage, Land & Property Inheritance Patterns	Traditional Villages					Resettled Villages					Merged Villages				
	Brao	Trieng	Hmong Khao	Khmu Lue & Rok	Tai Dam	Brao	Trieng	Hmong Khao	Khmu Lue & Rok	Tai Dam	Brao	Trieng	Hmong Khao	Khmu Lue & Rok	Tai Dam
Matrilocal						•									
Matrilineal						•									
Patrilocal			•	•	•			•	•	•		•	•	•	•
Patrilineal			•		•		•	•		•		•	•		•
Bi-local	•	•					•				•				
Bilineal	•	•		•					•		•			•	

During the farming period both men and women of the household move together to the farm for agriculture work. Women live in the farming shelter almost all time of the entire farming season, while men sometimes move back to the "home" (fixed house) for performing ritual activities including alcohol drinking for the house's spirit and/or for spirit of the community (Trieng, Khmu).

**Marriage Residence:** married Brao, Trieng and Khmu couples spend some years in the household of either the groom's or the bride's parents before exchanging residence (temporarily or permanently) with the other set of in-laws or before setting up their own households. The reason for this practice is explained in three ways: first, marriage can occur very young (the age of 14 is not unusual for girls to marry); second, one objective of marriage is to provide labour to the household; third, a period of some years for the married couple to live with both sets of family is considered necessary to help the young couple adjust to married life and learn the necessary skills to establish their own household (all groups).

Brao: Vonglakhone village. Brao married residence is matrilocal. If the wife dies, the son-in-law cannot return to his parents house [*nb. this is different in other Brao villages*]: if his parents-in-law like him he can become as a son and will stay with his wife's family for his labour. If the next daughter is unmarried, he can marry her. If he moves back to his parents and wishes to re-marry, he must obtain the permission of his parents-in-law to do so. If there are children, they must stay with the wife's parents in order to inherit. The father cannot inherit.

**Transferring Assets from Generation to Generation:** in transferring family assets from one generation to another, material items, whether fixed or moveable, define gender and age set rights and responsibilities. Transfers regulate gender boundaries, and provide a frame of reference in which men and women view their own identities,

<sup>28</sup> Baird describes Brao as bilineal and bilocal, but in Phouvong District Brao respondents described their system as traditionally matrilineal and matrilocal but moving to bilineal/bilocality under the influence of change. Baird 2008 op cit

as well as the identities of others. Yet the flexibility of customary practice in comparison with the fixed nature of statutory law can present difficulties in assigning a "typical" practice to any single ethnic group.

Table 5 shows gender differences in traditional inheritance practices. By comparison, statutory law recognises more rights of inheritance by a spouse as a first step, while customary law usually focuses on transmitting rights to the next generation and providing protection to the remaining (usually widow) spouse. For purposes of identifying "ownership" rights, statutory law usually requires that property inherited through the wife's line belongs to the wife and then her children, property inherited through the husband's line belongs to the husband and then his children, property developed or land cleared by both husband and wife is considered conjugal property and inherited by their children. This is the method the land titling project uses in determining whose name should be on a land title. This can work where there is a pre-existing condition of bi-lineal inheritance. However, in societies where women may not inherit, it becomes difficult for them to obtain land rights under a title unless specific measures are applied by titling programmes.

The nature of these rights becomes clearer when discussing division of land and property during divorce.

**Table 5: Gender Differences in Traditional Inheritance Practices**

Ethnic Group	Fixed assets (house & land)			Moveable assets (e.g. livestock & )	
	Youngest girl	Youngest boy	Women's share via Brideprice	Male siblings	Both Male & Female siblings
Brao	✓	X	X	X	✓
Trieng	X	✓	✓	X	✓
Hmong	X	✓	✓	✓	X
Khmu	X	✓	✓	X	✓
Tai Dam	X	✓	✓	✓	X

X = not practised      ✓ = practised

**Divorce.** Divorced women tend to fare unevenly over all types of property right. The responsibility of the man is to repay the costs of the wedding and the brideprice. In general the division of property on divorce is based on inheritance and on determining who is at fault, i.e. whose behaviour has initiated the divorce. In a no-fault divorce, each spouse will retain their inherited property while property developed by both during the marriage will be divided equally. However, if a man initiates divorce because of another woman he normally has to pay more than if a divorce is due to mutual consent.

Among Brao the wife will fiercely defend the right to retain the entire land and property for her children if the husband is at fault, and he will receive nothing. Similarly, if the wife is at fault, the husband will retain everything on behalf of the children. Among Hmong, it is the husband who decides who will receive which assets, irrespective of fault.

Most women from all ethnic groups except Brao will tolerate a husband's philandering because both social and economic structures internal to the group make it extremely difficult for a woman to live on her own. This is reflective of the high level of dependence of women on men in 4 of the 5 ethnic groups. It would be interesting to see whether future research indicates a higher proportion of divorced or single women as a consequence of enhanced gender equity in land and property rights.

**Assets Inheritance:** Among all ethnic groups surveyed, fixed assets tend to be inherited by the youngest child remaining to care for parents. Moveable assets can be inherited by both male and female siblings, though not among Hmong and Tai Dam. Tai Dam women commented, "Husbands are born for getting, wives are born to ask" (*phouoa thukk dai, phai thukk sia*). Women in these two ethnic groups are considered to have their inheritance rights met through jewellery, livestock and household goods agreed in the brideprice. Because brideprices is a feature of all ethnic groups, the married status of a woman at parents' death generally determines the amount of her inheritance share. For example, Trieng unmarried girls inherit from parents but their married sisters will not receive anything.

Tai Dam: Donekeo village. A Tai Dam woman married to a Lao Loum man is the only child of her parents. They live with her parents and during their lifetime, he observes Tai Dam ways (literally he has to *khao heed*, practise the rules of his wife's family ghost's tradition). The parents say when they die there is no-one to inherit the house and land. Instead, the son-in-law will inherit the property, but then the daughter will adopt the Buddhist identity of her husband and the house will become Lao Loum. The spirits of the parents cannot then remain in the home and a spirit house will need to be constructed in the garden

Some important assets with particular cultural significance may be considered community property and maintained by village elders for the good of the community as a whole. This is the case with Trieng gongs (*kong chum khong lah*), or large woven storage baskets for alcohol jars (*thoum*), though among Brao these are transferred across generations through the female line.

Trieng: Dakkanath. The community's shared funds buys the gongs or they are inherited through the kin group (*chong*). The *chong* elder is the guardian of the gongs and hides them in the forest. When the gongs are needed for a ritual activity, a ceremony must be organised to obtain them from the *chong* elder and to return them to him afterwards. The husband must drink alcohol for the spirit while the wife works in the fields. "Women are not allowed to drink, it is not tradition."

With the exception of Brao, women are consistently disadvantaged with respect to land and property rights on divorce, widowhood, and remaining unmarried. Widows tend to be dependent on their children, though some said they inherit a husband's property if he dies first; but a wife is primarily seen as guardian of the children's inheritance rather than an independent inheritor.

Hmong: village Senhxy. If a widow wishes to remarry, her children by her first husband must stay with his parents, particularly the sons. If she has many sons and the new husband agrees to pay the brideprice to her first parents-in-law, she can take some sons with her, but at least one should stay with them to inherit. If the first husband dies before the brideprice is paid, the second husband has to pay half of this amount to the parents and relatives of the first husband. The clan's (*seng*) spirit protects clan members, their lives and property. Men and women must marry outside their *seng*. The woman always becomes a member of her husband's *seng* and her birth clan's spirit leaves her when she marries. If a widow remarries in the same *seng* as her deceased husband, she can inherit his property on behalf of the children, but if she remarries into another *seng* she cannot inherit. The *seng* defines ownership of individual household property, and men are the transmitters of *seng* membership from generation to generation.



All ethnic groups said that polygyny was traditional in the past: only Khmu, Trieng and Hmong confirmed the practice continues, though now confined only to a few older men. Urban Tai Dam women said the Lao Loum practice of acquiring “minor wives” (*mia noy*) has become more common among Tai Dam men, though not in rural Tai Dam villages. Where polygyny does occur, it is usually because the first wife has no sons. Some first wives adopt other’s children as her own, who are entitled to inherit their adopted parents assets equally with natural children of second or third wives.

Table 6 summarises contemporary social practice affecting women’s land and property rights among the 5 ethnic groups.

**Table 6: Social Practice Influencing Women’s Land and Property Rights among 5 Ethnic Groups**

Ethnic Group	Residence Patterns					Brideprice Paid	Marriage Status			
	W to H's hh		H to W's hh		Either		Polygynous	Divorce Permitted	Widows Remarry	Unmarried
	permanent	temporary	permanent	temporary						
Brao		●	●		●	●	●	●	●	X
Trieng	●				●	●	●	●	●	X
Hmong	●					●	●	X	X*	X
Khmu	●			●		●	●	X	●	X
Tai Dam	●			●		●	●	X	●	X

● required or allowed

X absolutely forbidden or extremely rare

\* Hmong have strict rules who a widow may marry; thus many widows are re-married with the husband's younger brother and she is absolutely forbidden to remarry outside her husband's clan

### 3.2.2 Traditional Village Land and Property Rights

The second level of regulating traditional use of and access to land resources is through the village. Village resource access is defined by membership of the village, generally regardless of kin group or clan identity, and demarcated by physical means of natural features such as hills, forests and water sources, and now increasingly by roads or irrigation systems. Most villages know well their own land use zones and those of their neighbours.

Use of these resources is customarily regulated by village elders (usually male) and by individuals whose particular skills and knowledge farming systems are recognised and respected within a community. Communal labour exchange to maximise efficient use of these resources is negotiated and agreed within and between households in the same village.

"Traditional land use and management" in this document is defined as a way of using land that is village-centred, and may include a combination of several land types, including: upland (shifting/rotational) cultivation land, forests, land that is not forested but which sustains NTFPs such as different bamboo species, aquatic resources, grazing areas, spiritual areas (including spirit forest [*paa saksit*] and cemeteries [*paa saa*]), fixed paddy land, orchard or long term cash crop land, and garden (horticultural) land. Boundaries are often flexible and resources accessible for all village members and not gender defined, though types of labour inputs and agricultural tasks for different land and property resources are gender defined.

Traditional land use and its management is highly regulated by the spirit world, and men are the intermediaries between the material and spirit worlds. Men’s control over the spirit world is used to justify why women cannot remain single, why they cannot live on their own, and why they cannot inherit land and property. Spirits govern who can or cannot inherit, who can do what on the land, and when they can do it.

Among Tai Dam, inheritance must be male because it is *heed khong*, literally "ghost rules". Hmong men maintain the clan spirits in the house and on the land, and must intercede with the spirits of the land before women are permitted to start upland clearance for cultivation. Trieng and Brao men engage in heavy drinking sessions to clear the way for communication with the spirits. Women are restricted from both spirit mediation and from drinking.

Even in societies more gender equitable than others such as Brao, men's role as intermediaries between the spirit world and the material world is central to the well-being of individual households as well as of the community overall. This strengthens patriarchal structures by reserving key activities for men in mediating with the spirit world when building a house, clearing land, or dividing property among children and in consuming alcohol to assist mediation. Subsequent activities which are mainly the domain of women, cannot continue until this is completed

**Traditional Land Ownership and Land Use Management:** where traditional land use is still followed by all ethnic groups in study villages, there remains no concept of permanent individual land "ownership" among the 5 ethnic groups except as described in the previous section. Beyond these, land "ownership" is vested in village members and its resources are for their common use, livelihoods and spiritual connection. Temporary land boundaries on swidden plots are marked annually to make land limits clear and may be physically reinforced by fence construction.

There are no prohibitions on anyone from a village accessing any natural resource for their own livelihood use outside these categories, and no-one has to ask permission of anyone else in the village. Land conflicts between households are typically over the location of swidden fence construction and usually resolved by village elders. Even on individual land, livestock may be grazed without permission outside cultivation periods. Permission is only necessary in relation to assigning upland rice plots areas or identifying spirit forest areas.

Changes in land use and management are regulated by village elders using indigenous knowledge to accommodate shifts in circumstances such as population growth, individual household difficulties, or arrival of newcomers from other clans or ethnic groups.

Cultivable land is re-assigned each year in a different place by the *nai ban* and elders, who usually choose first the best plots for themselves. Families annually move their livestock, rice stores and farm shelters to new plots while the main residence stays fixed in the village.

Land boundaries for common use land among all ethnic groups in the study may thus be both conceptual as well as literal. This contrasts with statutory boundaries which are very literal indeed. Conceptual boundaries may be associated with ancestral domains and movement within and across such boundaries are negotiated between clans and other ethnic groups.

Because all ethnic groups except Tai Dam, and particularly ethnic minorities in southern provinces, have experienced multiple relocation over many years, customary links among the five study groups with ancestral domains have been weakened in practice and sometimes in memory also. However, they have not been completely lost, and different ethnic groups have different ways of maintaining their ties to land areas. The principal means is to centre land use, management and access rights in a village rather than in an individual ethnic group or clan. These rights can become quite proprietorial under certain circumstances, particularly when resources routinely accessed by a village are encroached by others without negotiation, consultation or permission, whether of the same, or different, ethnic group.

Among Hmong, the clan helps to regulate land "ownership" by keeping inheritance confined to clan members only, thus also regulating household structure and by association, land usage. Any clan member leaving the village devolves his land use right to other clan members.

In villages with several clans living together (as in all surveyed villages), land is not allocated to the clan but to a household<sup>29</sup>. Hmong reside in joint households of a male head with sons and their respective families. The difference is quite marked between Hmong and other ethnic groups. In village Phakeo consisting of both Hmong and Khmu, 61% of Hmong lived in extended family households compared with 19% of Khmu families. This may reflect the greater tendency of Hmong to regularly relocate entire villages, partly as a consequence of more unsustainable land clearance methods than other upland dwellers.

Change can also over time adopt the status of tradition. Izkowitz noted in 1938 that Tai Dam land was communal and could not be owned by any private person, it could neither be inherited, sold nor bought<sup>30</sup>. Irrigable land was regarded as the most valuable and to be divided amongst the different families according to their needs. Non-irrigable land, on the other hand, was regarded as commons where anyone could make a swidden. Today Tai Dam present their irrigable and rain-fed paddy land as traditionally belonging to individual households, while swidden locations do not belong to individuals but is "village land" allocated annually to households according to need.

In all villages where statutory land allocation has not yet occurred, there are well-understood land use co-operation mechanisms to meet the food security, nutritional and household needs of all households, poor and rich alike. These mechanisms depend on:

- i. **proximity** of a variety of land resources from which a large variety of utilitarian, sale and nutritional items can be obtained. These include items such as: rattan and timber for construction, firewood, bamboo (*pa-or*) for construction and handicrafts, grasses (*phai nhaa*) for roofing, animals from hunting, foodstuffs such as mushrooms, cardamom, etc., and aquatic animals.
- ii. a **multiplicity of good quality** water resources for irrigation, domestic water and fishing,
- iii. **land for communal spiritual and social purposes**, including cemeteries and spirit forests (*paa saksit*). In some villages there are separate cemeteries for the matrilineal and patrilineal line (Vonglakhone), for those dying within the village or outside the village and by accident (Vang-nhang), and for the rich and poor (Dakkanath).
- iv. **availability** of grazing areas for livestock
- v. **surplus** of land for upland rice plots
- vi. **adequate timber** for house construction

Necessary land resources for survival according to the 5 ethnic groups thus consist a combination of any of the following<sup>31</sup>: (i) fixed flatland paddy (irrigated or rain fed) [*naa*, or *thong phiang*]; (ii) communal land where upland rotational swidden plots can be cleared and shelters constructed [*din khed neun soong*]; (iii) forest land (irrespective of statutory classifications, but where different forest resources can be accessed) [*paa*]; (iv) clean water sources [*leang nam say*]; (v) communal land where NTFPs can be accessed (including but not necessarily, forests) [*khed danh ban*]; (vi) housing land where the main residence is located [*din pook sang*]; (vii) garden land which is normally in proximity to the house [*din suan khua*]; (viii) land for maintaining orchards [*din took ponh mai*]; (ix) livestock grazing land [*din bone liang sadd*]; (x) land with spiritual value and where village spirits reside (normally in forested land) [*paa saksit*].

Indigenous classifications are not reflected in land or forestry legal or policy documents. The current statutory classification system does not provide categories

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<sup>29</sup> This is not the case of other locations where land may be allocated to clans. See Lilao Bouapao, *Property Relations of the Hmong in Laos*

<sup>30</sup> Izkowitz 1953, op cit

<sup>31</sup> These are given in Lao for simplicity's sake, rather than in the different ethnic languages

which support local responsibility for conservation of land and other resources<sup>32</sup> and accommodate neither indigenous knowledge within different ethnic groups, nor soil and environmental differences of agro-ecological zones, let alone different concepts of social or spiritual attachment to different types of land, natural features and land-related resources.

Customary classifications remain more important to upland rural communities than statutory classifications. Villagers do not keep to zoning which takes no account of their own land use or management systems.

**Cooperation Mechanisms:** an important feature of traditional land management is the role of community cooperation and labour contribution. Community reciprocity is an important feature of traditional life which should not be underestimated, as it provides labour exchange for families with limited household labour or at times where tasks must be completed quickly, maximises productivity, and ensures household food sufficiency even to the poorest families in a community. An understanding of the traditional perspective further helps to appreciate how significant are the impacts of externally imposed change on this vital function of village structure.

In most villages where upland rice cultivation remains, those households with insufficient land for household purposes can negotiate with another to share or use their area. No-one buys or sells land, and no-one rents it formally. But land use is negotiable between different households, both fixed paddy or assigned upland plots. In villages Na Kham (Tai Dam) and Vang-nhang (Brao) there is no land rental but others can use cultivation land with mutual agreement. There is no expectation of payment, but it is usual to share some of the harvest. In other locations there is not even this requirement, only the requirement to pay the land tax for the duration of cultivation.

This form of land management is very adaptive to changing household circumstances. If a household is poor, then it has a reasonable expectation of assistance from clan or kin members in the village. If a household has a cash flow shortage one year (perhaps from the additional expense of a wedding or illness in the family), then they can just cultivate less land in a year and pay less land tax. Or they can temporarily use someone else's land or borrow rice from each other, returning after the next harvest. The following year they can catch up on the previous year's setbacks.

Collective labour allows a community to extract the maximum use from land-based resources, improves the potential for success in types of hunting or fishing, shortens the time necessary to complete tasks which may be constrained by seasonal or weather factors, and re-distributes labour equably between families with a surplus of labour to those with labour deficits.

Lack of cash flow is not necessarily a criterion of poverty for these villages. There is food sufficiency provided access to customary land resources are assured and stable. Some traditional upland villages in Attapeu province have rice surplus all year – the Trieng village of Dakkanath sells or exchanges its annual rice surplus to 7 other neighbouring villages. Social structures ensure that poorer households are supported by richer households in patron/client relationships, which in turn are underpinned by kin and clan obligations and responsibilities. It is only when land resources are removed, restricted or the population becomes too large for land availability, that its productive value to reliant communities is affected.

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32 This is an important point made by Linkham Douangsavanh, NAFRI, and Anan Polthanee and Roengsak Katawatin, Faculty of Agriculture, Khon Kaen University, Thailand: see their article Food Security of Shifting Cultivation Systems: Case Studies from Luang Prabang and Oudomxay Provinces, Lao PDR Journal of Mountain Science Vol 3 No 1 (2006): 4857 <http://jms.imde.ac.cn>; <http://www.imde.ac.cn/journal> Article ID: 1672-6316 (2006) 01-0048-10

The need for cash can be satisfied through selling NTFPs or handicrafts, or sale and barter with other villages<sup>33</sup>. Some households with specialist skills rely on barter for livelihood, receiving foodstuffs or consumption products in exchange for services such as blacksmithing, alcohol production, basket making, sewing or weaving.

