

*Towards equitable and secure access to land and natural resources for family farmers in the Mekong region*



## **Capitalization Note**



*June 2017*

# **Communal land titling in practice: Lessons from Khammouane Province, Lao PDR**



*Mr Bounthavy, shown here on the communal land, is the leader of the Talak communal land management committee*

**CIDSE-Laos**  
**Mekong Region Land Governance**

# Capitalization Note

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## Executive Summary

This capitalization note explores the results and lessons learned from a process to issue a Communal Land Title (CLT) to 33 households on 41.6 hectares of *agricultural land* in Talaknathin village, Gnommalath district, Khammouane province in Lao PDR. The process was facilitated by CIDSE-Laos, a locally managed civil society organization and local government.

The case study is intended to provide evidence that can be used to inform the development of legislation and accompanying procedures for communal land titling in Laos. While limited to a single communal plot within one village, the case study provides insights into the potentials and limitations of the CISDE titling approach to enhance village tenure security within rural communities in Laos. This, in turn, is useful to inform whether the model could be scaled up nationwide.

### Key findings

The case study demonstrates that with community and government support it is feasible to issue a communal title on a parcel of agricultural land in Laos, despite the lack of a complete legal framework to do so.

Benefits of the communal land titling:

- Villagers believe that the formal recognition that communal title provided will be able to protect the land for future generations.
- The development of a management plan, with clear rules and regulations for land- use and management, gave extra credibility to the CLT as it was designed to ensure land and resources are sustainably and equitably managed over the long term. In particular, regulations mandate that it be available for all villagers in perpetuity, thus providing a social safety net for poorer households.
- The ability to protect communal land close to the village under communal title benefited the livelihoods of women and the food security and nutrition of their families.

Factors that facilitated CLT in Talaknathin village:

- The Participatory Land Use Planning (PLUP) process previously undertaken by CIDSE-Laos provided a basis for issuing a communal title since it identified village boundaries and built the capacity of villagers, including women.
- The precedent set by other communal titling cases within Khammouane province and an established relationship between CIDSE-Laos and local authorities.
- Talaknathin village is a small, ethnically and religiously homogeneous village which has not been resettled and which does not have an influx of migrant families.
- The chosen land contained no islands of private land (titled or claimed), which would have complicated the process.

Limitations and their implications for upscaling:

- The cost of the obtaining the communal land title was expensive, and estimated at \$102 USD per hectare. High costs are due to several factors, including the non-systematic titling approach, the inability to use remote sensing equipment for land measurement and the time-consuming process required to ensure full participation in the CLT process and equitable management of the communal land.
- These high costs meant that the area titled was only small, and excluded for example, the 447 hectare village use forest which was considered by CIDSE-Laos to have no significant long-term management needs that would justify the expense of titling. This raises the issue of how the remaining communal land within the village will be treated: while tenure security is enhanced on this parcel of land, tenure security on surrounding non-titled land may be compromised.
- Local government was willing to accommodate CIDSE's desire for communal titling because the area involved was relatively small, there were clear pre-existing collective tenure rights and the area titled was not considered to be contested by future developments. In other words, it was 'easy'. The government may be more reluctant to agree to issue CLTs on larger areas of village agriculture and forest land.

In conclusion, while it is a feasible to issue a communal title on a relatively small parcel of agricultural land in Lao PDR despite an incomplete legal framework, it is unlikely that this innovation can be scaled up in other parts of the country until the new Land Law is approved and a procedure is formalized for issuing communal land titles at national level.