Inter-village trade is an important function of the local economy to obtain basic necessities such as kerosene, sugar, salt and clothing. In turn, lowland villages seek to buy upland products such as ginger, chilis, chickens, pigs and dogs, considered to taste better and be better of quality than lowland versions. However, quantities are small because of access limitations – the amount traded is the amount that a single person can carry on their backs or at best, on motorbicycles. Many villages are completely isolated during the rainy season, and all-weather access remains problematic, both for upland villages to get their products out and for potential support to get in.

Although annual upland cultivation areas are not “owned”, after village elders have divided an area each year, each household “owns” the right to cultivate its allotted area during the specified time. Disputes may arise between people who trespass or unknowingly cultivate someone’s allotted land.

In resettled and merged Khmu villages (Mang and Kieusangvanh), households believe they inherit the right to be considered in the annual allotment of upland cultivation areas. Thus while the land itself cannot be owned or inherited, the right to use the land is distinct and inheritable.

Richer, higher status households tend to get the best land, both in annual selection of upland rice plots (Senhxy/Hmong, Dakkanath/Trieng), and when moving to new locations (Vang-nhang/Brao, Vangxay/Trieng). Prosperous families tend to migrate first, having more moveable assets to support the transitional period.

**Regulating traditional land rights between different villages:** negotiated temporary land use between villages is practised. Alak from Chaleunxay regularly ask Trieng from Dakkanath for permission to use their land for cultivation. This is acceptable providing they agree to pay the land tax on behalf of the person allocated the land by Trieng elders.

Permanent land use can also be negotiated. Seven Hmong Khao clans (*seng*) migrated from Ban Chonkeo in Nga District in 1995 to Puluk village, and then to the Khmu village of Phakeo in 1999. Some Khmu moved at the same time from Ban Nak and Ban Lak. Hmong and Khmu groups negotiated relocation onto the land with resident Khmu and subsequently agreed the move with district authorities. Ban Phakeo is now split into 3 hamlets, the original Khmu hamlet of Nam Ngao, a second Khmu hamlet of Laksay, and a Hmong hamlet of Phakeo.

However, land use negotiations break down under compulsory resettlement or when land is sequestered for concessions.

Resettlement impacts are not just felt by the resettled, but also by host communities. They are expected to give up to newcomers their common use land or individual household land. Inevitably this leads to conflict between resettled and host communities, despite both sides acknowledging that neither is to blame for the situation. In villages Phoxay (Hmong resettled onto Lao Loum and Khmu land) and Kieusangvanh (Khmu merged and resettled together with Hmong Dam from other villages onto Tai Lue land) the conflict had reached confrontational proportions and feelings were running high when the survey team visited.

This also reinforces the importance of land resources as a village construct, rather than of an ethnic group, as shown in the example of Ban Mang, a Khmu Lue village formed originally in 1977. In 1994, other Khmu Lue families settled in the village and were

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<sup>33</sup> Charles Alton & Houmphanh Rattanavong, *Livelihoods and Forest Resources in Katu Villages in Sekong*, paper in Bouahom, B. Dr., Glendinning, A., Nilsson, S., and M. Victor (eds) (2005) *Poverty reduction and shifting cultivation stabilisation in the uplands of Lao PDR: Technologies, approaches and methods for improving upland Livelihoods - Proceedings of a workshop held in Luang Prabang, Lao PDR, January 27 - 30, 2004*. National Agriculture and Forestry Research Institute. Vientiane, Lao PDR

greeted by original residents as a welcome addition to the collective labour force which enable them to extend their land use. They were also welcomed as new families with whom to intermarry. However, since 1994 land resources have become constrained by resettlement and concessions. The neighbouring village Ban Pom, also of Khmu Lue, is now encroaching on Ban Mang's forest and grazing land. Recently they lost 25 has of re-classified land to a Chinese-owned rubber concession, managed by a Khmu Ou from Phongsaly, who brought in 60 Khmu Ou families as labour. This has raised tensions between Khmu Lue of Ban Mang, Khmu Ou on the rubber concessions, and Khmu Lue from Ban Pom.

### **3.2.3 "Traditional" and "Modern" Land and Property Regulation**

When a framework of statutory land allocation and land management policy overrides customary practice, several things start to happen:

- methods of implementing a statutory framework are tailored to achieving different land use objectives
- such methods may be more directive than consultative
- traditional knowledge is not accessed and customary land management information and use methodologies may be lost. This may indeed be a policy objective
- access to sufficient land for sustaining diverse livelihoods is decreased
- the authority of elders to mediate conflicts is significantly reduced or relegated to household conflict settlement
- statutory mechanisms may not be understood by implementors in different locations in the same way
- interests of the state, or the interests of the powerful, will over-ride the interests of individuals or traditional villages
- the focus of land use shifts from collective and cooperative to individual and household

Table 7 highlights the main differences between "traditional" and "modern" land and property regulation.

**Gender attitudes towards statutory land rights and Land Titles:** Respondents in survey villages were asked for their views on statutory land rights and on the land titling procedure, compared to customary land use and management rights. Their responses clarified the importance of traditional perceptions towards land and property rights and responsibilities.

Men's customary role remains the most important. This role is needed in practical terms as well as for ceremonial purposes. Men establish residences and make them habitable for the household. They are the ones to mark out land and property and establish boundary markers. They have power over women's access to use of land resources through their control over mediation with the spirit world which regulates when and how land is used. Women consider they depend more on men to establish and maintain the property rights that are enjoyed by both men and women.

Men and women from all surveyed villages considered the name of the household head should be on a title, regardless of gender. Hmong and Tai Dam were the two ethnic groups which most vigorously defended the patriarchal and patrilineal structure of land and property rights. Trieng and Khmu were more open to gender equity as a statutory requirement despite patriarchal and patrilineal custom. Brao were most consistent in acknowledging gender equity in land and property rights under customary law, but even this ethnic group demonstrated that change is affecting the attitudes of the younger generation.

**Table 7: Differences between traditional and modern land and property regulation in Lao PDR**

TRADITIONAL/CUSTOMARY REGULATION	MODERN REGULATION
<b>Land User Rights and Land Ownership</b>	
1. Ancestral domains centred on villages and established historical presence	1. All land belongs to the State
2. Individuals and groups have the right to use, own, inherit and make land and property management decisions	2. The state makes decisions about land management; individuals and groups only have user rights in certain circumstances
3. Land use rights permanent or lasting as long as necessary for individuals, households and villages	3. Land use rights temporary and short-term for individuals, households and villages, but long term for title-holders and FDIs
4. No tenure documents, but tenure rights agreed through custom, practice and negotiation between sets of elders	4. Titles now the only legal land user rights document
5. Inheritance and property rights gender differentiated	5. Inheritance and property rights gender equitable
6. Focuses on protecting inheritance rights of the next generation - more rights of inheritance by children as first step	6. Protects inheritance rights of remaining spouse as the first step, and of children as the second step
<b>Land Management &amp; Land Use Planning</b>	
7. Flexible and accommodates life cycle changes in households and villages	7. Fixed and cannot accommodate village or household changes
8. Land allocation adjusts to the needs and changing labour availability of different households	8. Land allocation occurs at a once-only stage of a household's development
9. Land management suitable for different types of production systems	9. Land management suitable for flatland paddy rice and cash crop production systems
10. Spirit world regulates what land can be used, when it can be used, and who can use it	10. The State regulates what land can be used, when it can be used, and who can use it
11. Community presence immediate in the village & can make rapid on-the-spot decisions	11. Decision-making depends on extension services which are overstretched, under-staffed, inadequately budgeted, district-centred and lacking ethnic minority & female staff (language, gender & cultural barriers)
12. Land use knowledge is local and specific to village circumstances and local markets	12. Land use knowledge is general and geared to larger markets
13. Land use planning involves men and women seasonally, includes communal labour contributions, and is regulated by elders. LUP related to the needs of a village as a whole	13. Land use planning involving men, regulated by district authorities, is focused on individual farmer use. LUP related to the needs of individuals and increasingly the FDI investment needs of the State
<b>Land Classification</b>	
14. Land classifications varied and include all types necessary to sustain diversified livelihood sources	14. More classifications for forestry land than arable land and community dependence on diverse land sources not recognised
15. Land classifications reflect indigenous knowledge of local land and soil types	15. Classifications generalised for the whole country
16. Forest classifications based on open access to a village for its use and needs	16. Forest classifications based on protection and exclusion of use
17. Communal land use boundaries clear, regulated by elders and penalties applied if breached	17. No communal land use defined
<b>Land Boundaries</b>	
18. Land boundaries conceptual rather than literal	18. Land boundaries literal rather than conceptual
19. Housing and arable land moved when necessary	19. Housing and arable land fixed and new land and property available through land markets only
20. Disputes resolved by elders	20. Disputes first resolved by elders, then by authorities, or remain unresolved

In survey villages, Brao women reinforced the view that they are owner of family's assets because the husband moves in with the wife's family. They are assertive in protecting these rights, particularly if the husband's eye wanders to another woman. Brao women will chase their husband out from the house if they learn he has a mistress and ensure he takes nothing with him but the clothes he stands up in. However, younger Brao men in resettled villages claim customary rules do not apply to "new" land and therefore titles should be in the male household head's name only.

Trieng, Hmong and Tai Dam women said that because they move to live with their husband after marriage they do not have any property. Conjugal assets will be transferred to their male children after marriage. Tai Dam women were emphatic that land and property be registered under the name of the male household head and feel protected during their lifetime with no fear of divorce. Hmong and Trieng men and women all agreed the male household head's name should be on all land titles. Among Brao and Khmu there was some discussion whether it should be just the male household head's name, or the names of the husband and wife. Some considered it irrelevant while others were clear the wife's name should be on the title. Among all ethnic groups, traditional views over women's property rights are more equitable when a married couple has developed land and property together or when a household is compulsorily resettled onto land with no inheritance status.

While all surveyed ethnic groups are clear about gender rights for land and property within customary regulation, they are not clear about gender rights under statutory regulation even if their own custom allows similar rights. Some villages had heard messages on radio programmes that the land titling document should include the name of both husband and wife, but could not understand why this should happen.

It was not clear among local authorities either. In one discussion the head of the village LWU stated that land ownership should be in name of the male household head, while several minutes later changing her mind by saying there should be both names as instructed by the radio programme.

While the method of inheritance is a simple rule-of-thumb to apply in project terms, it does not necessary ensure gender equity for ethnic minority women. If a woman cannot traditionally inherit, there is no basis for inherited property to be conjugally or gender defined. The experience of the titling project and other research<sup>34</sup> does show that ethnic minority women may welcome more gender equity in land rights if given the opportunity and if these rights are clearly explained.

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<sup>34</sup> Notably a study conducted on titling impacts among Hmong in Vientiane Province



## 4. Changes in Customary Land and Property Rights

The section discusses changes in land and property rights, the causes of change, how ethnic groups develop strategies to deal with these changes, and resulting direct and indirect gender impacts.

Traditional land and property use is supported by **proximity** of resources, **multiplicity** and **good quality** of resources, **availability** of additional land for diversification of livelihood sources, and **land surplus**. This ensures a high degree of food security to households of different socio-economic status, ensures disputes over competition for scarce resources are kept to a minimum, guarantees a higher nutritional intake and provides items which can be translated into trade or sale items.

Community co-operation mechanisms depend on these pre-conditions. When pre-conditions change, this results in reduced land productivity, limited variety of land resources leading to less access to items providing essential nutritional intake, and fewer sources of products to sell or process for cash. In turn, there is a shift from community co-operation to community competition, and the unit of responsibility becomes more tightly defined and focused on the family, rather than on the clan or village.

If we compare traditional resource availability with availability after change, we can see the pre-conditions for maintaining the cultural integrity of traditional land use have been undermined or lost. Land becomes characterised by **distance** of resources (further to fields or plots in different areas), **scarcity** and **low quality** of resources (land, soil and water), **low diversification** of land types (particularly lack of forest and aquatic resources and unavailability of grazing land), and agricultural land **deficits**.

There are now clear differences between customary rights and practices compared to what is called "modern" law (Table 7). These differences are the result of major changes in land use policies and practices that have occurred over the past 20 years or so. To understand the consequences we look at the reasons for change.

There are four main reasons for change. These are:

- land allocation
- compulsory resettlement
- promotion of commercial plantations and consequent land use change
- poor knowledge levels about "new land" rights and responsibilities

### 4.1 Land Allocation

Land allocation (LA) has had major consequences for traditional land use practices among all ethnic groups in this study<sup>35</sup>. It is closely associated with the methodology of Land Use Planning (LUP) which is sometimes, though not always, applied as a pre-condition to LA.

The process of land and forest allocation was approved as national policy in 1994 and officially adopted by MAF in 1996. The Land and Forest Allocation Programme (LFAP) provides the framework for land use planning and land allocation (LUPLA). In accordance with the Land Law, DAFO on behalf of the State should allocate up to a maximum amount of 25has of land per labour unit of a household<sup>36</sup>. In reality, much less than this is allocated. There is insufficiency of land per labour in upland areas, and no household has ever received the full entitlement under law.

In northern provinces a 3 plot strategy was followed, allocating a maximum of 3 plots per family for rotational use. This does not allow for sustainable regeneration of soil fertility, in turn endangering household livelihoods.

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<sup>35</sup> The authors are grateful to Florian Rock for clarifications in this section

<sup>36</sup> see Annex 5 for specific legal provisions on land allocation

The land user document issued is a Temporary Land Use Certificate (TLUC - *bay mob ti din*). Usually TLUCs are only issued for "additional" land and no systematic analysis of all land held by each family is undertaken during the allocation process. The TLUC is valid for 3 years (Article 17) and is supposed to be the first step towards a full Land Title<sup>37</sup>. Unlike a title, land under a TLUC cannot legally be sold without the assent and signature of village authorities, and if the land user does not comply with its requirements after 3 years, the TLUC can be withdrawn (Article 62). Nonetheless their owners still consider them proof of legitimate claim to the land they use. However, the team did not encounter any situation where TLUCs have ever been validated or converted to full ownership use, and sometimes they are not issued even though LUP/LA has taken place.

Village Land and Forest Management Agreements were also signed by DAFO and village authorities, ostensibly to hand over management responsibilities to a village, but not accommodating village traditional land use types and not providing any real tenure rights.

Land allocation is a once-only event occurring at a particular moment of a village's land use. There are two forms of allocation processes: (i) land allocated to resettled households. This should be based on LUP but in practice this rarely occurs; (ii) land allocated to individual households under LUP/LA in established villages. The team encountered circumstances where land allocation in established villages appeared to be unrelated to LUP/LA and was undertaken primarily as a means to formalise residential land rights, possibly as a precursor to land titling. Furthermore, where LUP/LA had taken place, arbitrary changes to land classifications have been made by DAFO with no reference to established LUPs or agreements. When referring to land allocation henceforth in this document, we mean assignment of land to an individual household for particular purposes with documentary validation.

While land allocation is intended to formalise the status quo, the way in which it is implemented does not accommodate (i) variety of land use (unless it is undertaken in combination with land use planning); (ii) differences of land use; (iii) changes in land use through compulsory resettlement, migration or sequestration for concessions; (iv) traditional flexibility in land use; (v) changes in household labour availability through the social and life cycle; (vi) convenience of access (even if 2has of land is allocated, it may be split up in different parcels in different locations); (vii) individual household productive capabilities.

Marriage negotiations of customary labour exchange between households have implications for both land use planning and land allocation, which is supposed to assess individual land user rights on the basis of labour availability in a household. As a fixed and externally imposed methodology, statutory land allocation is virtually unenforceable as it cannot adjust to the realities of a household's expansion and contraction, either within cultural parameters (as explained above) or within the natural life cycle through marriage, death or migration of family members. It further undermines the basis of structuring household labour availability in households.

Consequences inherent in poor land allocation practice include the failure of responsible authorities to discuss matters with women, leading to almost all TLUCs being in the name of male household heads rather than reflective of gendered inheritance or conjugal property rights.

While the amount of land allocated should be based on the household's labour availability, in practise it does not happen in this way. This is partly due to a desire for authorities to be seen to be fair and impartial to households, partly due to lack of land available to be allocated, and partly because authorities just do not have the time to do the type of assessments needed.

In Ban Vonglakhone (Brao), for example, every resettled household has been allocated a housing plot of 20 x 30m<sup>2</sup> and paddy (*naa*) land of 2 hectares. In Ban Vang-nhang (Brao), each household has had traditional landholdings reduced to 30 x 40m<sup>2</sup> for

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<sup>37</sup> Olivier Everard, Article on Land Allocation, 2008

residential space and 2 has of *naa*. In Ban Phoxay (Hmong), 60 x 60m<sup>2</sup> residential land per household was allocated and 42has cultivation land to be shared between 160 families. In Ban Kieusangvanh (Khmu), some obtained 20 x 20m<sup>2</sup>, others 30 x 30m<sup>2</sup> for residence – those moving into the village first obtained the larger plots. Agricultural allocation in this village varied between 0.3 to 1ha per family, depending on who was resettled first. For Ban Houay Hok (Khmu), assessment of cultivable land allocation was based on 1ha per family with one son, and so on, depending on the number of sons.

Ethnic groups in survey villages viewed land allocation as having both advantages and disadvantages. These are listed in Table 8.

**Table 8: Community Perceptions of the Advantages and Disadvantages of Land Allocation**

<b>Advantages</b>	<b>Disadvantages</b>
i. poorer households can obtain some land	i. the same amounts of land are allocated to households irrespective of household size or labour availability
ii. households arriving later in a village can obtain some land	ii. inherited land amounts are reduced
iii. provides documentary evidence of land use rights	iii. inheritance disputes increasing among siblings after landholdings reduced
	iv. transfers land from productive farmers to unproductive farmers
	v. increased land conflict between households within a village over shortages of cultivable land
	vi. increased land conflict between villages over encroachment by those seeking more land
	iv. many villagers do not understand rights and responsibilities inherent in TLUCs
	v. because no land assessments are undertaken before resettling households, resettled families often allocated inadequate amounts of land or unproductive land

In Ban Vanxay (Trieng), Ban Vang-nhang and Ban Vangkhene (Brao), Ban Phoxay (Hmong) and Ban Kieusangvanh (Khmu), the way in which allocation has been conducted for resettled families is considered unfair. Not only is the amount of land inadequate and unrelated to household size or labour availability, former land users may demand that resettled households pay for the land that used to be theirs, but which authorities have re-allocated to resettled families. In Vanxay, the first resettled Trieng households obtained land free, but those resettling later are obliged to pay Brao households now living in Xaysettha district who still claim rights to the land. There are no documents to support this claim, but *nai-bans* and witnesses have been used to validate claims and ensure payment is made.

While Brao expressed more equanimity at having their landholdings reduced, this was not the case among Tai Dam or Khmu who expressed strong feelings of resentment. Land allocation is viewed as a mechanism to separate them from traditional land rights. Indeed, LUP or urban planning may be used by provincial and district authorities to exclude people from their legal entitlement to a formal land user document for fear of having to pay higher compensation for land expropriation or for fear that recognising such land use rights would inhibit the ability of the state to make independent decisions over land use. In village Donekeo, Tai Dam households have been excluded from the titling process in anticipation of their land being expropriated

for the airport extension<sup>38</sup>. Although land allocation has lapsed, villages do not yet know this, and in traditional villages, it can be perceived as a threat rather than a benefit.

Tai Dam: Na Kham. Everyone is clear about their household land boundaries. Land allocation will focus on house and paddy boundaries. If land allocation reduces the land claimed and used by a household, this will increase inheritance disputes between siblings. We have inherited our land over generations and we are not willing to give it away to other households or to the government under land allocation. We have heard land allocation may reduce our landholdings - we will negotiate the matter with district authorities but we will not give up our inherited land.

When the type, nature and amount of land available to a group changes, land co-operation mechanisms also tend to change. While in traditional villages the land-poor households could negotiate with the land-rich for annual land use without paying rent, in villages where land allocation has been undertaken, it is normal to pay land rent. This inevitably excludes cash and labour-poor households from obtaining much, if any, cultivation land and pushes them further into the pool of hired labour.

Boundaries of co-operation shrink – fewer households with food surplus are willing to assist poorer households during times of food shortage because they feel if their land has been transferred from them (the productive farmer) to poorer households (often the less productive farmer), then it is up to them to make the best of what they have acquired.

The way in which land allocation is undertaken takes no account of different household abilities to bring land into production. In the following example, the presence of poor households and their inability to use allocated land productively and efficiently through no fault of their own, had consequences for the whole hamlet.

Brao: Ban Makieng (hamlet of Vangkhene). In 2003, 81 households (94 families) were resettled to Vangkhene. They were told to prepare paddy land for which they would receive 2million kip per hectare or 0.2kg rice per 1m<sup>2</sup> for their labour, with a minimum target of 1ha per family. After a year the authorities checked on progress, and learned that 59 households had prepared 1 ha, but the remaining 9 were unable to do so due to illness, lack of sufficient labour in the household and the need to sell their labour to other households leaving them no time to work on their own land. Consequently none of the households received any cash or rice for land cleared.

On the other hand, land allocation can provide opportunities for landless households to obtain some land from which more assertive and prosperous families may have excluded them, particularly if they relocated later than other households.

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<sup>38</sup> This also occurs in other provinces, indicating a national policy rather than a regional practice. See Elizabeth Mann & Noukone Onevatthena, Mann, Elizabeth & Noukone Onevatthena, *Village Review Study: Lao Land Titling Project II*, TA Report 4.54, July 2007

Brao: Ban Vang-nhang. In 2001 district authorities came to divide up the land, allocating 30 x 40m<sup>2</sup> per family and clearing village boundaries. If villagers already had more than the regulation amount for residential land, they had to give it away to other families. They had no objection to doing this, as it was sharing it out among others in the village. There were no conflicts between households or families in deciding who should have what land.

Lastly, land allocation cannot accommodate the changing fortunes of individual households. This may lead to cycles of indebtedness from which it can prove difficult to escape. In Dakkanath, Trieng with cash flow problems can reduce their outgoings by depending more on foraging and less on land cultivation with its attendant tax requirements. Once their debts are paid off, they can again increase their cultivation area. By fixing the amount of land available to a household, the flexibility to adjust income sources and spending levels is curtailed and taxes must be paid regardless of personal circumstances. If the village has entered the market economy with respect to land and property, a spiral of indebtedness can be hard to escape.

Overall, land allocation has contributed to a sharp decline in community willingness to accept responsibility for land management or to participate in making decisions about land use planning. This responsibility has been transferred to DAFO, which cannot be expected to exercise the same level of supervision over land use as those living on site.

Land allocation has been one of policies that has systematically detached ethnic minorities from customary land management that supported the poor, ensured basic food sufficiency, and enabled a level of capability to meet material needs. It has increased conflicts, most notably between those who formerly might have cooperated with each other.

## **4.2 *Voluntary and Involuntary Resettlement***

Laos has a long history of highly mobile populations, either for economic and social reasons, or to escape the consequences of conflict over the past 2-3 centuries. Since the early 1990's, another factor has contributed to relocation. The Government of Laos perceives shifting cultivation to be a major cause of deforestation, soil degradation and erosion, and opium cultivation a social evil. The aim to reduce both is clearly stated in the Forestry Law of 1996 and the Background Document on the National Poverty Eradication Programme (September 2003). The State also realises that it cannot provide facilities to remote areas, such as schools, market roads and medical services.

This combination of factors has led the State to relocate remote communities to lowland areas to gain control over the environment, to improve access to infrastructure, and to exercise closer supervision over the people<sup>39</sup>. Communities are given incentives such as promises of cultivable land, facilities and a better life.

This section looks at compulsory relocation as a State policy compared to voluntary relocation initiated by a village itself.

### **4.2.1 Voluntary Resettlement**

Several of the ethnic groups in this study have customarily incorporated cyclical village relocation as part of their social and economic structure. Brao were traditionally semi-nomadic, as were Trieng, Hmong and Khmu. As well as whole villages relocating, men may have seasonally migrated to seek work elsewhere, or families and/or women moved to cultivate swidden plots for a large part of the year. This seasonal trend continues today.

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<sup>39</sup> Specified as an objective in Directive 09.

Village clusters would regularly seek new locations to live and cultivate land, for a number of reasons. Populations may have grown beyond the ability of the old location to sustain numbers, the land may have become infested with rodents, an elder may have had a dream which was interpreted to counsel moving, groups may have lost conflicts with neighbouring groups, etc.

When households or villages voluntarily move location, access to resources can be negotiated if necessary. This may result in different clusters of the same ethnic group developing different perceptions of what is traditional and what is not, depending on who moves where and with which other ethnic group or clan negotiation is necessary.

Several villages may also agree to move as a unit, though not simultaneously. When well-planned, this provides valuable and necessary support to ease the transition period.

Brao, Vang-nhang is an amalgam of 7 villages which moved to the current site over 5 years. Some individuals were sent out by the villages to find good locations for resettling; this place had enough flat land for rice fields, a good number of streams and rivers, and enough wood for house construction. The old villages are more than 50 kms. away.

First, households from Ekempukaniang arrived. They were supplied with food and support from the remaining villages. Once they had cleared land and established the base, the villages Kong Mi and Nam Leu moved. They worked together to clear land and build houses. Ekempukaniang households had stored rice in the first year which everyone shared.

The third villages to move were Kampitoun and Hansana. The first 3 villages supported these until they were established; finally Phouphi and Sen Luang households arrived, and they were the last. Now villagers say:

"The first households took the best land, but everyone has some land. During the first years, we did not dare to enter the forest alone because of tigers. We would go in groups of 5 or 10. The forest was dense and many NTFPs could be gathered by women, and timber could be cut and sold. Now women have to walk 2 days and 2 nights to find forest food."

Not everyone is happy with constant movement, and many communities have welcomed the opportunity to stay in one location and combine fixed paddy cultivation with more traditional land use methods.

Customary village movement has significantly reduced, in some locations due to regional conflict over many years, while in others due to increasing unavailability of cultivable land. But compulsory village relocation has increased, where communities have no choice as to where they go or who they live with.

#### **4.2.2 Involuntary Resettlement**

Involuntary resettlement has been implemented by provincial and district authorities in every part of Lao PDR. Some provinces have pursued the policy more vigorously than others, but none remain unaffected. The rationale behind the policy has been explained, and this is coupled with a claim that ethnic minorities are the main cause of deforestation in Lao PDR.

While some upland communities may undertake activities damaging to the environment which need addressing, most do not. A more serious threat to both timber and non-timber forest resources comes from extraction activities of companies and powerful individuals who are only concerned with short-term gains and have no interest in the long-term sustainability of the country's natural resources<sup>40</sup>. Villagers are given the task of protecting forests, but this is difficult for them to do in the face of

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<sup>40</sup> See also Charles Alton & Houmphanh Rattanavong, op cit

outsiders who appear to have official authority to extract timber from forbidden areas<sup>41</sup>.

This is not the first study to point out the severe adverse impacts of poorly planned resettlement on both resettled and host communities. The team observed an acute shortage of cultivable lowland areas in resettled villages has led to competition over fixed agricultural and residential land and increased conflict between different households, between different villages, and between communities and local authorities.

Land availability assessments or land use planning are rarely, if ever, conducted before relocating households<sup>42</sup>. Thus allocating inadequate land, uncultivable land, or no agricultural land at all was the experience in every resettlement villages visited by the team.

Khmu: Ban Kieusangvanh. This is a newly created Khmu (Luu) and Hmong (Jua/Blue) village, carved out of land between Ban Named and Ban Napa, both of Tai Lue. The 2 ethnic groups do not interact, except among representatives of the village authority. Each group lives on either side of the road. Khmu moved into the village in 2 waves, first in 1998 and second in 2000, from Ban Houay San, about 3kms. distance. Some families with good property remained in the old village.

Khmu have conflicts with Tai Lue over both agricultural and residential land. Tai Lue claim ownership of the land on which they have been resettled, and demand payment. 3 families bought additional land from Named villagers to construct houses, but the authorities stopped them and told them it was not legal to buy or sell land in Laos. Subsequently villagers learned upland areas immediately behind the village have been sold to Hor (ethnic Chinese but Lao nationals, whom Khmu view as "foreigners") rubber plantation investors at a price of 7-8 million kip per hectare. Khmu women asked: "why can foreigners buy land in Laos but we cannot? Why do the Lue ask us to buy the land for our houses but then we are told this is illegal?"

In villages where adequate cultivation land remains, the search for land by neighbouring communities may create inter-village conflict, as in Ban Na Kham, where Tai Dam households are resisting encroachment into their forest resources by resettled Khmu in neighbouring Houay San village.

The consequences for land use is:

- slash and burn continues in the absence of alternative land availability;
- resettled households often retain their properties and upland cultivation areas in their old villages, and move backwards and forwards between the two;
- communities have lost confidence in the promises of authorities and have become reluctant to interact with them
- poorer household in particular may quit the resettlement site and return to their old villages

Trieng families moving back to Chaleunxay gave the following reasons for their decision to quit the resettlement site of Vanxay:

- they have been resettled several times and become poorer each time they move because they are relocated without other households from their kin group
- they have insufficient labour to make a living in the new location
- they have no cash to hire labour
- they have used up all their savings in order to relocate and find it difficult to save more

<sup>41</sup> *ibid.* This situation was also encountered by the team during fieldwork

<sup>42</sup> Even in the 1930's the scarcity of irrigable lowland rice land was observed, Izikowitz, Karl Gustav, Lamet: Hill Peasants in French Indochina, 1953, reprinted White Lotus Press, 2001

- they do not have enough capital to buy paddy land
- allocated paddy land is not suitable (rocky soil, no water) and their rice yields have decreased to 0.7-0.8 ton per ha compared to yields from upland plots of 2-3 tons per ha.
- they received no assistance from the authorities to relocate since they moved later than others
- in the resettled village there is no land for cattle grazing
- the old village has no fixed land boundaries like the resettled village, and they can easily find arable land
- climate is too hot in the lowlands
- they cannot cultivate enough food to sustain the household

Resettlement has undermined the authority of elders, who no longer have the authority to manage customary land resources. Nor can they control who enters and who leaves the village any more, as resettlement sites are along roads with constant traffic<sup>43</sup> and not constructed along traditional spatial lines.

Resident spirits of the land are often not invited to accompany resettled households. Trieng and Brao communities have re-constructed their community house in the new location, but its function has shifted to a meeting house for outsiders (such as the study team) and where project staff can stay overnight.

However, even if some types of spirits remain where they are, household spirits accompany resettled households, and their importance becomes more significant in self-identity. Among resettled Khmu the importance of spirits in land use and management can also be maintained to some degree.

Khmu: Ban Kieusangvanh. "Every 10 days it is necessary to take rest for 2 days, and it is taboo to work on your own land during these 2 days. If you do, you will see a ghost or spirit in some way, sometimes expressed through physical ailment. So we use those 2 days to work on the Chinese land because their land does not count. Once a year in the old village we sacrifice to the spirits so they will not be angry with us and will continue to protect us. We do not sacrifice in the new village."

Resettlement affects women differently in different locations. In Beng and Phouvong districts the impacts have been negative and increased women's livelihood activities, but in Sanxai district they are said to have alleviated women's labour. The difference seems to lie in whether the resettled household maintains cultivation in the old village or not. This choice depends on whether enough arable land of good quality is allocated to resettled households. Where allocated land is inadequate size or of poor quality, or no land has been allocated to resettled households, then they have four choices: starve, sell their labour to plantations, return to their old village, or split the household between old and new locations (often done if the old village is accessible within a day's walking). Table 9 provides an assessment by Trieng of advantages and disadvantages of their relocation.

Changing land cultivation methods and types of crop produced has also led to changes in the gender division of labour and reduced collective activities in the village. Men from resettled households say women's work has eased in lowland rice cultivation compared to upland rice, especially in weeding, but that costs have risen over the need to hire labour to cultivate a greater variety of crops for subsistence and sale and to hire equipment and machinery to do tasks formerly undertaken by people.

However, as the main ones responsible for the bulk of cultivation tasks over longer periods of time, many women must now cultivate two different types of land at considerable distance from the other, and as demonstrated in the Khmu example,

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<sup>43</sup> see also Baird 2008, chapter 8



must eke out livelihoods by taking wage labour on plantations during traditional rest days.

**Table 9: Trieng Assessment of Old and New Locations, Ban Vanxay**

<b>Plus points about resettled location</b>	<b>Plus points about old village</b>
Land for house and cultivation is fixed and they don't have to repeatedly reconstruct field and rice houses, nor to stake out land	Easy to find many different food sources, plenty of fish and forest resources
Market access improved (but often no crops available to sell in the markets)	Easy to find NTFPs for household use and items for sale. Easier to make a living
Access to roads	No need to buy and sell land and property, land can be shared
Access to electricity	No sense of ownership in the same way as the lowlands, and more community solidarity
Less work for women in upland rice cultivation, more time to relax	Poorer families can more easily find food; there is enough rice for everyone
Schools are available for their children, who will have a better future	They can kill animals for health and follow traditional spirit practices more easily
Weather is warmer	Weather is cooler
<b>Minus points about resettled location</b>	<b>Minus points about old village</b>
Weather is warmer	Weather is cooler
The function of money means everything is paid for; the change to a cash economy means a lot of adjustment for many families	Difficult to fence off boundaries for upland cultivation each year
Increased indebtedness due to the need to pay for everything	Upland rice cultivation is harder work and requires more work from women in weeding and clearing
Less time to make money when sick, and taking loan for medicine means interest is charged and increases until a person is well enough to earn and pay off the debt	More travelling involved to access fields which are increasingly further away from the house
Need for family labour is more important, poor families have no family labour	
New awareness of market benefits increases family conflicts over who will inherit assets	
Still have to continue upland cultivation as inadequate <i>naa</i> available, have to travel some distance for this purpose	
Increased competition for cultivable lowland means more cutting back of forest areas	
Later arrivals have to pay for land, earlier arrivals were allocated land without payment	

Women from all districts bitterly complain that men were not helping out as much as they should because they were continually called away for meetings with concessions holders, district authorities and projects. Resettled Trieng men in the merged village of Vangxay pointed out that men and women now have to work jointly to meet the new conditions of lowland agriculture.

Compulsory relocation disperses kin and family groups, leading to severe adverse impacts on poor households which depend more heavily on kin and clan to assist with agricultural tasks. Upland villages can also cultivate a more limited number of crops, supplementing diet and income by forest foraging. The change in availability and

variety of land resources inevitably has a greater impact on both nutrition and income of poorer households.

But while resettlement significantly changes traditional perceptions of land use and property rights, it is not always seen as a wholly negative experience, particularly by the younger generation. Advantages and disadvantages of old and new locations were summed up in one sentence by Trieng villagers in Vanxay: “the old village is better for our agricultural production and to make a living, but the new village is better for the future of our children”.

The main appeal of resettlement among surveyed communities has been access to schools. Older people said they are willing to put up with the disadvantages of resettlement locations in order to provide education for their children which they see as the route out of poverty. The younger generation has also become influenced by the more easily available material benefits of the modern world and enthusiastic about what it has to offer in the way of motorbikes, televisions, DVDs and karaoke. The world of gongs and rice jars seems very distant for this generation.

### **4.3 Land Use Changes**

While the legal framework in theory provides protection against arbitrary changes in land use, in practice land users (whether traditional or non-traditional) have little protection over land use changes. Rapid urbanisation and ribbon development along roads in provincial and district centres is accelerating land use change and individuals are constructing residences and shops over scarce paddy land.

In the last seven years or so, large areas of land (including state, village and individual land) have been allocated for land leases and concessions. These have included plantations (mostly rubber in the study areas), mining, hydropower, tourism, special economic zones, and property development.

The State retains the right to determine and change land categories<sup>44</sup>, and local authorities re-classify village land from “productive” to “unproductive” in order to meet the concessions demand. Most land lease awards are independent of rural land use zoning or urban plans, and have not had Environmental or Social Impact Assessments conducted beforehand<sup>45</sup>. Procedures for awarding concessions and contract formats are not clearly defined, and awards take place in an ad hoc fashion.

Impacts for communities visited during the survey include:

- further decrease in land resources available to communities
- individuals and families losing land, usually without compensation
- encouragement by authorities to move livelihoods from farming to plantation wage labour
- importation of wage labour from other provinces and countries, who remain and may compete to acquire land or encroach on remaining land
- arbitrary re-classification of village land in order to meet concessions demand for more land
- emergence of additional conflicts between communities and households and

All villages visited during the study expressed concern over loss of their land to concessions.

It has become difficult to regulate land concessions due to the lack of distinction between State and village land, while local authorities cannot keep up with the pace of change. LUP continues to be undertaken by DAFOs, but now on behalf of, and paid by, concessions applicants.

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<sup>44</sup> Law on Land, 01/97/NA, amended 21<sup>st</sup> October 2003, No. 61/PO, Article 12 states local administrations are responsible for determining local land categories, while Article 14 states any change in land category has to be approved by concerned management authorities.

<sup>45</sup> The exception is those funded by international financing institutions

Khmu Luu: Ban Mang. Paddy land is individually owned, but upland cultivation is still done on first-come-first-served basis. Households reserve upland areas each year and can negotiate with neighbours for its use. House and *naa* land allocation was completed in 2003. A Chinese rubber concession has been established on land considered by the village to be theirs, managed by a Khmu Ou. He has brought in 60 other Khmu Ou families from Phongsaly to work on the plantation. Bang Mang households were told village land allocation would be done after the concession was established, but this has not yet happened. District authorities have already told them 25% of their land is unproductive and must be given to the concession. They have requested the authorities to undertake village land allocation as soon as possible as they fear more of their land will be given to concessions.

Individual and communal land user titles may in future provide more tenure security to households and villages, but most agricultural land is not yet systematically allocated or titled<sup>46</sup>, the titling programme has not yet moved into upland rural areas, there is yet no formal provision for communal titles, and it will take years for this to be achieved at current rates of progress.

Even where land has been allocated or titled, land use changes are happening so fast that eligible land is being excluded from receiving formal tenure recognition. In village Donekeo, Tai Dam respondents questioned the value of a land title compared to any other form of land document as their experience is that it does not guarantee them protection against compulsory land acquisition with no compensation.

The issue of land use changes brings into sharp focus the following needs:

- for clearer distinctions between state, village and individual land
- for village communal land tenure documents which provide the same level of rights as individual titles
- for exclusion of tenured communal and individual land being awarded to concessions
- to implement revised and improved LUP procedures, consulting with village elders at all stages
- and to enable simple registration of communal and individual land titles, allowing for easy subsequent registration when the land user (as opposed to the land use) may change

#### **4.4 Land Markets**

A major consequence of change in Lao PDR has been the acceleration of land transactions. In turn, this affects the ability of ethnic groups to maintain control over their own land or to obtain replacement land.

While all traditional villages in the study regulate land transfer and land use by inheritance or negotiated agreement, the situation is quite different elsewhere. Land markets are very active in most resettled and merged villages, though almost entirely unregulated.

Land sales occur either with and without documentation. TLUCs are viewed by farmers as legitimate land ownership documents, whether or not they have expired. But sales occur without documentation also. In Ban Vanxay, Brao who moved away from the area some 20 years previously are demanding compensation from newly settled Trieng. The Brao have no documents to support their ownership claims, but *naibans* and witnesses have come forward to swear to the validity of the claims, and on this basis a price is agreed.

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<sup>46</sup> Elizabeth Mann & Noukone Onevatthena, "Village Review Study", Lao Land Titling Project II, TA report 4.54 (July 2007)

Abuses also occur. In the mixed Tai Dam/Yang village of Namo Tai (where there has been no land allocation), sales occur on the basis of land tax documents. But even this documentation is not always considered necessary, enabling some people to sell off their neighbour's land, who first learns about it when the new owner appears to take possession.