## Key policy recommendations

1. **Adopt a village rights or territory approach to formalizing village tenure recognition:** A parcel-by-parcel approach to titling can be time consuming, costly and often results in limited coverage. In contrast, a demarcation of the village territory would be a simpler and more effective way to protect all agricultural and forest land within the village, since all land identified in a PLUP which does not belong to the state or is privately titled becomes managed by the village within its boundaries. A territorial demarcation of village land would serve as an interim protection measure until formal registration and titling can be completed for individual parcels at some future point.
2. **Provide interim alternatives to formal titling that recognize customary land:** If land registration and titling is not an immediate option, alternative recognition mechanisms based on existing legal frameworks are needed which are quick to establish, provide broad coverage, and are not too complex or costly.
3. **Remove the requirement for complete land use zoning before communal/collective land registration can be completed:** While a Land Use Plan (LUP) provides a good basis for CLT, it is unreasonable that unlike private individuals, communities require a LUP to register and title communal land on demand. The new legal framework should acknowledge that a full LUP may be avoided as a prerequisite to registration/titling in situations in which the proposed area is not claimed by a neighbouring village, is endorsed by the village authorities, and where the district can certify that the customary tenure is strongly recognized by all inhabitants.

# List of acronyms

CLT	Communal Land Titling
CSO	Civil Society Organization
DAFO	District Agriculture and Forestry Office
DONRE	District Office of Natural Resources and Environment
FAO	Food and Agriculture Organization
FOMACOP	Forest Management and Conservation Project
GAPE	Global Association for People and Environment
GRET	Groupe de Recherches et d'Echanges Technologiques
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IFAD	International Fund for Agricultural Development,
LIWG	Land Issues Working Group
LMDP	Land Management and Decentralised Planning
MAF	Ministry of Agriculture and Forestry
MRLG	Mekong Region Land Governance
MoNRE	Ministry of Natural Resources and Environment
NLMA	National Land Management Authority
NTFP	Non Timber Forest Product
PAFO	Provincial Agriculture and Forestry Office
PLUP	Participatory Land Use Planning
PONRE	Province Office of Natural Resources and Environment
SUFORD	Sustainable Forestry for Rural Development
TABI	The Agro Biodiversity Initiative
WCS	Wildlife Conservation Society

# 1. Background

This capitalization note explores the results and lessons learned from a process to issue a Communal Land Title (CLT) to 33 households on 41.6 hectares in Talaknathin village, Gnommalath district, Khammouane province in Lao PDR. The process was facilitated by CIDSE-Laos, a locally managed civil society organization (CSO) and local government. The case study is intended to provide evidence that can be used to inform the development of legislation and accompanying procedures for communal land titling in Lao PDR. While limited to a single village, the case study provides valuable insights into the potentials and limitations of the CISDE titling approach to enhance village tenure security within rural communities in Lao PDR. This, in turn, may help inform the extent to which the model should be invested in for nation-wide application.

CLT is regarded by civil society as enhancing the livelihood rights of rural communities because it builds upon existing customary tenure to provide formal tenure that is recognized by the state. This, in turn, provides the added security and confidence necessary for such communities to invest in the production and management of their land and the social accountability to uphold its use regulations. Critically, CLT is seen to legally safeguard tenure rights against threats and infringements by external actors. Previous land and forest allocation efforts in Lao PDR have failed to prevent communal land from being expropriated by third parties, despite having land use plans which had been approved by local authorities (Schönweger et al., 2012). Communal land titles can also serve to prevent elites within a community from unfairly claiming, selling off or leasing community land and resources.

While CLTs can provide added legal strength to village land and forests, obtaining a CLT can be a burdensome and costly process. In Cambodia, for example, only 14 indigenous communities have so far obtained communal titles in the eight years since implementing legislation was introduced to support CLT. In the meantime, community land has continued to be encroached on by outsiders and some NGOs have given up entirely on CLT as a mechanism for protecting indigenous people's land. Therefore, the costs of obtaining a CLT need to be weighed up against factors such as how much village land is ultimately included in communal titles, and how CLTs actually measure up in terms of securing communities' long term use and management of land and related resources vital to their livelihoods.

Ewers (2011) differentiates between two models of communal title in Asia, being the 'permanent title' model and the 'delegated management' model. In the permanent title model (typified by the Ancestral Domain Titles in the Philippines which refer to a wider area controlled collectively by a community), land is granted to the community for collective ownership, and generally does not distinguish between agricultural, forest and other land categories. In the delegated management model, the state maintains ownership of the land and delegates management to a village or local groups, who typically comprise those using a specific resource such as paddy land, forest or pasture.