Land markets have become increasingly important in lowland areas where land availability has become constrained. Very few of the ethnic groups interviewed, with the exception of Hmong, were familiar with functioning in a market economy.

In traditional settings land use is negotiable between families, and payment also negotiable in kind or even not required at all. In lowland areas, everything has a price, whether land or labour. Land markets facilitate land sales, but are dependent on a market economy. Community willingness to cooperate over land use becomes proportionately constrained in line with reduced land availability and higher land prices. In Ban Na Kham for example, Tai Dam were proud they did not pay for labour exchange. Those families with less labour just did less work, or asked the kin group to assist. But in resettled Ban Vanxay, Trieng bemoaned the fact that no-one now helps in the harvest without payment.

Land shortages mean resettled households are obliged to find land to buy or rent. Some communities purchase land in anticipation of being resettled. According to recent studies, Hmong have been forward thinking in this respect<sup>47</sup>. The study team found a similar situation in Beng district among rich Hmong families. In village Phoxay, rich families have purchased land, while poorer families are renting, paying land tax on behalf of the owner. However, even more prosperous families now experience difficulty in buying land as the price has escalated beyond their reach due to fees paid by concessions holders. In Beng district, the price of a hectare of land has gone from 1-2 million kip to 7-8 million in the space of a few years. This has effectively priced most local and resettled households out of the land market.

Because land tax documents are often the only documentary proof of land user rights, landowners are careful not to rent the same piece of land to the same tenant every year to prevent tenants from attempting to transfer land rights to their name. Additionally, rotating tenancies helps the landowner to clear a larger portion of this land. But it does not help resettled households as they must embark on a continuous treadmill of trying to find land to cultivate each year.

#### **4.5 Knowledge Levels**

Ethnic minority groups interviewed had very uneven levels of information and were often confused about their "new" land rights and responsibilities under statutory law compared to their customary rights and responsibilities.

Different messages from different authority sources only served to confuse them still further, and the team found no reliable formal or informal mechanism to respond to queries and clarifications from villages as local authorities are often as confused as the communities themselves. Even if they are not, those with knowledge may take advantage of those in ignorance of the law for a variety of reasons.

Because many ethnic groups are excluded by language, literacy and gender barriers from reliable and accurate information, this has left them limited in their abilities to negotiate their claims to different land use and natural resources. In turn, this leads some households or villages to make less than optimal choices in their land use and management.

Much of the information content about land rights is verbal and transmitted person-to-person, leading to anecdotal, inaccurate or simply wrong knowledge being acquired. These high levels of misinformation and ignorance about about land rights and responsibilities, particularly in rural areas, has left ethnic minorities particularly open to exploitation and manipulation.

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<sup>47</sup> URDP Research Report 2007 op cit

The study team found that some communities were told it was illegal to buy and sell land in Laos. At other times information is not comprehensive, as in radio transmissions relating to titling procedures. Local authorities are not kept up-to-date with changes in policies and procedures, or do not fully understand how to apply them in their local context.

Projects ostensibly with the aim of benefiting communities have instead often had the opposite effect – Brao villagers in Vonglakhone were told in order to obtain assistance in improving their livelihoods from a project, they had to move a second time in 6 years to a more convenient location for the project to access them. Messages from project implementors puzzled the villagers, with one team promoting organic horticulture, while another team promoted corn cultivation with chemical fertiliser.

Because many villages have already experienced land allocation procedures which they think are less fair and less efficient than traditional land use practice, they are understandably cautious about accepting any additional information from whatever source.

Nonetheless, changes in women's knowledge levels, and men's acceptance of the change, are also apparent when agencies and projects formulate their approaches appropriately. This has had impacts on men's attitudes towards their own work roles as well as their position in the village authority structure.

In village Senxhy, while pointing out that men are the household heads, Hmong men and women stressed that the household head will be the person who is better at planning and managing household land and property. The team spoke to women who are acknowledged as cleverer than their husbands and whose names are the ones found on land and property documents. Thus while tradition forms the foundation of land and property rights, expediency may result in subsequently different constructions.

## 5. Conclusions and Recommendations

### 5.1 Conclusions

- The village is more important than the ethnic group or sub-group for land and property rights. Traditional land use and management practices enable recognition of the value of a village as a social and economic unit, and protect the relationship of its members to natural resources.
- Within a village, land and property rights are maintained at three levels: (i) **family**, through marriage agreements, expressed through brideprice, spousal residence choice, and labour exchange between households, and through inheritance practices for fixed and moveable assets. Rights and responsibilities are regulated by family elders; (ii) **clan**, through marriage, divorce and widow re-marriage prohibitions and prescriptions, regulated through clan elders; and (iii) **village**, through definitions of membership of a village and the rights and duties over land and associated resources that membership affords, which are regulated through village elders. Boundaries may be conceptual rather than literal, but well understood by those using land and its resources within those boundaries, as well as by neighbouring villages.
- In more remote areas, and even in accessible villages, many ethnic minorities may not consider agricultural land (and even residential land sometimes) belongs to individuals, but to the village as a whole.
- Customary tenure rights often lack gender equity in terms of actual property ownership, its transmission from generation to generation, and timing of what tasks can be done on what types of land. On the other hand, they provide equity of access and use rights provided certain ceremonial steps are first observed.
- Customary tenure rights are not officially recognised in Lao PDR, but remain important to rural communities, particularly where land allocation has not yet occurred and in traditional villages where spiritual connections continue to support and regulate village land use and management.
- Customary practices do not exclude change, as demonstrated by the different ways in which traditional villages in this survey have responded to the outside world. Some have been more successful than others in absorbing change, even using it to strengthen their own socio-economic position in the community. The younger generation is often better able to adjust, but in the view of elders, at the cost of their traditions. In the words of one Brao elder: "Gongs used to be the main asset of the family, but their value is now much reduced. In the old time, one gong cost the equal of 30 buffaloes, now it is 4 buffaloes. The younger generation is not interested in this type of asset and do not even know how to beat the gongs."
- Tradition is also an internal perception to a particular group or village, hence variations arise between villages and within the same overall ethnic group in the way in which "tradition" is defined. For example, some 70 years ago Tai Dam used to view lowland rice cultivation as a communal activity, but now present it as a household activity using shared collective labour where necessary.
- The pace of land change is moving faster than most upland villages can absorb. This has seriously compromised inter-family, inter-ethnic and inter-community relationships and increased conflict at all levels.
- The main instruments of change affecting traditional rights are: (i) land allocation; (ii) compulsory resettlement; (iii) land classifications that take no account of traditional and localised classifications; (iv) land use changes as a result of land leases and concessions; (v) growth of land markets and increasing need to function in a market economy; (vi) failure to clearly apply and communicate policy in a systematic way, leading to exploitation of both traditional and statutory land rights.

- Formalising tenure rights, or re-defining them through LUP, land allocation, zoning, and a classificatory system that does not account for traditional land use, have caused much confusion among ethnic groups and even among local authorities as to who has rights over what. This is compounded by frequent policy changes and re-interpretations of legislation. This has undermined both customary systems, as well as the statutory systems which are supposed to replace them.
- Instruments of change have systematically and effectively detached many communities, both ethnic minorities as well as lowland Lao, from their livelihood base. This has resulted in reduced willingness to take responsibility for types of land management that can no longer ensure food sufficiency, or to participate in land use planning exercises that may not reflect localised knowledge, needs, or priorities.
- This has also affected the practice of community co-operation to maximise productivity of local resource management, and collective action. In turn, not only has overall productivity of the land reduced, but social safety nets providing support to weaker and more vulnerable community members, particularly single women and those lacking adult male labour, have been undermined or eradicated.
- Gender equity over land and property rights is variable among different ethnic groups. Broadly speaking there is greater gender equity among Mon-Khmer groups visited by the team, particularly in southern provinces, and less among northern Tai-Kadai or Hmong Mien groups visited.
- In customary systems, men perform the intermediary role between the community and the spiritual world. In "new" locations, this intermediary role is widened to include the outside world. In both "old" and "new" systems women remain dependent on men as interpreters of truth, reality and change.
- Women are further circumscribed by their economic dependence on men and by social convention which prohibits a single woman (unmarried, widowed, divorced, separated) from remaining on her own, but requires her to live and work within the context of a household.
- Where land titling has been undertaken, gender equity approaches have been generally welcomed by women of different ethnic groups. However, national policy development has been mainly influenced by Lao customs and traditions. Different inheritance practices in other ethnic groups, particularly in rural areas, ensure that women's rights to land and property remain marginalised and dependent on men.
- The basis for integrating gender equity in land and property tenure does not yet exist in rural areas, either with respect to individual and conjugal property rights in ethnic minority villages, or to communal property rights over village land.
- Information about land rights and responsibilities under the Land Law is very variable among ethnic minorities, and between men and women. In rural areas, legal and policy information to village communities tends to depend on local authorities. Much information content is verbal and often relayed at second- or third-hand. This results in anecdotal, inaccurate, or simply wrong information being relayed.
- Knowledge and skills of local officials about land and property policy content and application tend to be very limited.
- Ethnic minority communities in rural areas have higher rate of illiteracy and unfamiliarity with Lao language, and women have proportionately higher rates than men.
- Rural communities have limited ability to negotiate their claims to different land use and natural resources, leading to sometimes poor land management choices.

Land use changes have led to greater reluctance to take risks or to interact with government officials.

## **5.2 Recommendations**

Based on study findings, the following recommendations are made:

**1. Labour base.** The requirement for land to be allocated on the basis of labour availability is not implemented, nor does it seem to be relevant. If this requirement cannot be applied it should be removed as a basis for land tenure.

**2. Clarify legal land definitions.** While individual land and property boundaries are fairly clear, there remains confusion between definitions of village and state land. These need clarification at the earliest opportunity and associated tenure rights defined and formalised.

- There is an urgent need to improve village communal tenure security and to strengthen communal land management authority of village elders and authorities. This should enhance local community ability to make improved and on-the-spot land use decisions based on indigenous and localised knowledge.
- Communal tenure should include rights and responsibilities covering: land and resource use, monitoring illegal activities (e.g. forest encroachment, illegal logging), settling encroachment disputes by other villages, etc.
- Land classifications agreed under a village/communal title should not be re-classified after title registration. Any expropriation of titled communal or village land should be subject to full compensation rights.
- Legalisation of communal land titles should be supported by strengthening of community abilities to undertake village LUP and integrate forest management plans to improve both environmental protection and the security of protected and conservation forest areas.

**3. Formalising rural land tenure rights by converting TLUCs to Titles.** At the time of writing, there is a proposal to convert TLUCs into titles without surveying the land parcels or undertaking systematic adjudication. Given the study findings, proposals are made as follows, both to authenticate ownership and to ensure gender equity in titling.

Full systematic adjudication of TLUC land and survey of land parcels is needed for the following reasons:

- most TLUCs are in the names of men only, irrespective of whether the property has been inherited by the husband, the wife, or is conjugal property
- full systematic adjudication is needed to protect both inheritance rights and statutory rights of women under the law
- given the growth of unregulated (and often illegal) land transactions, it is important to verify whether or not the TLUC named owner is currently the actual owner
- allocated land is among land already transferred by districts from individuals to land concession holders. Changing names on TLUCs would bring former owners into additional conflict with concessions holders and district authorities

**4. Regulate Land Use Changes.** The distinction between state land, individual land, and village (communal) land further needs better articulation in policy and practice in order to:

- restore the authority of village elders to regulate village land use and management
- regulate land concessions more closely
- secure village tenure over communal land
- restrict re-classification of communal village and individual land



## **5. Improve Resettlement Planning.**

- with districts continuing to implement involuntary resettlement, land potential in proposed host villages should be first assessed before finalising resettlement plans. Villages with no potential to support the land needs of resettled families should not be considered. This should also reduce conflicts and help to steady land markets
- improve land valuation systems to better reflect rate of expropriated or replacement land, and to
- focus more on improving village land use and stabilising upland land-based livelihoods rather than depend on resettlement as the answer to eradicating slash & burn
- include expropriation and compensation information in land tenure communication methodologies

## **6. Improve Integration of Gender Equity into Land Use Planning (LUP).**

LUP remains a mainly male-centred activity undertaken by male external facilitators with male villagers. LUP strategies should be revised to include greater gender equity to incorporate women's knowledge, land use, availability of time for labour demands, etc. It should also be able to accommodate customary restrictions on land use (e.g. for either spiritual or local environmental considerations).

**7. Land Allocation.** If land titling is to extend into rural areas, and different forms of title tenure are to be available to rural villages, it should be reviewed whether land allocation remains necessary or not. LUP remains an important step towards tenure clarification, but land allocation can be replaced by different levels of title (individual, communal, and state).

**8. Secure Gender Equity Rights under Land Titling.** The basis for integrating gender equity does not yet exist in rural areas and among many ethnic minorities. The Land Titling Project uses inheritance rights as the rule-of-thumb to integrate gender equity into titling procedures. In many communities women have no right to inherit, and therefore cannot qualify for individual or conjugal property rights<sup>48</sup>.

- LTP-2 must ensure that LWU-implemented gender-equity component is aware of women's lesser inheritance rights in different ethnic minorities. Efforts should be made to determine the nature of different rights in different villages *before* starting systematic adjudication, and to assure gender equity by requiring conjugal registration at the very least.
- Many rural ethnic groups do not wish to have individual residence tenure within a village as proximity of houses may give rise to boundary conflicts. This emphasises the need for clarification of the basis of communal land titles at the earliest opportunity. Gender equity in communal titling may be integrated via gender-sensitive LUP.
- Communication and awareness approaches should be adjusted to conditions of rural ethnic groups and to differing language and literacy levels of men and women. This will require more time in preparing ethnic minority villages for land titling by comparison with lowland Lao villages.
- Additional training may be required for DLO/DLMA staff, LWU/CES/SATs, on appropriate communication strategies in systematic adjudication and registration procedures, to guarantee gender equity in land titling ethnic minority households.
- TLUCs should be fully systematically adjudicated and surveyed in order to protect both inheritance and statutory land and property rights of women as well as men.
- A comprehensive information/media programme on gender equity issues in a variety of Lao and ethnic minority languages should be prepared, and care taken

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<sup>48</sup> This point was noted as early as 2003 in the LTP-1 *Socio-Economic Baseline Study*

that these programmes are not arbitrarily edited by local media personnel. These should be broadcast at a time when women will be in the home and able to listen.

**9. Land Policy Communication Strategy.** There is urgent need to forge clearer links between national policies affecting land, and people's understanding of how those policies affect their land rights and responsibilities. At present this is the task of provinces and district authorities who may apply different interpretations of State policy.

The NLMA has established a Land Information Centre, responsible for collection information to guide policy formulation. LTP-2 has a sub-component, Community Education & Services (CES) as the communication link between NLMA and communities.

Communicating messages about land rights presents considerable challenges, not just in the means and content of communication, but because: (i) policy changes are frequent, thus requiring repeated revision of message content; (ii) ethnic minorities have lower levels of literacy as well as less knowledge of Lao language, and ethnic minority women even more so; (iii) there has been no review of which communication methods are most effective for different stakeholder groups; (iv) communication needs to be 2-way and responsive, but authorities are more accustomed to instruct; (v) there is limited belief in the value of consultation and feedback.

In light of these facts, the following recommendations are made:

- Undertake an assessment of communication methodologies and content in different villages and with different administrative levels, to assess the best methods of communicating to different stakeholders (e.g. leaflets are not suitable for illiterate households).
- Where communication activities have taken place, assess different stakeholder opinions about what content has the most meaning for them, and which communication methodologies brought the message home most effectively.
- Support the current national policy dialogue with NLMA and the NGO Land Information Working Group (LIWG) to provide feedback from local levels while capturing experience at national levels for nationwide distribution.
- Improve conflict resolution training at district and village levels.
- Support and strengthen the role of Community Education Services (CES) under the Land Titling Project to communicate land policies and procedures more effectively. CES is well placed with its presence in every provinces, its authority under the NLMA, and its connection to the LWU to ensure gender equity in titling. However, CES role presently is confined to land titling issues, not to wider land issues and has been marginalised within the systematic adjudication process. LTP2 should enlarge its communication package about gender, individual, village and state land use rights and responsibilities, including information about the buying and selling of land, and compensation rights under compulsory land acquisition.
- Implement the postponed feedback strategy under LTP-2.
- A communication strategy is not a once-only event at a particular stage of the titling cycle – it needs promotion in different ways, and also needs follow-up and monitoring to ensure its effectiveness. This requires multiple methods to transmit accurate information.
- Output from the appraisal should be used to develop an effective communication strategy for use with rural villages and to ensure broader coverage of a wider range of land-related information.

## **10. Monitoring and Evaluation.**

- Identify and apply improved gender-disaggregated monitoring indicators related to livelihoods and food security in relation to land access, to better see how titling positively or adversely affects communities.
- Improve the use of socio-economic data to monitor the impacts of land titling and land policies on traditional land use.

## **11. Policy Research.**

Recommended areas for future policy research include:

- Understanding land access and the relationship of food security to land tenure patterns;
- Pre- and post-land titling gender equity changes. Rural and urban effects of land titling on women's decision-making in family and household, including changes in the incidence of divorce, residence patterns, migration and household demography. This could be included in the forthcoming Socio-Economic Impact Survey proposed for LTP-2.
- Area-based studies at district level to understand the processes behind increased population pressure on land and its resources, including spontaneous migration, relocation, and land-use planning issues.

# Annex 1: Terms of Reference

## TERMS OF REFERENCE

for a

### **Study on Women's Land and Property Rights under Customary or Traditional Tenure Systems in five Ethnic Groups in Lao PDR**

#### **Background**

Land titling activities by Land Titling Project Phase 2 (LTP2 – World Bank, AusAID, GTZ) in Lao PDR aim among other objectives to provide equity in titling to men and women from all ethnic backgrounds (Project Appraisal Document, Report 259221-LA, World Bank). The progressing land titling work and new land policies are affecting the complex nature of traditional land tenure systems, resource access rights, and differing property inheritance practices among different ethnic groups. In turn, this could lead to changes in the way that land is used to negotiate relationships between men and women in the same community and between different communities.

The Lao-German Land Policy Development Project supports NLMA in the elaboration of a consistent and comprehensive land policy for Lao PDR. In its first phase this project will fund up to 15 land policy studies which will help to collect relevant data, describe the present status and analyse policy matters in various aspects of land management and administration. This study on women's land and property rights in various ethnic groups of Lao PDR forms part of this series of land policy studies.

#### **Objective**

The study team will undertake an assessment of cultural- and gender-defined access to different forms of land, its resources and property (e.g. buildings on the land), and the regulatory role played by land and its resources in inter-ethnic and gender relationships. The team will focus on 4 key points:

1. Cultural- and gender-defined access to different forms of land and its resources including buildings on the land among five sample ethnic groups;
2. The regulatory role of land and resource access in inter-ethnic and gender relationships, and how gender equity as applied under LTP2 changes this;
3. The role of customary and inheritance practices in maintaining inter- and intra-village agreements on land and its resources.
4. The change over time of customary and traditional practices with regard to women's land and property rights in the sample ethnic groups due to relocation of people, influences of the other ethnic groups and the modern Lao State.

Furthermore, the study aims to investigate how men and women from different ethnic groups view gender equity in land ownership as applied under the expanding land titling project, compared to pre-titling indigenous land use and inheritance practices.

Outputs will be used to review and make recommendations to policy development on land registration in Lao PDR.

#### **Methodology**

The team will use both qualitative and quantitative methodologies to research these topics.