There are a number of aspects of the communal land registration and titling legislation in the Lao PDR that indicate that communally titled land is not outright owned by the community and that the state maintains substantial discretion in how communal land is recognized and managed. For example, Art. 38 of the draft Land Law states: "The use of communal land is centrally managed by the state, which assigns such land to villages and ethnic groups to use for the highest benefits of the communities. The management of communal land is determined by specific [i.e. forthcoming] regulation."

The situation is often more complex than the two models suggest, and it is possible to find a mixture of direct and delegated/state ownership when it comes to legal specifics. In Cambodia, for example, some land types are considered communally owned under the communal land titles for indigenous communities, while other land types (such as spirit or burial forests) remain categorized as state public land. Forestland for livelihoods, on the other hand, is excluded altogether from the communal land titles and falls under a different line ministry (the Forestry Administration).

Approaches to communal titling can be also be distinguished between a ‘separate parcel’ model, which registers communal land and individual land separately, and a territory-based model, which includes demarcating the village boundary or the ancestral domain containing both private and communally managed land. Although in Lao PDR the village is legally recognized as the lowest administrative unit of governance, most pilots to date have followed a parcel-by-parcel approach to communal titling within this boundary.

At the 12<sup>th</sup> High Level Round Table Meeting between the Lao government and its development partners in 2015, the principle of communal land titling was agreed to both parties and incorporated in their final report (Government of Lao PDR, 2015:31):

*Communal land titling should also be promoted and be accepted as a means to formal land ownership. This would serve to protect the most vulnerable poor who have the least access to privately owned land and instead rely on rights of use of communal land.*

Legally, there has been a framework in Lao PDR for the titling of collectively owned land (*din luam muu*) since the Property Law of 1990 (Liu and Sigaty, 2009; LIWG, 2013). The 2003 Land Law, and the subsequent Prime Ministerial decree on its implementation (No. 88, 2008) provided a process for collective titling, specifying that it may be undertaken only after village land use zoning had been completed. The most recent instruction on land registration and titling (MoNRE No. 6036, 2014), distinguishes collectively owned land (or land belonging to a group of people within “a collective, production unit, or association”) from communal land (*din xoum xon*), which is “commonly owned by village or ethnic group, including communal ponds, forests, agricultural lands and cemeteries.”

These two categories, collective and communal, were maintained in the most recent publicly available draft of the National Land Policy (2016) that was put in front of the Party Committee for approval as a Party Resolution on Land. Recently, the Committee for approval stated that the term ‘communal land’ will be discarded in favour of the term ‘collective land’, but the substantive definition of collective land will be the same as what was previously termed communal land (communicated by MoNRE at the Land Sub-sector Working Group on Communal Land Titling meeting, 16/6/2017).

Despite the efforts of numerous donor projects working with the Lao government, only two collective/communal land titles of significance had been issued by the end of 2016. The first is to five villages<sup>1</sup> (2,189 hectares) in Sangthong district close to the capital Vientiane (to conserve bamboo forests for handicraft production)<sup>2</sup> and the second is to 14 villages (20,208 hectares) resettled to make way for the Nam Theun 2 hydropower project in Khammouane province (Schneider, 2014).

In addition, the Land Management and Decentralised Planning (LMDP) Project, supported by GIZ, has been developing guidelines and pilots for issuing CLTs in four provinces as part of its systematic land titling program in Lao PDR. By end of 2016, 330 collective/communal land parcels had been registered in Houaphan province, including some larger areas (“hundreds of hectares”) of village use forests, grazing areas and paddy fields (LMDP, by email, 20/2/17).

Limitations to upscaling CLT have been firstly, the lack of clear guidelines on how to transform the legal definition of communal land into actual land titles (Schneider, 2014; GIZ, 2015) although this is currently being addressed by GIZ’s LMDP project. Secondly, systematic land titling has been prioritized in urban and well developed rural areas, where unit titling costs are relatively cheap due to high population density and generally well-defined boundaries of landholdings. This contrasts with the situation in remote areas, where populations are scattered and boundaries need to be defined prior to issuing titles. Thirdly, local government has been reluctant to issue communal titles because, unlike individual titles, the government is unable to collect land taxes (LIWG, 2012a).