The team will focus on group and individual interviews at village level, but also hold talks at the Provincial and District Land Management Offices and interview local authorities. During the study, the team will work in 2-3 provinces (Oudomxay and possibly Luang Prabang in the North and Attapeu in the South). The study will cover Khmu, Hmong and Thai Dam communities in the North and Laven and Ta'O'i communities in the South. For each ethnic group a minimum of 3 different villages should be selected taking into consideration aspects like:

- representation of a number of sub-groups (clans);
- differing locations (e.g. close to urban centers or in very remote rural areas);
- relocated versus "old" villages;
- mixed villages versus mono-ethnic villages.

### **Expected Outputs**

There will be a number of outputs from this study:

- 1) an outline of the methodology of research and a tentative workplan including the draft interview guidelines or questionnaires and a list of participants from different ethnic groups, which will be submitted to the German teamleader of LPDP by the end of the first week of mission,
- 2) a draft structure of the report at the end of the third week of mission,
- 3) a short MS Powerpoint presentation (30-40 Minutes) of findings and recommendations,
- 4) a final report of 30-40 pages (excluding annexes) presenting the main findings and recommendations and any policy reform proposal in English language,
- 5) A separate summary of findings and recommendations or options on 2-3 pages for distribution to decision makers.

### **Specific Tasks and Scope**

- Analyse the present legal framework on land titling, inheritance and protection of customary rights and identify the provisions of these laws, decrees and directives concerning the equity in titling and inheritance to men and women from all ethnic backgrounds;
- Review all available literature, reports and other documents on topics related to ethnic minorities, gender and land;
- Select target villages in the provinces to be visited
- Hold interviews at the PLMA and DLMA on specific aspects of titling and land use rights in the respective provinces or districts.
- Interview Provincial and District LWU staff and SATs on their specific land/property/inheritance issues facing women and ethnic minorities
- Meet the local authorities in the selected target districts (e.g. Vice-Governor of District)
- Conduct fieldwork and gender-balanced interviews with village authorities, elders, interest groups and selected individuals on key topics
- Analyse survey findings, preparing a draft report for circulation and discussion
- Present survey findings in a stakeholder workshop in Vientiane
- Finalise study findings based on stakeholder feedback and prepare study report, including a number of case descriptions

### **Timing**

This study will commence on 25 February 2008 and will be concluded by 12 April 2008, except for the presentation which is planned for Tuesday, 22 April 2008. (7 weeks in total or up to 48 working days). See draft work schedule on page 4.

### **Team Composition**

The study team will consist of two consultants:

- 1 international consultant with specific experiences women's land and property rights
- 1 Lao consultant on socio-economic and community development

### **Remarks**

These TOR refer to the tasks and outputs of the entire team. The individual sharing of tasks and responsibilities is left to the team members.

GTZ will pay all consultancy fees for this study and provide transport to the provinces and within Vientiane. GTZ will provide a translator to accompany the team and will provide funds to employ up to 5 local resource persons and research assistants from the various ethnic groups to work with the team and to translate into the local language.

## Annex 2: List of People and Organisations Interviewed

Date	Name	Position
<b>Attapeu Province</b>		
03/03/08	Ms. Amkha Sihalath	Vice President of Provincial Women's Union
	Ms. Banthalay Keomanivong	Lao Women Coordinator for Land Titling Project
	Mr. Soulichanh Phonekeo	Deputy Director of Planning and Investment, Programme Director, Rural Livelihood Improvement Programme (IFAD)
	Mr. Kulwant Singh	Programme Management Advisor, TA Team Leader, Rural Livelihood Improvement Programme (IFAD)
04/03/08	Mr. Boun-noi Salangkone	District Governor of Phouvong District
	Mr. Boun Honh Thinthavong	Deputy District Governor, Phouvong District
	Mr. Boun Hien Keoboupha	District Governor of Sanxay District
	Mrs. Viengmany Sonphanith	Deputy Head of District Women's Union, Sanxay District
13/03/08	Mr. Souvanna Khamsovannong	Head of Provincial Land Management Authority
<b>Oudomsay Province</b>		
19/03/08	Mrs. Khammy Souksavath	President of Provincial Women's Union
	Mrs. Sithone Moungmixay	Vice President of Provincial Women's Union
	Mr. Houmpheng Souththivong	Director, Department of Planning and Investment (DPI)
20/03/08	Mrs. Poukham Bouttaphong	Vice President of District Women's Union, Beng District
	Mr. Khamphet Souththivong	Deputy District Governor of Beng District
26/03/08	Ms. Bouaphone Keomany	President of District Women's Union, Namoe District
	Mr. Somchanh Thavivanhack	Director of Planning Department of Namoe District
	Mr. Khamphone Songkhounmanh	Standing Member of District Party, President of District Lao Front, Leading Body of Mass Organization, Namoe District
28/03/08	Mr. Saysavang Sinkeomany	Deputy Director of Planning Department, Xay District
31/03/08	Mr. Somchanh Boulasinh	Head of Provincial Land Management Authority

## Annex 3: Village Profiles

### BRAO

#### Ban Vonglakhone, Phouvong District, Attapeu Province

Vonglakhone is located in land of Sanamxay district but administrated by Phouvong district. The original village of Vonglakhone located in the hills near Lao/Cambodia's border. In 2002, the whole village was organized by district authorities to resettle in the low land area near the Nam Donh river, which they called Ban Donh. The objective of resettlement is to move from slash-and-burn to fixed farming. Seven families are remaining in the hills, but still visit the new locations from time to time, to visit relatives and to buy salt. They were then moved to the second location across the Nam Kong river in 2006 as district authorities considered that the first location was suitable for production but not for residence. The new resettled village is called Vonglakhone again and school is accessible for children. Several households still living in the first relocation site and it is considered part of Vonglakhone. Families split up between field house and school side house to look after livestock and to do their paddy cultivation with a distance of 8-9 kilometers away from each other.

Today, Ban Vonglakhone has 76 households/families, with 363 inhabitants (female 181, male 182). All villagers are Brao ethnic group, and their native language is Brao but 2/3 of population (including women and men) can speak Lao. There are differences in dialects between northern Brao (northern Phouvong district) and southern Brao (southern part of the district), but they can understand each other. They prefer to call themselves Lavé rather than Brao. There are no clanship practice in Brao ethnic group, they are animist. Before building house or clear land, they have to verbally ask spirit's permission, or have to verbally inform the spirits when dividing property to children.

Polygamy was practiced in the past but now it is stopped. Boy and girl now make their own decisions about whom they will marry, while in the old time parents looked for a suitable spouse. Girls are considered too old for marriage after about 18 years, whereas a man can marry at any age until he is 30. There is no payment at marriage from either side (bride price or dowry), but before the marriage they have an agreement for what the payment will be in case of divorce.

Both man and woman can initiate the divorce if she or he has new partner and the division of couple's asset can be negotiated. Women strongly insist to let husband go if he find new partner but they want to keep children. In case of man divorcing woman, he will leave all to the wife but if either a man or women want a divorce, they have to pay compensation to the spouse in the form of cattle or gongs. Women consider men as leaders and decision makers, while women have the wealth.

In this Brao community, single women always live with parents and will receive a bigger part of the inheritance. If a single woman dies with no immediate heirs, then relatives or close neighbours will sell the property or share it out, to raise money for funeral rites.

After being married, mostly men go to live with wife. If the 1<sup>st</sup> child is a daughter, she cannot move out of the house so the husband must move in. If the 1<sup>st</sup> child is a boy, then the wife can move in or he can move to the wife's house. As sons go to the wife's house, so it tends to be daughters (the youngest) who remain to look after parents and to inherit land and property. She can inherit after parents death but decisions about the property are made by parents first, then others until she marries. Some families make verbal will before they die, while others do not. Sons may inherit, but receive less. Other assets are divided among all the children such as cattle and valuable properties such as: gold, silver, gongs, alcohol jars, large knives, large earthenware jars, symbales (tan ok, ta neanh), moe thoum (pot), etc.,. If the husband dies first, the wife inherits, then children after her death.

In the new Vonglakhone, all households were allocated 2000 m<sup>2</sup> agricultural and 20x30 m<sup>2</sup> residential/garden plot, despite of different family size or labour. This has increased potential for family disputes over even allocation. Some disputes are related to family's heritage where the resolution starts with discussion among siblings, following with close relatives, then elders groups or village authority. There is no conflict between households or villages regarding cultivation land or village boundary. Most of women agreed that their husband's name should be on the land titles as he is the head of the family and has more knowledge, despite of hearing from the radio that titles should be in the names of both husband and wife.

### **Key Community Points:**

While their living condition is better than in the mountainous area as they have fixed cultivation and residential land and school access for children, but they face problem of labour shortage and food scarcity in the new location. They feel more tired due to lack of food, as less fish in the river they mostly rely on vegetables and bamboo shoot. They have to walk 2 hours and cross the river to their paddy field and to bring rice back home in the new place. People also expect that the authority will bring electricity to their village.

### **Ban Vang-nhang, Phouvong District, Attapeu Province**

Ban Vang-nhang is an amalgamation of 7 villages which moved voluntarily from the mountainous area in 1976 to Houai Ayak (now called Ban Ta-oum) for 3 years where some families remained, then most of them started moving to Vang-nhang in 1979. By the guidance of authority, the 7 villages came in waves over 5 years, between 1980 and 1985: First: Ekempukaniang, second: Kong Mi, Nam Leu, third: Khampitoun, Hansana, fourth: Phouphi, Saen Luang. The reasons of moving in this area are to have access to *Naa* (paddy field), road and school. Some people came to find out good locations for resettling, and found there was enough flat land for rice fields and enough wood for house construction. No-one goes back to the old villages which are some 51 kms away, taking 24 hours or 3 nights in the forest to reach. In 1980, they were under the administration of *Tasseng* (sub-district) Done-xay. In 1984, *Tasseng* was abolished and became Ban Vang-nhang.

This is the village of Brao community with a total population of 917 (486 women and 431 men) consisted of 162 households, 201 families. Families of these 7 villages are drawn from La Ba, Kavet, and Hamong. In general they still keep their traditions, which serve them well. However, they found that some things had changed, particularly old beliefs are diminishing. For example, it is customary to sacrifice a buffalo in case of illness to appease the spirits. But now they think why should they impoverish themselves as buffaloes are very expensive and there is an accessible health centre. So they only sacrifice a chicken or pig now, and only if the illness cannot be cured by medicine.

An agreement is made on marriage. If divorcing without any clear reason, the one who initiates the divorce has to pay livestock or the equivalent in cash. If the couple reach mutual agreement to divorce, the family's asset will be divided in 3 portions for husband, wife and children. Some villagers said they will put the name of family's head on the Land Title, but others said that it should be both husband and wife's name to avoid problem in case the husband dies.

In ancient time husband moves to wife's house for at least 3-5 years, and then wife has to move to husband's house for at least 1 year. Men whose parents live alone can go back to their own parents only after fulfil the period of living with parents-in-law. After the due period the couple can move out to live in their own house which is built nearby parents house. Parents of both sides contribute wood and roof and other necessity including labour for helping in building new house. The parents' heritage is for both sons and daughters, but the daughter who takes care of parents until the death is the one who gets more such as house, land and rice fields. Other assets are divided equally among all the children. Widow or divorced women or unmarried



women but having a child should be given appropriate portion of parent's heritage. Properties to be divided as heritage are: Gongs *Konb chum Khong lah, jar*, buffalo, paddy-field *Naa*, house.

In 2001 district authorities came to clear the village boundaries and allocated 30x40 m<sup>2</sup> to each family. If villagers already had more than the regulation amount for residential land, they had to give it away to other families but they had no objection to do this, as it was sharing it out among others in the village. They have Land Use Certificates and Land Tax Documents, but no one has ever bought or sold land in the village. There are no conflicts between households or families in deciding who should have what land. Despite of coming from different villages, there are no conflicts between the 7 sets of elders. Anyone can go to any elders as it is the same practice for all Brao.

### **Key Community Points:**

Despite that life in Vang-ngang is much better than in the mountains, but over the mountainous location have good water source which can provide plenty of fish and aquatic animals. The water source over here is not constant for the whole year and they have observed the water level is going down in general. The main reasons for poverty they have discovered are:

- not enough labour in the household
- Someone is old and vulnerable
- No projects
- No sources of cash
- Health problems and limited health facilities
- Not enough livestock

### **Ban Vangkhene, Phouvong District, Attapeu Province**

Ban Vangkhene is a merged village of 3 different villages: Ban Kang, Ban Palai, and Ban Makkieng. All 3 villages were merged into 1 big village 6 months ago, based on the PM Decree No. 09. Initially, the 3 villages moved from the same mountainous location to this area following the track of Nam Kong river. Villagers resettled in Ban Palai in 1997 from Ban Boi and Houai Tan, in Ban Kang in 1978-79, and in Ban Makkieng in 2005. The resettlement of Ban Kang was done in voluntarily while Ban Palai and Ban Makkieng were in accordance with the government's policy for stop slash-and-burn practice.

The total population of Ban Vangkhenh is 1365 (617 women, 748 men), most of them are from Brao ethnic group. There are 260 households consisted of 264 families. Ban Palai has population of 541 persons (227 women), including 95 households. Ban Makkieng has population of 407 persons (219 women), including 81 households, 94 families. Ban Makkieng stayed with its original villagers, but the other 2 villages mixed. All the villages built their own *rong*, or community house where being used for meetings, festivals, etc. People speak their Brao language as the main language and most of them can speak Lao, except older generation who cannot speak it fluently.

### **Ban Palai**

Villagers came to Ban Palai in 1997 from Ban Boi and Ban Houai Tan in response to the government's policy to stop slash-and-burn cultivation. Initially it was very difficult for them since they had to stay 3 nights in the forest on the one-way journey from the original village to the new location. They had left their hill villages after the harvest but could not bring rice with them. They ran out of rice and had to go back several time to get it. They received nothing from the government in order to bridge the gap. They used to live in separate clans, but now they all mix up and houses are arranged

in kin clusters. People rely on the Teao river for washing etc., and boreholes for consumption. However, the water quality deteriorates if the borehole is used a lot. Firewood can be easily gathered from all locations. Livestock can wander fairly freely, but mostly in the extension land and upland rice area when it is not under cultivation.

There are no disputes over land among households and families, they can borrow and lend land for cultivation. They still cultivate upland rice in the hinterland of the new village, but can do this only every 1 or 2 years to secure the crop quality. The land on which they grow upland rice was reserved by the households who came first and cleared the land, but they can verbally agree the share out among themselves. There are no disputes over village boundaries, as anyone can freely use forest, water, etc. However, when merging administration, they felt the opportunity to expand their agricultural holdings has increased.

Young boys and girls are getting married at age 15 or 16, but the marriage age seems to be increased to about 18 for a girl. After marriage, most men move into their wife's house for at least a couple of years, then to the husband's parents' house for at least a year, before moving into their own house. The objective of this practice is to teach them about their culture, to give advice on life, and to teach the married couple how to live on their own.

In case of divorce, whoever initiates it will leave without anything, and leave property for his/her children. If a spouse wants a divorce but still expects to get part of the heritage, they can divide it if they have no children. However, if there are children, they cannot divide it between themselves, it must go to the children. If a wife inherits from her parents but is the one who initiates the divorce, she can keep the inherited assets.

Inheritance can be divided equally to all children, irrespectively boy or girl, even if they have moved out of the parents' house. Usually the one who look after parents will get house and land. However, most families have not lived long enough in this location for any inheritance division to have taken place. Concerning the land titles, most of them prefer that it should be in the name of both husband and wife, even if a wife's property is inherited from her parents.

## **Ban Kang**

People in Ban Kang moved down from mountainous area in 1977-78, lived in Ban Houai Kood, then moved to the current location in 1987. People voluntarily moved to this area as they were informed by elders who served in the military that this was a good place with fixed low land area. The naibaan led the way; he used to serve in the district military. At that time land was freely available; but now they do not have quite enough land for paddy and feel the need to expand. People visit their old village regularly spending only 1 day's walk, where 7 families remained behind. They revisit to forage for different food, particularly fish, as it is difficult to find such a variety of food in the new location. At the first period, Ban Kang was under the administration of Saysettha district before being transferred to Phouvong district.

Formerly, marriage is depended on the parents' decision. Now young people have freedom to choose their own spouse but they should marry out of the clan. It used to be very strict to not marry a close relative, but it becomes less strict now. Marriage agreement is made in case of divorce. The one who initiates the divorce has to pay in cattle or the equivalent value in cash. If a spouse has an affair and the wife wants a divorce, he has to pay a higher rate than for a divorce through mutual consent and "boredom". If a wife has an affair, the man can divorce her, but if he has an affair the wife tends not to divorce because there may not be the possibility of getting another husband as people look down on divorced women.

In general, parents' inheritance is divided equally among all children, but mostly the last child getting the house and land. There is no difference between sons and daughters.

## **Ban Makkieng**

People moved to this area in 2005. In the first year, the district authority supported 5 tonnes of rice, second year they received 11 tons (5 tonnes from the district, 6 tonnes from the timber company). Based on the resettlement policy, they supposed to get rice in the 3<sup>rd</sup> year also, but it was not forthcoming. The timber company provided 25 corrugated iron sheets for roofing to each family – there are 94 families in the village, but 18 still haven't received this.

WFP provided food for work, to clear paddy fields. Villagers were told that there will be 2 million kip allocated per family if they clear 1 ha of paddy land. There were 60 households duly completed this, but 9 households did not perform the condition due to their sickness, lack of labour in the family, or they were so poor and had to sell their labour to others which left them no time to clear their own land. Consequently the district told them WFP had cancelled the money because either all the families had to clear the land, or no-one would get the money. Since 9 families had not cleared 1 ha, no-one would get anything. The villagers suggested that the 9 families should get a proportion of the money linked to the amount of land they had cleared, but this was not agreed.

The process of land use planning (LUP) has not started yet in this village. People don't have enough land for cultivation, and this has led to boundary conflicts with Ban Palai and Vongsamphane. They are not allowing Makkieng villagers to clear any land as it has been occupied by the other villagers before Makkieng people resettled in. Villagers from Ban Palai and Vongsamphane say they will not let Makieng households have land unless the government compensates them for loss of crops and trees. Many families want to return back to the old village, and one poorer family has left already.

## TRIENG

### Ban Vangxay, Sanxay District, Attapeu Province

Vangxay village was established in 1999 and is one of 3 villages (Dak Hiet and Somboun) that effectively from Sanxay district centre, even though 2 of the other villages are administratively part of other kumbaans (Dak Hiet is part of Chaleunxay, 50 kms. away). All the 3 villages have their own naibaans.

Most people moved to Vangxay in 2000 from 8 main villages (Dak San, Dak Mo, Mai Tavon, Dak Sau, Suksavanh, Dak Seng, Dak Dao, and Chaleunxay), though families are still moving in from many different locations. The resettlement was in response to the government policy requiring village to merge and this location was selected by district authority. Before 2000 this area was the forest and there is no settlement. First batch was 50 families in 1999, the 1<sup>st</sup> village was called Ban Somboun. The 2<sup>nd</sup> wave of settlement was in December 2000, with 60 families settling in Vangxay. Subsequently families continue to arrive intermittently in small groups of 5-6 families per year until 2004.

There are a total of 185 households with 1134 inhabitants, of which 578 are female in Ban Vangxay. In addition to Talieng which is the majority, another ethnics living in Vangxay consist of Lao, Yea, Brao, Alak, and Oy. Talieng like to live in groups of relatives called *chong*, and there are many specific groups of relatives such as: Hiang, Prao, Tangorl, Palong, Klig, Yea, Churuum, etc. Each *chong* is named after the name of elder person who administrate the traditional practice of community. The elder of *chong* has the role to keep and guard the community's gongs which were bought from the community sharing fund. Presently the gongs are shared within the community and neighboring communities when the gongs are needed for ritual ceremonies which buffalo or cow is killed.

When make agreement on marriage, the bride price is considered a strict obligation for the groom side. The groom's family has to give bride price to the bride's parents, in addition to the cost of arranging the wedding ceremony. The bride price is increased relatively to the larger number of streams which people cross from the bride to the groom's location. One stream is equal to one buffalo. If the man can not afford to pay the bride price and for the wedding, he is in debt, some men are in debt for 10-20 years. If the husband or his parents die before the marriage debt is not paid off then the relatives (children or grand children) have to take responsibility for paying off the debt. However if the husband's family is really poor, the debt can be cancelled based on the agreement made between the 2 families, but it is a rare practice.

The agreement on divorce obligation is made on the marriage day. The one who initiates the divorce should leave everything to the other. Either has to pay compensation of the bride price, plus one buffalo and the cost of all kinds spent on the wedding day (rice, alcohol, cows, pigs, buffaloes, dogs, chicken, etc.). Everyone keeps his or her own inheritance, even in the case of divorce. If they have constructed property after marriage, they will calculate the value and divide by two.

When dividing parents' heritage, sons get larger part of the inheritance than daughters. All of them will get equal part, but daughters don't receive any land or property as they move to the husband's house. The last son gets the house. The widow women can remarry but the new man has to pay the bride price and cost of wedding to the parents of her former husband. If husband was in marriage debt before he died, his parents will pay the debt to parents of the former daughter-in-law after receiving the bride price plus the wedding price from the new man.

Single woman is not allowed to live alone in a separate house. Unmarried daughter gets part of parents' inheritance and has to live with them until their death, after that her brother will let her living with his family. The inherited land of unmarried sister can be shared for use with brother's family but can not transfer ownership to the brother. She should keep land as her own asset to secure her future life.

Disputes over land increasingly occur between villages, siblings and families. There are boundary disputes between villages and household disputes relate to inheritance. One example when an older brother selling land and not sharing the proceeds with siblings. Many are still cultivating upland rice in hill areas around Vangxay, about 2 hours one way walk. There is no more land for allocation. People who move first got the land free but those who move in later have to buy paddy and residential land. Forest can be cleared for paddy and residences, but they must buy it from Brao who claim they had the area before in Ban Somboun.

### **Key Community Points:**

- Land allocation in the village is seen as being very unfair. All families have been allocated the same amount of land, irrespective of the number of people in the family.
- Several people said they had heard over the national radio that the outside assistance was US \$3,6 millions, in which 1 million for development program, another million for road construction, so what is the plan for the 3<sup>rd</sup> million?

### **Ban Chaleunxay, Sanxay District, Attapeu Province**

Chaleunxay is one of 10 villages of the focal site Nam Su, which has 3000 people. Chaleunxay used to be the district centre established in 1999 then was relocated to Pa Am in 2002. Some people did not move and still remained at this location when all the administration officials relocated. Several large houses vacated by officials were purchased by others in Chaleunxay or from other villages. Those people who resettled in Pa Am for establishing the new location of district offices received 23 iron sheets, 1 buffalo, nails, hoe to be used in agricultural activities.

The majority of people currently living in this area moved from Nam Ngone village in 1980 after the liberation war. Many villages started moving to join in Chaleunxay since 1986 by the guidance of authority for the reason of road access, and the process still continues until the present: from Ban Dak Hien (9kms. from Chaleunxay) a family moved in 2003, from Ban Dak Pok 5 families moved in 2005, 2006, and 2007.

Currently, the total population of Chaleunxay stands at more than 500 people, more men than women. There are 86 households consisted of 101 families. Chaleunxay is the mix community of Alak and Talieng and has spatially divided into groups, e.g. military, administrative, economic, but has increasingly become all mixed up. The administrative group consists mostly of Alak and was the first resettlement area in 1983. The economic group is mostly Talieng with some Alak, and was the 2<sup>nd</sup> site to be resettled. Thadeua was resettled from old and new Dak Pok villages between 2002-2003, mostly consists of Alak, and was the 3<sup>rd</sup> site to be resettled. Ban Javan was amalgamated with the military group which consists mostly of Talieng and was the last to be resettled in 2003. The military area has 29 families. Most Talieng families originally moved from Dakcheung in Sekong Province. In the old days, Talieng lived in small family group. During the war they scattered, but after the war tried to contact each other and decided to move together again in Chaleunxay. There is no clans or sub-groups.

In Chanleunxay, both Alak and Talieng practice patrilocal marriage while in some other villages marriage is matrilocal. Agreements are made between the families, who share the wedding costs equally. The groom's family has to pay a bride's price and for wedding ceremonies, but if they really have nothing, then that is acceptable too. The normal bride price is 1 buffalo and 1 pig but it is increased upon the number of rivers/stream which people cross between the location of bride and groom. One stream costs one buffalo, two streams costs two, and so on. The duration of ceremonies depends on the type of village and the wealth of the family, rather than on whether a person is Alak or Talieng. Alak do not have 2<sup>nd</sup> wives, but some Talieng do based on the 3 reasons: (1) to help 1<sup>st</sup> wife with the household chores, (2) husband wants a younger girl, and the 1<sup>st</sup> wife agree to make him happy, (3) they have no children or only daughters. All wives live in the same house, sharing everything, even the same bed as the husband.

On the wedding day, the agreement on divorce cost is arranged. The cost of divorce is more expensive than the marriage cost. The divorce cost includes the cost of bride's price, all the expenses incurred on the wedding day, and one buffalo "*Sam khao*". Despite of the strict rule among Alak and Talieng which deters couples from divorcing, there are some cases of divorce and it is mostly men wanting to divorce wives. After divorce, the wife only gets the bride price and other payments based on the divorce's agreement and returns to her parents' house.

Parent's properties are divided equally among children, but boys get the bigger part because they live with their parents. The house is usually given to the son who stays and takes care of the parents. On the wedding day, daughter receives some gifts from parents such as gold necklace, earrings, woven basket (*Moe toum, moe thong*), jars (*hai yalai*), and some cash. Mostly husband is the one who decides about heritage division for children, wife does not have the right to do it because she is the moved-in person. If husband dies the widow woman can remarry, but the new man has to pay the bride's price to parents of her former husband. If widow woman wants to move back to her parents she should pay back the marriage's cost, and her children have to stay with parents-in-law but the late rule can be negotiated.

Single women are not allowed to live alone; she should stay with parents if they are still alive, or stay with brother's family after the death of parents. Unmarried daughters get part of heritage from parents as other siblings do.

There are some conflicts over land, mostly are related to yearly boundaries marking for upland cultivation, but these are minor. There are some cases of inheritance disputes between siblings but no reports of village disputes. A cemetery nearby the village is used by both Alak and Talieng and there is also one military cemetery. The whole location is surrounded by forest and firewood can be collected all around the village. Larger timber is also cut for construction and it is not necessary to obtain permission from authorities. People who moved to the district and then returned have no problem in re-occupying their old land. People sold their houses, but not their agricultural land since no-one owns agricultural land in this village.

#### **Key Community Points:**

- People express concern about lack of wells or boreholes in the village thus all streams are used for drinking water.
- Reasons of people moving back from Pa Am:
  - not enough labour to do lowland rice cultivation,
  - no cash for hiring labour,
  - move later than others so did not receive support from authority,
  - paddy field allocated are not suitable for cultivation (rocky, no water)
  - no space for cattle grazing
  - not enough food
  - cannot adjust to too hot climate

## **Ban Dakkanath, Sanxai District, Attapeu Province**

Dakkanath is a traditional village on top of the mountain established more than 2 centuries ago. People lived here since ancient time for approximately 3 generations. Elder generation confronted with various wars and many families are still separated from their relatives. During the wartime, people left the village to hide in the forest in the distance of 1 kilometer. They were under many different public administrations: Thai administration during Lao-Siam war, then French administration came in, lately Thai and French signed peace agreement and handed-over the public administration to Lao.

Today the village has 59 households with 369 inhabitants (209 female) and forming 67 families. Dakkanath is a mixed Alak and Talieng village, which have a tradition of living together and their customs are very similar, though there are some language differences. There are 8 families of mixed Talieng and Alak by intermarriage and now Alak mostly speak Talieng. No one from outside has moved into the village in the last 10-20 years. All Talieng in this village are originally from Dakcheung while Alak's original village was Nam Hien, in Attapeu. They believe in spirits, both good and malevolent, and have 3 festivals per year: *boun khao mai*, in November, to welcome the rice harvest; *boun khao kiek*, in March, to prepare for planting upland rice; *boun hor khao sark*, in August.

Traditionally, Talieng practice patrilocal marriage but over the past 20 years this practice has been changed and can be negotiable. Now it depends on the family's situation, if parents have no children left, it could be either house or if husband is too poor and his parents have can not afford the couple's life. On the wedding days, the groom's parents have to give cash to the wife's family as bride price amounting to 50-100,000 kip. They also give alcohol, rice, pig, cow, buffalo, and dogs as food for invitees and relatives of the bride. If the groom is too poor and can not afford, the cost of wedding price (in kind) can be negotiable with the promise to give it in a later time, but can not canceled. Some men are in debt of wedding for 10-20 years. If a man dies before paying off debts his children will take responsibility in paying it for father. If the groom's family does not have buffalo to pay debt, they can pay in kind of gongs (*khong choum*, *khong la*) which has an equal cost of buffalo. Presently the size of wedding cost for the poorer has been reduced from a buffalo to a pig which should be given for food.

On the wedding day, the parents of both sides make agreement on the divorce cost. Whichever spouse initiates a divorce has to repay the bride price and compensate whatever was spent during the wedding. The house will remain with the person who entitled to inherit the property. Customs are now less strict than before; previously the divorcing person had to give a buffalo, but now someone may not have a buffalo and it is negotiable. Mostly people do not think of divorce once they are married. During the French administration, Talieng men can get formal permission for getting additional wife. At present, a man can have more than 1 wife, but must get the agreement of the 1<sup>st</sup> wife. All wives live together in the same house.

Dividing of inheritance is done while parents are still alive. Only house and residential land can be inherited to children but not agricultural land. If the husband dies first, the wife manages the properties, then children. The last child gets the house, and this could be either boy or girl. In case of a man having more than 1 wife, if he dies and nothing has been constructed after the new wife has moved in, then the property should be inherited to the children of the first wife. But if there has been any construction after the 2<sup>nd</sup> marriage, then they divide the property equally with the children of the 2<sup>nd</sup> wife.

Widow or widower living with children is acceptable, but single women (never married) is not allowed to live alone in a separate house. They live in family with parents or in brother's family. When parents divide heritage, single women get equal part as other siblings.

There are no disputes between households or villages regarding the natural resources. In case people from other villages want to clear land in Dakkanath for cultivation, they

would have to ask permission from the village authority and would have to pay the Dakkanath land tax rate (10,000 kips/ha). No-one buys and sells land, but they can negotiate with each other to use or share land. Each household reserves the place to do upland cultivation annually, but it is not their own land forever. They just have to pay the land tax for the area they reserve. The priority for the land choice is given to the most important person in the village, ie. the naibaan, then others can mark their selection which is negotiable.

**Key Community Points:**

People express concern about the possibility of resettlement and desire to avoid being resettled. The informants said that their village fits the criteria of village definition in the Law on Local Administration which indicates that 'a village has to have minimum population of 200 persons, located at the road side'. Villagers dig access road to their village, and in addition they guard the waterfall in the nearby location. Their traditional practices have become less strict than before and there is more solidarity in their community.



## HMONG KHAO

### Ban Senhsy, Beng District, Oudomsay Province

Senhsy is the home of Hmong Khao (white Hmong), who moved from China and have been resettled in this location for more than a century (127 years). This village locates on top of the mountain with the altitude more than 1100m above the sea level.

Currently Senhsy has a total population of 522 inhabitants living in 81 households, forming 112 families. The village is structured in 3 clusters, but these are not identifiable by clan or family group, all live mixed. They are from 4 different *seng* such as To, Veu, Tsiong and Moa. The members of each *seng* stem from 1 original ancestor. All *seng* are mostly equal, but each *seng* must have its own leadership to settle disputes of *seng* households.

Marriage within the same *seng* is prohibited. When boy and girl agree to marry, the boy will take the girl to his house without her parents' permission (traditionally it is said 'she is stolen'), then within 3 days the boy's parents will propose the marriage with the girl's parents. The brideprice costs 3 *soys* of silver (1 *soy* equals to 14 *munhs*, and 1 *munh* equals to 1,740,000 kips). The brideprice is obligated and it can be a debt which the groom has to pay. If he died before paying the marriage debt, his parents have to take responsibility for it; and if his wife die before the marriage debt is paid off, husband still has obligation to pay the debt. After marriage, wife moves to husband's family permanently, and cannot return to live with her parents even after the death of her husband.

In case of divorce, if wife initiates it, she has to pay for the cost of divorce by cash while the division of the couple's asset will be decided by husband. If husband wants a divorce, wife will take all assets of the couple and can go back to her parents. However she cannot live in the same house as her parents anymore, she has to live in a separate house nearby as the ghost of her parents' house does not take her back. If husband wants to remarry, he has to pay the marriage debt (if he is in debt). If wife wants to remarry, she has to pay for the fire which costs less than the brideprice which was given to her parents at the former marriage. However most of them agreed that the terms of divorce depends on individuals whether they could share their asset or not.

The boy and girl will get equal part of parents' inherited assets, such as livestock or cash, but the house is for the last son. In case there is no son, they will give to the daughter and her husband will come to live with them, instead of vice-versa. Cultivable land cannot be inherited as it belongs to everyone.

The widow women can be remarried, and the assets she inherited from her parents always remain hers, which she can give to her children. However most of widow women prefer not to remarry due to many worrisome reasons such as: death of new husband, new husband might not be as good as the former one, and the fear of losing her children. Therefore, mostly they choose to remarry with young brother or relatives of former husband, but it is prohibited by the tradition to remarry with an elder brother of former husband.

Single women cannot live alone as they need men to help them finding the location of cultivation land (talking with the ghost for them). They usually live with parents, brothers or relatives where the clan's ghost will protect them. After the death of parents, a single woman (unmarried daughter) can get their inherited assets more than other daughters who left parents for marriage.

In this village there is no paddy and no clearly defined grazing area, usually cattle can graze on land not under cultivation that year. Upland rice cultivation is on first-come-first-served basis after the Naiba and elders plan the location each year. Some households dispute over boundaries, but they can easily settle their differences.

#### Key Community Points:

Most villagers expressed concern about the serious water shortage which limits their cultivation opportunities. Domestic water is supplied with dug wells, but the quality is

poor. Presently, they need more land for commercial corn plantation which they started such cultivation 5 years ago. The sell rice seed, mulberry and maize to outside traders who export the corn to China.

The district authority asked them whether they would move or remain in the village, but the authorities have no exact site for them to be relocated. Villagers thought they might propose to relocate residential areas in a new place suggested by the authorities and to keep their production in this village, but they were unsure whether this would be allowed.

### **Ban Phoxay, Beng District, Oudomsay Province**

The village is located alongside other villages adjacent to the road, including Nabone, Thakad and Beng Luang which are Lao Loum villages, and Houayla and Konekham, which are Khmu villages. Phoxay is the only Hmong village. People have lived here for 13 years since their resettlement in 1995 to follow the 2 government's policies: (1) to stop slash and burn and opium cultivation; (2) to merge small villages into a big village. Firstly in 1990, they moved voluntarily from northern area of Houai Nam Ngao called Phou Pha Lang, to do opium cultivation in Houai Tanh areas before resettling again in Phoxay village.

Phoxay village has the total population of 1133 persons (women 538) living in 139 households, and consisted of 160 families. All of them are Hmong Khao (white Hmong) who can speak Lao but difficult articulation which is hard to understand. There are 4 *seng* of Hmong in this village such as Toe, Keu, Tsiang, and Ja. They help each other and there are no preferences to assist one's own *seng*.

Marriage within the same *seng* is not allowed, but there are also marriages outside the Hmong community and even intermarriage with Lao Loum and Khmu. Traditionally the groom has to pay 42 *munh* of silver, or its cash equivalent as a brideprice. However, the cost of brideprice can be negotiable in these days depending on different agreements in different locations. Pigs and chickens are mostly killed to serve as food at the wedding party. After the marriage, wife moves in to husband's house and has to live there permanently.

In case of divorce, the family's assets will be divided among husband, wife, and children in equal parts, but whoever initiates it will receive a smaller share of divided assets. In this village, there are 2 divorced women who are now living with their parents.

Parents will divide assets equally among all sons, but the last son inherits the house and land. Daughters are considered to have received their inheritance share at marriage with clothes, blankets, household utensils, animals, etc., depending on the wealth of the family, or cash equivalent.

After the death of a husband, if a widow has a son, the heritage will go to the son but not to her. However if she remarries a man from the same *seng* as her deceased husband, she can inherit, but if she remarries into a different *seng*, she cannot inherit. In case that she has no son, she still can inherit the property if she does not remarry. In cases of polygamous households, assets are divided equally among remaining wives, but the house and land goes to the wife with sons and then directly to the sons.

There is no school and no other communal property or land in this village, only a small communal plot of land which they use for community ceremonies such as Hmong New Year. Each household was allocated 60x60 m<sup>2</sup> of residential land, regardless of household size. There is no paddy available at all within the village, and no cultivation land being allocated to any households. The district had planned to allocate paddy in another location (the Nam Beng project), re-distributing land from 13 other villages to a total of 600 households (300 Hmong, 250 Lao Loum, and 50 Khmu). To date only 80 Lao Loum households in Nabone village have been allocated land.

There is conflict over reserving land for slash and burn cultivation, but no conflict over other types of land. At the back of the village, there is a small area for slash and burn

which anyone can access, and was a share from neighboring Lao Loum and Khmu villages. However, on the first-come-first-served basis, only 7-8 families have reserved this land each year as the area is limited.

All villagers are very worried about their production land. They say they are happy to live near the road, where their children can go to school, they can own a house permanently, and have better access to health care. However, they would have preferred the Government to allocate residential land equally among the Hmong households, and also to allocate cultivation land. If it is possible, they would expect the Government to provide them other livelihood opportunities more than the choice to work as labour on rubber plantations.

### **Ban Phakeo, Beng District, Oudomsay Province**

In 1995 the population moved from Ban Chomkeo in Nga District to Puluk village, before resettling in this location in 1999. Most of them moved "voluntarily", but the government informed them that many facilities would be constructed in this area and that it would be a good idea for them to move to the new road. People came to survey the location and found there is plenty of land, while the Ngo river has water all year around, and gravity-fed irrigation is possible.

There are 2 ethnic groups living together in Phakeo: Khmu and Hmong Khao. Khmu were original inhabitants, but some Khmu also moved from Ban Nak village to this location at the same time from Ban Lak. The Hmong negotiated their relocation into their land with Khmu and it was then agreed with the district. Ban Phakeo has a total population of 710 people (women 374), Hmong 439 (women 235) and Khmu 271 (women 139). There are 131 Hmong families living in 51 households, and 55 Khmu families living in 43 households.

Ban Phakeo is now split into 3 hamlets which are merged into the same administration. The original Khmu hamlet is Nam Ngao, a second Khmu hamlet of resettled households is Ban Laksay, while the Hmong hamlet is Phakeo. There are 7 different *seng* or clans of Hmong Khao living together in Ban Phakeo, including Lee (the majority), Va (the second largest), Veu, Song, Ya, Toe, and Ha.

Men and women must marry outside their *seng*. After marriage, the women moves into her husband's household and becomes part of his *seng* for a lifetime. There are 2 forms of marriage arrangements: by "arrangement", when the 2 families agree a union; and by "capture", when a boy and girl escape to live together for a while then subsequently join the boy's family. The bride price costs 42 *munh* of silver (one *munh* equals to 1.74 million kips), 30 *munh* is for the bride's parents, while 12 *munh* is for the bride's clothes and ornaments. In the past, the rule was very strict for the brideprice but now it can be negotiated to be paid in instalments over the years. The cost of wedding is shared by both sides. In Phakeo village, all men have only one wife, with the exception of one old man whom his second wife has already died.