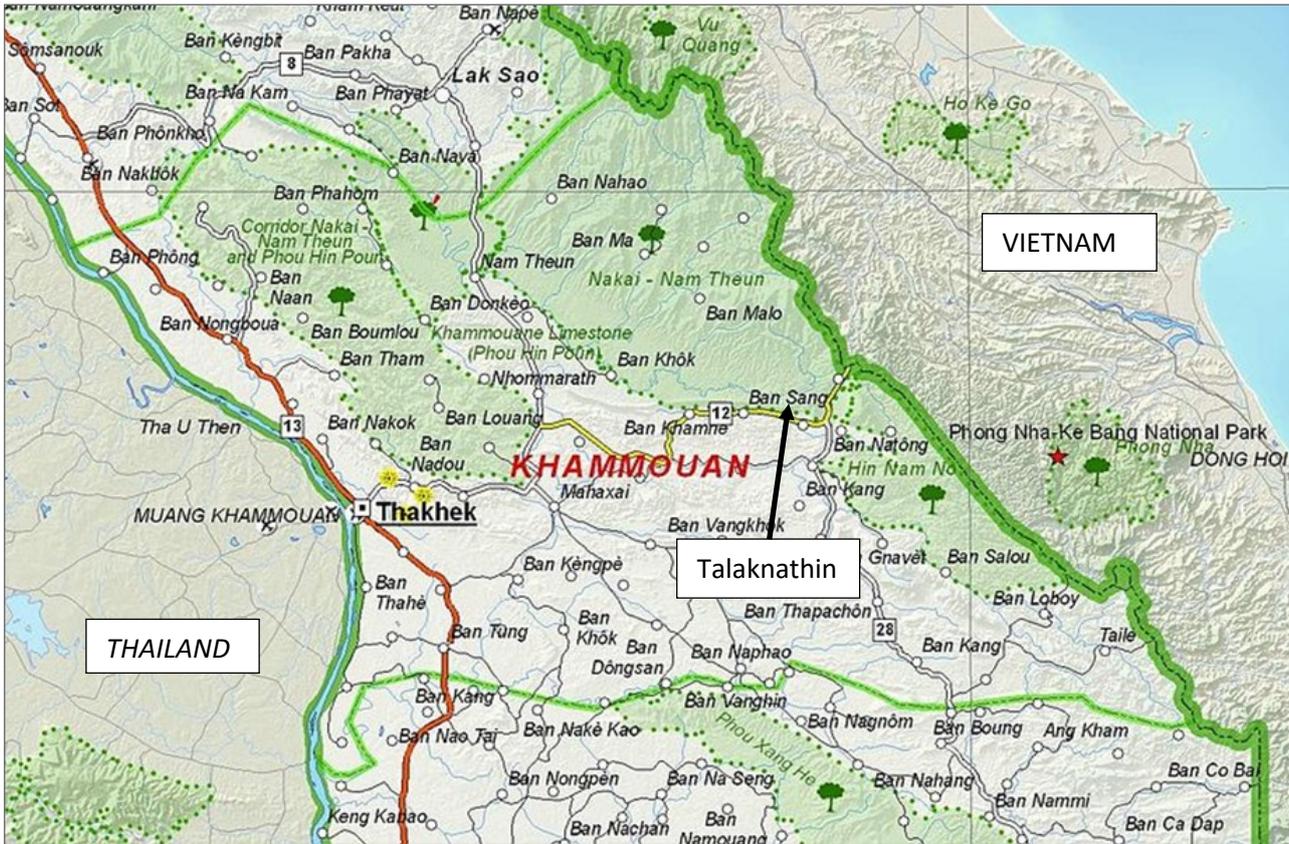
CIDSE-Laos has been working to strengthen land tenure and access to natural resources for local communities in Khammouane province since 2009, when large projects in potash mining, cement, tree plantations and hydropower, began to threaten the land tenure and livelihoods of the rural populations with which CIDSE-Laos works. Like all local CSOs in Lao PDR, it must work closely with government partners when implementing activities with villagers.