The divorce is depended on who initiates it. A man should organize a ceremony in honor of his former parent-in-law when he divorces their daughter for getting another wife. The same rule is applied to a woman who divorces husband, but she has to give back to husband the given brideprice. Being divorced, daughter can not live in her parent's house anymore as she has left the family's ghost after the marriage. Her parents will build a small separate shelter nearby their house for her to live with her children. The divorced women will get nothing as heritage from parents.

With regards to inheritance practice, land and moveable assets will be divided equally among the boys, but the one taking care of the parents (usually the youngest son) will get more. Girls are considered to have received their inheritance through the brideprice. Before leaving for husband's house, girls may also receive more assets from their parents such as clothes, blanket, cattle, and cultivation land, depending on the wealth of each family. Sons must share the cost of buffaloes for the parents' funeral rites, while daughters need not to contribute anything. This is another reason why sons inherit more.

After the death of husband, widow woman should live with husband's family, as she belongs to the ghost of his clan after the marriage. If there is a new man wants to marry her, the man has to pay the brideprice to her former parents-in-law. Even if the former husband is still in marriage debt, the new man has to pay off that debt from her parents. In case wife dies first, widow man can re-marry but has to inform the parents of former wife as he will remain being their son-in-law, so that he does not have to organize any ceremony for their honors. Widow woman gets heritage from her own parents

The unmarried daughter can receive parents' heritage as other siblings. There are only 2 single women in the village, 1 Hmong (who is very sick and cannot get married) and 1 Khmu. Both live with relatives as single women are not allowed to live alone since she will not get the ghost which should be maintained by the men.

Previously people had the freedom to find areas for slash and burn, but the past 3 years they have been required to discuss the area for cultivation with each other, which is to be reserved and which is suitable for annual use. If a household has a shortage of land, they can negotiate with others to use their chosen site. Land allocation of residential and paddy land was completed by the district authorities in 2001. Each household get 3 plots for shifting cultivation and received temporary land use certificates. No land and property is bought or sold in this village, but people are renting land in other villages where land is more productive to cultivate corn (maize).

Land disputes occur mostly within households and some between Phakeo and neighboring villages, but all these can be settling by village authorities. There are no land disputes between the 3 hamlets. Boundary conflicts with neighboring villages are mostly from the reservation of area for slash and burn each year.

#### **Key Community Points:**

The villagers expressed concerns that their paddy has dried up due to the soil quality which is very sandy and infertile, and they are strongly in need of some irrigation support. In some villages irrigation systems have been started but unfinished. Another system has become damaged and now does not function at all. Some villagers concern about the condition in the contract on rubber plantation with Chinese investor

## KHMU

### Ban Houay Hok, Beng District, Oudomsay Province

This village was established in 1975 by amalgamating 3 villages together, all at the same time. People moved in this location from Mok Say mountains located 4 km away, they moved by authority's order. There are 67 households with 334 inhabitants, and all of them are Khmu Rok. Khmu Rok is different from Khmu Lue by their women appearance, covering their hair with white fabrics, weaving the bag using natural fiber *piad*, and smoking the pipe. Khmu Lue women weave cotton fabric with weaving loom and do not cover their hair with white fabrics.

Since resettling in this area, people felt life had been improved, particularly as they now have fixed paddy whereas before they only practiced slash-and-burn. They started paddy cultivation in 1999 when land was cleared with the help of newcomers in Ban Mang Neua. They used to do upland rice, but mostly transferred this land to maize cultivation in 2006-07 due to the government's policy to stop slash-and-burn practice. However the paddy available is too small, some households do not have enough land for production and rely more on their upland cultivation. The *naibaan* divides upland area each year, but *naa* and houses are individual property. In the past upland field are divided equally among households, but from 2007 onwards they allocated only 1 ha per family with one son, 2-3 ha per family with 2-3 sons. Villagers rely on Houay Hok stream and 2 boreholes for domestic water. There is *Paa saksit* sacred forest near by the village. They sacrifice a buffalo or pig each year to keep their *Paa saksit* spirits happy and to bring goodwill to the village.

When young people are falling in love, man usually send small gift to woman such as mirror, comb, fabrics, or soap. After giving the gift his parents will meet the woman's parents to propose a marriage. The parents of young man prepare 3 *munh*, 1 skirt, for engaging the young women. The bride's side brings 1 dog, groom's side brings 1 pig, to cook for the wedding party. From 1975-2000 the brideprice to be given to the parents of the bride was 9 *munh* (1 *munh* cost 50,000 kips) of silver and 150,000 kip in cash. However from 2000 onwards, it has been changed to 6 *munh* of silver and 1.5 to 2 million kip. Tradition is strict on the brideprice, it must be paid even if they have to borrow money for the purpose. The debt has to be paid off within 3 years. The groom has to live with his parents-in-law for 1-3 years or until the debt is paid off, then moving back to his parents with his wife.

If a man marries outside Khmu Rok, he will follow the tradition of the bride's ethnic group. Khmu Rok allow cousins to marry each other. However, if son of brother marry daughter of sister, they should maintain their ghost because the bride's mother had left the ghost of her family after getting married; her young daughter cannot move in to her former family where the ghost was already informed about her leave. The family ghost should be re-informed about the moving in of her daughter. This ceremony is called "*pian heed*" (ceremony for a change).

In Khmu Rok tradition, once people being married, divorce and polygamy are forbidden. Even if either wife or husband is beaten by the other side, they cannot divorce but will do the "*peng heed*" (maintain the rules of ghost) and continue living together. After the death of husband, the widow women can decide whether to go back to live with her parents, or to continue living with her children and parents-in-law until they died, or to live on her own with her children. Both widow man or woman can re-marry. The man who marries the widow women has to pay 50% of the first brideprice she got from her first husband. Widow woman gets heritage from her parents-in-law and if she remarries then she gives such heritage to her children.

Parents' assets are divided equally among all the children (boys and girls) but those remaining in the village inherit land equally while those moving out of the village don't get any land but will receive livestock. Parents tell children when they are adults about the division of their assets which includes cattle, silver coin, silver in long piece, silver bracelets, clothes, alcohol jars, pigs, dogs, poultry, etc., Presently parents gets land title for *Naa* and *Din Souan*. The sons divide the land among themselves while daughters do not get as they move out to live with husband.

Single or unmarried woman is not allowed to live alone she always has to live with parents or with brother's family.

In this village, land allocation was undertaken by DAFO in 2007, as well as zoning for land use planning. They don't know whether it will be useful or not because they only applied it this year. There are no boundary disputes in the village or between this and other villages. Elders can usually solve all disputes.

### **Ban Mang, Beng District, Oudomsay Province**

This village is an amalgamation of 11 villages which settled in this location in 1977. They formerly lived about 10 kms away in the mountains. One of the original villages was called Ban Mang, and they retained the name of the amalgamated village. The main reason to move was they learned there was more development in the lowlands, found the road useful, and found that in the mountains they had limited markets for their products. They followed the government policy and reached a decision among all the villages to re-locate. Initially the village was called Ban Viengkeo when it moved in 1994, then was merged with other villages in 1999 to become Ban Mang. Mang Tai was the first village to settle in 1977, the second was Mang Neua in 1994. Mang Tai welcomed the arrival of the second wave of resettlement because it extended the marriage pool as well as the possibility to extend land use. They cooperate with each other with labour.

Today the village has over 1063 inhabitants of 210 families living in 170 households. All of them are Khmu Lue. Villagers identified the following different Khmu groups: Lue, Rok, Lamet, Ou, Kwen and Khrieng. In the past, the differences between particular khmu groups were more evident in dialects, hairstyle, clothes and attitudes, but nowadays these differences are less distinct. Khmu Lue can be distinguishable by their weaving skills while Khmu Rok do not possess such talents.

Traditionally, Khmu Lue practices patrilocal marriage. Both men and women have freedom to marry with other ethnic groups, but if a man marries a bride from another ethnic group, they have to follow her marriage practices. On the day of proposing the marriage, parents of both sides agree on day of marriage, cost of marriage, and invitees list. The agreed cost of marriage should cover (1) bride price: 2 pieces of silver (long size), 4 manh (silver coins), 1-2 million in cash; (2) fine cost 350,000 to 500,000 kips to be paid in case of son-in-law has wrong doing toward his father-in-law during his stay with parents-in-law (3) cost of food served at the wedding ceremony is shared 2/3 by the groom and 1/3 by the bride's parents (the bride side kills goat and the groom side kills cow or pig); (4) after marriage groom will move to live with bride's parents for 1-12 month before moving out to his parents' house, but it is negotiable. For example if the groom is a one-child, the bride can move to his parents' house immediately after marriage; (5) divorce cost is depending on particular cases. The bride price will be increased if a bride is from another village, thus most of the men in Ban Mang had married within the village.

After the divorce, woman can move back to live with her parents. Settlement depends on who wants the separation. Whichever initiates the divorce has leave everything to the other, even inherited property, in addition to the fine of 1.5 million kips. If both spouses agree, they can divide the assets equally and the cost of fine is divided in 3 parts, 2/3 to be paid by husband. If wife has an affair but no divorce, the man who has an affair with the wife has to pay the fine of 3 million kips to her husband. This cost is more expensive than husband has to pay (only 1.5 million kips) if he has a mistress due to the reason that wife is bought in by husband's family. The heritage that wife gets from her parents are her personal assets that she can give to her children as her asset, even in case of divorce she can take her asset away with her.

If the husband dies the wife inherits land, property and assets, and then it passes on to the children. They will divide assets equally between both sons and daughters. The son who takes good care of the parents receives the house and land. Daughters who move out of the parents' house don't normally receive a share of the land, but if

they prove having not enough to cultivate, parents can allocate a share of land. Otherwise it is mostly the sons that inherit the land. Parent's heritages given to daughter are: pig, chickens, alcohol jars, big knife for cutting wood and for weeding, and cattle if they can afford. The cattle are given to daughter within 1-2 years after she moves out to husband's house in order to ensure that the couple fits to live with each other. The sons get cattle, silver, and gold from parents. Some parents give their assets to sons when they move to live in their own house; some families divide the parents' assets after their death.

In the old time, land was not subject of heritage, but parents cleared land for cultivation and told children that they can share the land use. They did not fix any cultivation land because they practice the shifting cultivation and there are no boundaries. From 2003, the land allocation was carried out by the district, at the present each household has 2 to 3 fallows.

People in Ban Mang have land conflict due to rubber plantation. There is a rubber concession, managed by a Khmu Ou who has brought in 60 Khmu Ou families from Phongsaly to work on the plantation. They also have disputes with neighbouring village, Ban Pom – also Khmu Lue, located along the Nam Lao stream. Ban Pom wants to extend into Ban Mang's conservation forest and grazing areas. Even the district authorities have not managed to resolve it. Land is bought and sold, particularly garden and paddy land. The value of land is estimated by rice seed, 1ha equals to 6 buckets of seed (1 bucket = 2 million kips. Land tax documents are in the head of family's name, usually the husband, but there are 5-6 families which are woman-headed family due to the husband's death.

#### **Key Community Points:**

Villagers proposed to district authorities to carry out the land allocation as soon as possible for fear that their land would be taken by other concessions. So far 25 hectares have been taken already, but the district said that this land was not productive and should be given to the Chinese company, which they did.

#### **Ban Kiusangvanh, Beng District, Oudomsay Province**

Ban Kiusangvanh locates along the main road to the district administrative office of Beng. There are two different ethnic groups living together in this village. First group of Khmu Lue resettled in this village in 1998, and the second group moved in 2000 from Ban Houa Xang, about 3 kms away. Also resettling here were Hmong Dam (Black Hmong) who moved from other mountainous location. The resettlement was done following the order of authority. Some Khmu remained in Ban Houa Xang because they have good houses in the village and preferred to stay. Hmong reside along one side of the road while Khmu on the other side. There are 3 Hmong households on the Khmu side.

Ban Kiusangvanh has a total population of 696 persons. Khmu has 36 households (41 families) with 241 inhabitants (including 134 women, and 107 men); Hmong are living in 103 households with 455 inhabitants. The households have no agricultural land at all in this village as all the paddy land seen alongside the road is the agricultural land of neighbouring Namaed village. Most households try to rent land from people in Ban Namaed or Ban Napa, the other neighboring villages of Tai Lue. The cost of renting upland rice locations is 80,000 kips per hectare, while better locations command more than 100,000 per hectare. All households return to their old village to cultivate the land and have to carry their crops back.

Khmu Lue practices patrilocal marriage, wife moves to live in husband's family after their marriage. On the wedding ceremony which is held at the bride's house, it is the tradition that the groom has to drink 18 *khanengs* (khaneng is a buffalo horn) of alcohol, then the bride's parents drink 12 *khanengs*. The brideprice is obligated and it is being practiced until the present. The groom's parents have to give long silver piece to the bride's parents as a brideprice and to pay respect to the ghost of the bride's family; cost of carrying the baby "*kha chia*" given to the elder brother of the bride's

mother amounted 270,000 kips; cost of mother's milk "*kha nam nom*" 200,000 kips, given to the bride's mother; and another 1.5 million kips and up as "*kha yueum*" for distributing to the relatives of the bride. After the marriage, the bride's parents will work in the agricultural land of their son-in-law's parents as a symbol of giving contribution to the groom's family. In Khmu Lue tradition, people of the same family can marry each other, except for children of two son-in-law. Many years ago men had many wives, but such practice has been stopped as they now strictly follow the law.

Traditionally there is no divorce if a couple has problems they get elders to sort it out. However, in case of divorce, the children can decide whether to live with mother or father. If children live with mother, the father has to give money for support but the mother does not have to give any money for help if the children live with father.

Widow man and woman can re-marry but the parents-in-law should be informed. If parents-in-law are still alive widow women "belongs" to them. But if she is living in her own house, then the house and property belong to her and her children. Widow woman is allowed to re-marry with cousins or relatives of her late husband. Before re-marry a new wife, parents-in-law ask their former son-in-law to drink "*nam khao muak*" (water in which rice is soaked for many hours before steaming), wash his hair and his face with such water.

Boys get more than girls on inheritance because girls receive some part on marriage. Assets which parents give to daughter when she moves out to live with husband's family are cash, cattle, blanket, clothes, pigs, dogs, and poultry. The one who lives with the parents will receive the house – this should be the boy, but some said it didn't matter nowadays. Land in their old village is still seen as an asset to be passed on to children, including their upland rice areas. However, there is no permanent ownership of upland cultivation areas as they keep moving to different area each year, but people inherit the right to demarcate their land each year.

Single woman can inherit parents' assets as other siblings do as she is the one who takes care of parents more than other. After parents' death, she has to live with brother's family. In fact there are no single women in the community but only 1 single man who is said to be unattractive to women and cannot find a wife.

Khmu are familiarized with heritage disputes. In ancient time they even killed each other due to unsatisfied division of parent's asset. At the present, they apply the law on inheritance for solving heritage disputes within family.

In the khmu community they have no conflicts, but they do have conflicts with Namaed village over both agricultural and residential land. Land that district authorities allocated to them is now being claimed by Tai Lue of Namaed as belonging to them and Khmu are being asked to pay for it. When Khmu clear land for upland cultivation and are preparing to burn off the undergrowth, Namaed villagers stop them. Moreover, Khmu said land in Ban Kiusangvanh should have been re-allocated to them without payment.



## TAI DAM

### Ban Namoe Tai, Namoe District, Oudomsay Province

People have been living in this village since the early 1950's. They moved in voluntarily from different location in order to live along the road side.

This is a community of mixed Tai Dam and Yang, but Yang are the majority. Namoe Tai has the total population of 443 people (231 women, 212 men), living in 76 households and consisted of 86 families. Most Tai Dam in the village have married with Yang and came to live as in-laws. Ethnicity of a woman will depend on the husband's ethnic group. They did not feel there is much difference between the 2 ethnic groups, although they celebrate different festivals. There are two *sings* (clan) of Tai Dam in the village, Lo and Ka. Yang will celebrate *kin Chiang* (new year), while Tai Dam have a one-day festival, *sen heuan*, to pay respects to the house spirits, attended by group of families from the same Sing.

Wedding arrangement are made by at least 2-4 elders who are close relatives from each family, the same practice whether Yang or Tai Dam. The brideprice is based on the village rule and on tradition which used to be 5.2 *munh* payable in silver coin and cash on the wedding day. However, this is now limited to about 200,000 kip in cash. In the old times, the groom would bring 8 *munh* for the bride's house spirits *Kha heed*; 1 *munh* per year for each of the 8 years the groom does not live with his bride's family. But nowadays this amount is calculated by 500,000 in cash per year for 8 years. The only amount that remains fixed and unchanged is the 5.2 *munh* for the bride's family. The 8 *munh* for the house spirit has to be paid before the groom moves into the bride's house but he doesn't have to pay if he doesn't move in. Now it is negotiable to reduce the period of 8 years to 1-2 years. Some couple moves to husband's family immediately after the wedding day. However, if parents of both sides have only one child, the couple will live in with husband's parents. If the bride is the only one daughter, husband will live with wife's parents for a life time.

Each couple strongly commits to live with each other for a lifetime once they are married. The couple's problems will be firstly solved by elders, but if not possible they can divorce. However, there is no case of divorce in this community. Tai Dam say they strictly practice monogamy.

Inheritance practice mostly follows the tradition rather than the law. Parent's assets such as animals, cash and silver will be shared between daughters and sons, but sons will get the bigger part. In ancient time, land only went to sons, but nowadays they can divide between both daughters and sons, but daughters will receive less as they receive some assets from their parents-in-laws. When the daughter leaves the house, her parents can give some land to her, but her husband's name will be on the document because it becomes the husband's asset, not hers. Widow women can return to parents or re-marry.

Land allocation has not yet been implemented in the village. All households have some paddy land, but it is not enough (only 6-7 households have enough paddy) so they have to keep doing upland rice. There are many conflicts over land because people illegally sell other people's land even if the actual owner has land tax documents. There are boundary disputes also, particularly over upland cultivation areas. The village authority together with the elder groups in the community can manage household disputes concerning land boundaries, but they cannot solve the boundary disputes with neighboring villages.

Land tax document which is the only land or property document they have at present are in both the name of husband and wife. However it is not systematic, as some years there is only husband's name in the document. Land tax documents are for residence and paddy land, as well as for upland rice land.

## **Ban Nakham, Namoe District, Oudomsay Province**

Ban Nakham is Tai Dam village. The ancestor of Tai Dam told from generation to generation that they moved from their original village of Meuang Then in Dien Bien Phu, Vietnam. The story were told by older people that 3 leaders named Senh In, Monh, and Iyaw, brought the village to this location in 1808 with 8 households and 52 people. There is no particular reason known for the move, but possibly due to the occurrence of the war between Tai Dam and Tai Lai (now called Tai Khao) at that period. Initially, they expected to settle in Luangnamtha, but found this location more suitable, with a large area of paddy land. People get domestic water from Houai Kham stream.

Currently Nakham has a total population of 393 people (184 women, 209 men) living in 64 households with 80 families. Apart from Tai Dam, there are 27 Khmu Lue people (12 women, 15 men) who mostly moved by intermarrying with Tai Dam, and also 3 Yang intermarried families. Tai Dam in Ban Nakahm are from many different *sings* (or clans) such as: *Sing* Lokham, Lonoy, Tong (copper), Ka (type of bird), and Kwang. Members of one *sing* are thought to derive from a common ancestor and they can marry within their own *sing* or with a member of another *sing*.

Marriage is patrilocal. After the marriage, the groom has to live with the bride's parents for 2 years (ancient rule was 8 years) before returning permanently to his parent's household with his bride. It is a traditional rule that when a girl marries into a family, then other boys from the groom's family are not allowed to marry other girls from the family of the bride. The groom's parents are obliged to pay *kha hua* (cost per head of the bride) which is 5 *munh* and 2 *hao* (5.2 *munh*; 1 *munh* has 10 *hao*). If the man cannot afford to pay *kha hua* he can be in marriage debt which has to pay off within a certain period. If he dies before paying off the marriage debt, his debt will be cancelled. In opposite way if wife die first, husband still has to pay off the marriage debt.

Divorce is permitted, there is no fixed amount to pay, but it depends on the situation and on who initiates the divorce. The land and house would be divided but the one who wants the divorce gets less. Woman can move back to her parents after the death of husband or divorce. The children can decide where to live. So far, there are no reports of divorce cases known in this community.

The elder son is responsible for dividing up the parents' inheritance. The older brother gets 2 parts, the younger brothers receive 1 part to his 2 parts "*Ai dai song, nong dai nung*". If the older brother moves out and the youngest brother takes care for the parents, he will get the house. Daughter receives moveable assets from parents when she moves to live with husband's family such as: money, silver coins, gold, rice plates, cattle, but th eland and house goes to the sons. There are some instances where a family has no son, and in that case the property would be inherited by the daughters. There are many disputes between siblings over inheritance, but elders of the village can usually help them to sort it out.

There are no actual rules applied to single woman in this community. Villagers mentioned about one single woman who is now living with her brother's family. She has been blind since age 14, and is now over 50 years old.

Most of household land disputes are about upland rice demarcation each year, but the village authority can manage to resolve. However, the disputes between Ban Nakham and Ban Houaixang (who slash forest in watershed location of Nakham for planting rubber) should be resolved by district authority.

In this village, most families do paddy cultivation, with some additional upland rice cultivation. So far, there is no buying or selling of land in the village. Land allocation has not yet started and everyone is clear about their household land boundaries. They think land allocation will focus on house and paddy boundaries. However if land allocation reduces the land claimed and used by a household, they think this will increase inheritance disputes between siblings. They feel that their lands were inherited over generations, and they are not willing to give any away to other

households or to the government under land allocation. Villagers expressed concern that land allocation may reduce their landholdings and prepare to negotiate the matter with district authorities.

### **Ban Donekeo, Xay District, Oudomsay Province**

This village was established in 1959 with 3 main ethnic groups. There are now 41 Tai Dam households, Lao Loum (Lue) which is the majority, and Khmu Lue. In addition, there are also a few households of Hmong, Phounoy, and 7 Hor (Chinese) living in this village. All Tai Dam moving from Chomka and Chomong villages in Nam Heng resettled here at the same time.

Ban Donekeo has 377 households (411 families) with 1959 inhabitants (955 women, 1004 men). Tai Dam cover 11% of the total population. The majority of Tai Dam in this village are from *sing Vy*, while there are lesser from other *sings* such as Lo, Kwang, Luang, and a few Ka. Though there are many different ethnic groups and cultures in the village, but they all treat, use and view land and property in the same way. Tai Dam is well-known of their skill in weaving and sericulture, though most have stopped this practice since they do not cultivate mulberry tree any more. The main source of income for Tai Dam women is making mattresses. The weaving season is between November and February, and they now buy silk from Vietnam.

In this Tai Dam community, some marriages are arranged by parents though most of young generations now have freedom to choose their spouse. The venue of the wedding is flexible based on the agreed condition for marriage. If the son-in-law will move to wife's family '*khao kheui*', the wedding is organized at her house, but if the groom does not '*khao kheui*' then the wedding is held at his house. In case that the bride is the only child in the family, son-in-law has to live in wife's family permanently and he is called as '*Kheui soo*' (supporting son-in-law). If the *Kheui soo* is from different ethnic group, he has to practice all rules of wife's ghost tradition which is called '*khao heed*'. A lot of parents-in-law's assets are given to the '*Kheui soo*'.

There are two types of brideprice to be paid by the groom: (1) the brideprice costs 5.2 *munh* of silver, in addition to one pig on the proposing day, and one set of clothes for each of her parents. (2) the brideprice in kind of labor indicated in number of years in which the son-in-law live with wife's family to help them with labor (mostly 2-5 years). If the son-in-law will live with his wife's family he does not have to pay such brideprice, but if he cannot perform the agreed condition, he has to pay the agreed price in a yearly basis.

When a couple divorce, wife does not get heritage which husband received from his parents but she can keep her own assets. The couple's share asset is divided based on the dimension of guilty of the one who initiates the divorce. In this village, there are 3 Tai Dam men having second wife who are from other ethnic group, but those second wife had left their husbands within some years as they could not tolerate the patience of first wives who did not complain and pretended not to be angry with them or with husband. There is also a case of Tai Dam divorced women who is living with her 6 children, her husband left her to get second wife but he did not get anything from the divorce.

After the death of husband, a widow woman can lead her family and her name is written down in the family census book as head of family.

The village has no upland rice cultivation. There used to be some along the mountains which they consider belongs to this village and to neighboring villages, but now the authorities have announced this area of 50 ha has been allocated to a Lao Chinese agricultural development company. There is paddy which is individually owned, but this is being increasingly encroached upon by the government authorities under the expansion of Oudomsay town. Cultivation land is being reduced all the time and there is much conflict with the authorities over land acquisition. There is some forest which is accessible to all, but they are only allowed to take firewood which, not to cut trees.

There is no conflict between households, but there are some family disputes which can be settled by the village elders.

## Annex 4: Checklist for semi-structured interviews and mapping

### Discussion Checklist:

<b>Regulatory role of land</b>	
1	If someone wants to buy or use some land he does not consider "his", what does he do?
2	If another community from a neighbouring village wants access to land the village considers its own, what happens?
3	What land or trees or property can anyone use without asking permission?
4	How long does an inter-village agreement to use land or natural resources last?
<b>Clans, Culture &amp; Marriage</b>	
1	Patrilineal/matrilineal/bilineal? Polygynous?
2	Patrilocal/Matrilocal/Bi-local?
3	Totemic and how many clans in this village?
4	Is it normal to have more than 1 clan in a village? If yes, why?
5	Endogamous/exogamous? Which clans can marry whom?
6	Is there any inter-marriage between your community and other ethnic groups?
7	If yes, is there any exchange of land or property as part of the marriage agreement? Bride price?
8	Can you expect help from a clan member in another village or another part of the country?
9	If yes, what kind of help can you expect?
10	Ancestor spirits? Other spirits? How to ensure they are on your side with using or accessing land, property, natural resources?
<b>Marriage, Inheritance, Death &amp; Divorce</b>	
1	If a woman marries, what is the basis for her decision? parents decide/ attraction / parents dying and being alone [needing protection] / keeping property in one family / infertility of a previous wife, etc.
2	If a man wants to marry, what is the basis of his decision?
3	What land/assets are brought into the family through marriage? (is there bride price or dowry?)
4	What is inherited from parents? Land/property/assets e.g. livestock
5	Can sons and daughters both inherit land and property from parents?
6	Is the type of property inherited equal or different for boys/girls or men/women? How does a son or daughter "earn" an inheritance right?
7	If only men can inherit, and there are several sons, how do you decide who receives what property or land?

8	Do they inherit during the parents lifetime, at the death of a father, at the death of a mother, or after death of both?
9	If there is a decision to be made about land or property use, who would make it? Whose advice would you seek about it?
10	can women participate in formal/informal land & property transactions? If not, why not?
11	If women or men have a question about land and property rights, who do they go to? Do they understand the answer? If not, why not?
12	If a husband or wife want to get divorced, what happens to the property and land?
13	Is there any repayment of bride price? Who is this repaid to if the bride's parents are no longer alive?
14	What is the division of property & land if the husband wants a divorce?
15	What is the division of property & land if the wife wants a divorce?
16	What is the division of property & land if both the husband and the wife want a divorce?
17	If a man or a woman wants legal settlement of a dispute, what kind of legal settlement do they look for?
18	How is information shared in the community? How do women get access to information about land and property rights
19	If land and property is in women's names, how do they pay the registration fees or documentation fees?
20	Who in the household makes decisions about the following:
i	•land use
ii	•crop choice
iii	•planting times
iv	•saving money
v	•buying items for the family
21	If a person has a grievance about land or property, who does he first go to?
22	Depending on the type of grievance - different people for different types? Do men and women go to different persons?
23	If the person he first goes to does not help or does not agree with him/her, what does the aggrieved person then do?
	<b>Managing Change</b>
1	Has anything happened in the last 10-20 years which has changed anything about how you view land and property rights?
2	If yes, what has happened?
3	What is your response to these changing situations? How will you agree land and property rights as a consequence?
4	How is information shared in the community? How do women get access to information about land and property rights
	<b>Titling</b>
1	Above questions in light of titling experience or expectations

## Land Resource Mapping

<b>A</b>	Find people who know the area well and who are mobile in and around the village area.
	Split
<b>B</b>	Explain that you would like to prepare with them a map of their land resources, to understand how the community uses them, and how men and women might use them differently
<b>C</b>	Split into a men's group and a women's group to do separate exercise with each
<b>D</b>	Choose the medium in which you will do the mapping, e.g. with paper and pens, or with sticks and stones etc.
<b>E</b>	Choose a suitable place where you will not be disturbed, and where the "map" can be clearly seen and discussed by all participants
<b>F</b>	Help people get started, but let them draw the map, do not do it yourself. Be patient and don't interrupt them
	<b>Ask respondents to mark on the map the following:</b>
<b>1</b>	Identify the key features of the village, including roads, rivers/streams, or other features
<b>2</b>	Identify the boundaries of the village land as respondents understand them
<b>3</b>	Ask why the village was placed in this location? What were the key features of the area which made it a good place for the village?
<b>4</b>	When was the village formed? Is it old? New (e.g. after 1975)
<b>5</b>	Mark the main residential area of the village, and different residential clusters by ethnic group, clan, or house type
<b>6</b>	Mark key community infrastructure, such as a school, community longhouse, water supply sources (streams, common use wells, etc.)
<b>7</b>	Mark different land uses in the wider village land, including different sorts of forest, grazing land, water resources for fishing, etc.
<b>8</b>	Mark which clans, families, men or women, can and cannot access and use the different types of infrastructure, land and natural resources
<b>9</b>	What land or trees or property can anyone use without asking permission?
<b>10</b>	When does someone have to ask permission?
<b>11</b>	Identify who cannot access and use infrastructure and land resources, and the reasons why not (gender, clan, household, village, etc.)
<b>12</b>	Mark what property and space is private, what is public, and what is communal/collective, and what makes the difference between the 3 types
<b>13</b>	Mark which households cooperate with each other for different land use activities, and how they cooperate
<b>14</b>	Has this village split with another village? If so, what were the reasons for the split?
<b>15</b>	Are there any locations where there are disputes over land? If yes, mark these locations and identify the causes of the disputes
<b>16</b>	Do any households in this village seasonally migrate to another location to cultivate their lands, or do they divide their time between 2 locations?
<b>17</b>	Have any houses or pieces of land been bought and sold in the past 10 years? Mark which ones.
<b>18</b>	Is there any property or land which cannot be bought and sold because it belongs to everyone? If yes, mark these

## **Annex 5: Specific Legal and Policy Provisions in the Lao PDR related to Land, Property, Inheritance and Ethnic Minorities**

### **LAND and PROPERTY:**

1. The Constitution of the Lao PDR (amended 2003)

Article 16: protects and promotes all forms of property rights, including private domestic.

Article 17 (new): protects property rights of possession, use, usufruct and disposition and the inheritance rights of organisations and individuals, including land which the State will ensure can be used, inherited and transferred in accordance with laws

2. Law on Land, 01/97/NA, amended 21<sup>st</sup> October 2003, No. 61/PO

Article 3 specifies the state is the owner of land, and is responsible for allocating land to "individuals, families and economic organisations for use, lease or concession

Article 5 confirms the State's responsibility to protect the legal interests of land use rights holders

Article 7 states anyone wishing to use land must have authorisation of the State, while Article 9 points out the State is charged with centralised management of land, with categories of land the management responsibility of different State agencies.

Article 10 outlines responsibilities of National Land Management Agency.

Article 11 classifies types of regions and types of land.

Article 12 states local administrations are responsible for determining local land categories, and for zoning and demarcating the boundaries of each category, while Article 18 charges district or municipal administration with allocating agricultural land use rights

Article 14 states any change in land categories has to be approved by "concerned management authorities"

Ministry of Agriculture & Forestry is responsible for managing the following types of land: agricultural, grazing, industrial plantations, orchards, gardens, forests, "water area land".

Ministry of Industry & Handicrafts is responsible for managing industrial land.

Ministry of Transport & Communications is responsible for managing land for roads, bridges, water channels, land for transportation & communication, and warehouses.

Ministry of Culture is responsible for cultural heritage land

Ministries of National Defence and Security are responsible for land in sensitive locations, including national borders

NLMA is responsible for construction land, including residential, urban land, buildings, offices, factories, etc and for public facilities

Article 17 specifies the amount of land to be allocated to each family according to the number of labour force in the family, namely 1ha per labour force for *naa* and livestock land, 3has per labour force for industrial plantation and crops, 3has per labour force for orchards, and 15has per labour force for land to raise livestock. A family can have as many hectares as there is labour in the family. If a family or individual wants to cultivate more land than can be allocated under the law, it can be done via a lease or concession.

The amended Land Law also describes the process of registering land. It specifies (Article 49) that a Land Title is now the only legal document "considered as main evidence for permanent land use rights."



It also clarifies that groups or individuals can acquire land legally in 3 ways: allocation by the State, transfer (defined as "sale, transfer or exchange"), and by inheritance (Articles 52, 57 & 58).

Article 60 outlines the obligations of legal land users, and Articles 62 and 63 details the circumstances under which legal land users can lose their rights

3. Ministerial Direction 564, addressing Directions on Land Titling Regulations 997 (Systematic Adjudication) and 998 (Sporadic Adjudication)

4. Prime Minister's Decree 169/PM, 3<sup>rd</sup> November 1992, Management & Use of Forests

Article 4, which says "the State recognises the right to use forests, forest land and forest produces in accordance with the custom of villagers"

5. Order on Customary Rights and the Use of Forest Resources, April 4<sup>th</sup> 1995, Ministry of Agriculture & Forestry, defines "users" and "holders" of forest land and its resources

6. Prime Minister's Decree 01-96/PM (1996), Forestry Law

7. Prime Minister's Decree on Sustainable Use of Production Forests, No. 59/PM (2002)

Confirms the right of villagers to be involved in management, use and share in revenues from production forest products. However, lack of a clear legal framework concerning village participation in forest management has led to frequent policy changes and disputes between concerned parties.

8. Regulation 0204/MAF (2003), Ministry of Agriculture & Forestry, setting out field implementation instructions to implement Decree 59.

9. Forestry Law (2005).

#### **INHERITANCE:**

1. The Constitution of the Lao PDR (amended 2003)

Article 17: (see above)

2. Family Law No. 97/P (1990)

Specifies monogamy is the only legally recognised form of marriage (Article 4) and deals with disposal of assets in case of divorce (Articles 26, 27 & 28) and property rights of children (Article 34)

3. Inheritance Law, No. 03/90 - PSA (1990)

Identifies who is entitled to inherit from whom, both within the family, within a lineage, and by divorced persons.

4. Property Law, (1990)

Defines different types of property, including moveable assets and fixed assets such as houses. It also states that anyone retaining land that is not used for any form of production is liable to have such land removed and transferred to someone else without compensation (Article 22).

Conjugal property is defined (Article 26) as that property obtained by a married couple during their marriage, and belonging equally to the husband and wife. Assets belong to each spouse before marriage, or through inheritance, belong to the individual concerned, not to the married couple.

In divorce (Article 27), conjugal property should be divided equally; however, where one spouse is at fault ("responsible for altering the marital relations"), the responsible person will only receive one-third.

Article 28 provides for acquisition of property but requires a contract.

5. Law on Development and Protection of Women, No. 70/PO, (2004)

Article 17, which specifies daughters and sons have equal rights to inherit property

Article 32 prohibits violence against women's assets so as to cause the loss of inheritance rights or property

6. Law on Land, 01/97/NA, amended 21<sup>st</sup> October 2003, No. 61/PO

Article 58 (see above)

### **ETHNIC MINORITIES:**

**International Conventions:** as of October 2007, Laos is a signatory to the Convention on the Elimination of all Forms of Racial Discrimination 1965 (CERD) and the International Covenant on Economic, Social and Cultural Rights 1965 (CESCR) and the Convention on the Elimination of all Forms of Discrimination against Women 1979. It has not yet, however, signed ILO 169 Convention Concerning Indigenous and Tribal Peoples in Independent Countries 1989.

### **National Policies & Legislation:**

1. The Constitution of the Lao PDR (amended 2003)

All sections of the Constitution stress the multi-ethnicity of the state.

Article 8: "All ethnic groups have the right to protect, preserve and promote the fine customs/traditions and culture of their own tribe and of the nation. All acts creating division and discrimination among ethnic groups are prohibited.

The State implements every measure to gradually develop and upgrade the socio-economic levels of all ethnic groups."

Article 23 promotes preservation of national culture and its ethnic people, while accepting other "progressive" cultures.

Article 35 states the equality of all people before the law regardless of their ethnicity, beliefs or gender

2. Resolution of the Central Party Organisation Concerning Ethnic Minority Affairs in the New Era (1992)<sup>1</sup>. According to the reference, this policy is the cornerstone of current ethnic minority policy. Appendix 3 of the referenced document is therefore reproduced below.

3. Resolution of the Political Bureau Concerning the Affairs of Various Minorities, Especially the Hmong Minority (1981)

4. Prime Minister's Decree on the Organisation and Administration of Villages, 102/PM (1995)

Defines a "village" as constituting "over 20 households or a population of over 100 co-existing persons."

5. Law on Local Administration, No. 60/PO, (2003)

This details criteria for establishing different administrative units and who has responsibility for doing this, as well as duties and responsibilities of those administering different units from Province to Village

6. 8<sup>th</sup> Party Congress and Directive Order No. 9 of the Politburo, 8<sup>th</sup> June 2004, Instruction Order on the Establishment of Village and Village Cluster for Merging Administration (*Kum-ban Pattana*)

This Directive is the most recent and most important policy affecting ethnic minority villages at present. It concerns merging of villages with the aims (among others) of improving socio-economic development and accelerating poverty reduction. It calls for

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<sup>1</sup> Taken from Appendix III, *Policy Study on Ethnic Minority Issues in Rural Development*, Project to Promote ILO Policy on Indigenous and Tribal Peoples, by Dr. James R. Chamberlain, Mr. Panh Phomsombath and Ms. Vatthana Phorsena, February 2000, International Labour Office, Geneva

focal sites to be "special zones", but does not specify how poverty reduction is to be achieved by this step.

Directive 09 is the latest in a series of decrees and directives attempting to address poverty reduction, including Decree 010 on decentralisation which was felt to have limitations and was the product of the Rural Development Committee (now abolished). The RDC also organised focal sites (*khedchutsoom*) which have been superseded by Directive 09, but which still persist in some provinces such as Savannakhet and Luang Prabang. In the survey provinces of Attapeu and Oudomxay, districts tend to take the label of *khedchutsoom* and *kum-ban patthana* as it is used by MAF to describe technical services consolidation, and have applied it to *kum-ban patthana* as proposed under Directive 09.

Directive 09 is now the principal policy document cited by provinces and districts to develop concessions with the aim of turning land into funding opportunities in order to speed up national development.

However, 09 is a Party Directive, not a Government Decree, which has led to some district and village authorities questioning who is responsible for implementing National Policy. The Party is parallel and superior to Government, but Government manages the budget for poverty reduction.

Directive 09 defines a village in mountainous areas as more than 200 people, in lowland areas as more than 500 people, and in urban areas as more than 1,000 people. In order to achieve these numbers, 2-3 villages with adjacent boundaries are to be merged into one. In turn, village clusters (*kum-ban*) are to be formed by merging 5-7 neighbouring villages into one administrative unit. This is interpreted as up to 21 villages being clustered into one *kum-ban* and its administration merged (*kum-ban patthana*). One objective is for "ethnic people in the village cluster to live together with love and solidarity under the Party's guidance."

Developing *kum-ban patthana* is an administrative step in addition to forming focal sites. One district must have at least 2-3 focal sites.

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