Talaknathin village is located 15 kilometres from the Vietnamese border in Khammouane province along the busy main road linking the provincial capital of Thakhek on the Thai border and Vietnam, which makes it attractive to investors (Figure 1).

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<sup>1</sup> It was intended that the titles be issued to the bamboo groups within the villages, but since these were not a legal entity, the titles were issued in the name of the village.

<sup>2</sup> Issued in the form of Temporary Land Use Certificates (TLUC), valid for three years, after which the community could apply for permanent title. However, the district has advised that it is awaiting the revision of the Land Law before it will proceed with permanent title (Souvanpheng Phommasane, pers. comm. 14/12/16).



**Figure 1.** Location map of Talaknathin village in the central Lao province of Khammouane

Initially established in 1951, the village is composed of two ethnic Yoy<sup>3</sup> hamlets (Nathin of 45 households and Talak of 33 households) located three kilometres apart. Of importance in this study is that even though they were subsequently consolidated into one village in 1998, they continue to maintain separate identities. Paddy rice is grown for home consumption, and there is no swidden rice farming. The largest source of income is from livestock (cattle, pigs and chickens), with broomgrass coming second. A location map is given in Figure 1.

<sup>3</sup> The Yoy, or Tai Yo, are estimated to number about 1,500 people in Lao PDR within Khammouane. While there are some differences in dialect, they are ethnically and culturally similar to the dominant Lao Loum.

## 2. Process description

The issuing of CLT to Talak hamlet is the culmination of a five-year process beginning in 2011 when CIDSE-Laos introduced legal education to encourage community participation in land governance. Capacity strengthening of the village conflict mediation unit was also provided so that it could advocate for the rights of villagers with local authorities. From this basis, CIDSE-Laos proceeded with Participatory Land Use Planning, or PLUP.

As a formal process, PLUP has its origins in Lao PDR since 2003, when several donor funded projects placed additional emphasis on community participation within the existing land use planning approach (GIZ, 2015). It culminated in a 2010 manual endorsed by the government entitled “*Participatory Agriculture and Forest Land Use Planning (PLUP) at Village and Village Cluster Level*”. The PLUP manual may be divided into two key stages. The first stage leads to detailed land classification and zoning at village level and produces a report with maps that is able to be approved by the district authorities. The second stage, which is more time consuming, expensive and often left undone by aid projects, is land registration and titling. CIDSE-Laos has been, and continues to be, a strong advocate for PLUP, as it believes that only by following a systematic process will villagers participate and engage in discussions about their land and its management (Box 1).

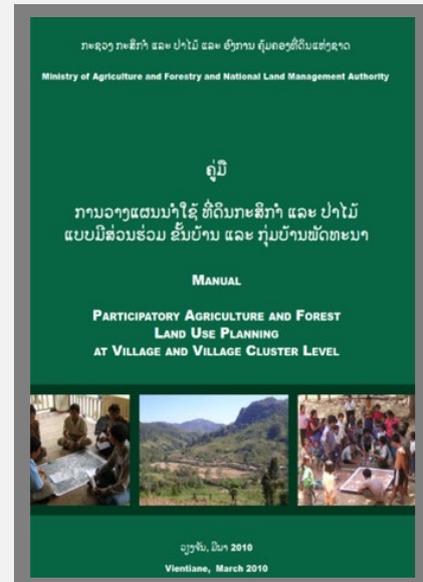
### Box 1. How CIDSE-Laos’ Participatory Land Use Planning process led to CLT

At the outset, PLUP requires the establishment of a village land use committee, which is representative of all community members, including women and young people who are often excluded from community decision-making.

With the facilitation of CIDSE and government staff, villagers identify their boundaries with other villages, work through current land use patterns, and consider their future needs.

Maps are prepared and village management plans are developed to ensure that villagers manage the land to cater for these needs within the law, and that all villagers are able to benefit. Through regular visits, villagers build up the trust, confidence and understanding needed to take the step of registering their communal land for title.

Source: Interviews with CIDSE team



CIDSE-Laos had planned to undertake PLUP in 20 of its target villages in Gnommalath and Mahaxay districts during the six years to 2016. Eventually, however, PLUP could only be completed in 14 villages due to disagreements in the other six villages over the location of village boundaries with their neighbours.<sup>4</sup>

In Talaknathin, PLUP was completed in 2011 in both hamlets as a village unit, with 1,593 hectares delineated into the land use zones and registered with the Khammouane Provincial Office of Natural Resources and Environment (PONRE). Nearly half of this area (765 hectares) comprised limestone karsts, which were unable to be zoned to forests or agriculture (Annex 1). The PLUP report notes that nearly half of all families were short of rice since their paddy land was insufficient in size and unirrigated.<sup>5</sup>

While CIDSE-Laos hoped to begin CLT in 2013 for Talaknathin and other villages that had completed PLUP, the process was stalled by the province on the basis that there were no formal procedures to issue communal land titles, as outlined above. However, in March 2014, the Nam Theun 2 hydropower project issued collective (not communal) titles to 14 resettled villages in Nakai district, also in Khammouane province, under special provisions secured by the project backers (including the World Bank) who needed to ensure that this was a model project (Schneider, 2014). Subsequently, the Hin Nam No Biodiversity Project, supported by GIZ at central level, was able to pressure PONRE in Khammouane to issue a collective<sup>6</sup> land title covering 21 hectares to villagers in Nong Ping, Boulapha district, where a local cave was attracting a large number of visitors and leading to interest from outsiders wanting to develop the site in an exploitative manner (Joost Foppes, pers. comm. 8/12/16). CIDSE-Laos believes that these titles provided the necessary precedent for PONRE to permit them to move forward with communal titling in 2016.

Talak hamlet was the first site chosen for CLT by the district authorities and CIDSE-Laos because it met the criteria of strong leadership, no internal division and insufficient agricultural land. The CIDSE-Laos team expressed the importance of having their first attempt at communal titling succeed to ensure that the government would accept this form of title as a viable future option, and so they took particular care to select an area that would be “well managed” by the village in the long term. The influence of the ‘delegated management’ paradigm noted earlier is apparent, and highlights the inconsistency of requiring “good” management as a precondition for issuing communal land titles when it is not a prerequisite for issuing private titles in Lao PDR. CIDSE-Laos’ rationale for requiring good management is given in Box 2.

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<sup>4</sup> It is common practice to undertake PLUP at a zone (*kumban*) level in Lao PDR, so that a cluster of villages jointly agree on their boundaries at the same time. However, CIDSE chose to focus their resources on poorer and more remote villages, meaning that their target villages were scattered throughout the two districts.

<sup>5</sup> At the time of compiling this case study, village authorities reported that 10 families were short of rice, with the additional explanation offered being that farmers cannot afford fertilizer. Rice shortages are offset by borrowing from relatives or by selling livestock.

<sup>6</sup> Technically the communal land is titled as *din luam muu*, or collective land, since there is still no category for communal title (*din xoum xon*) within the PONRE computer program.

## Box 2. Justification for CIDSE to require communal titled areas be ‘well managed’

- Land management is a requirement of the PLUP process, which is followed by CIDSE and its local government partners. For communal land registration, the PLUP manual states: *Outline in a written document the conditions of management and use that will relate to the communal land categories, using the Village Land and Forest Management Agreement as a reference document (p.60).*
- A management plan is considered to give extra credibility to the CLT as it is designed to ensure resources are sustainably used over the long term, and that the land will be used in an optimal way. The same argument is used by other CSOs in Laos working to register communal lands (e.g. GAPE for community conservation zones, TABI for swidden agriculture and GRET for bamboo forests).
- CIDSE has a social justice mission, and having management regulations ensures that poorer households can access communal land equitably.
- An area is at greater risk of being expropriated by outsiders when the community does not actively manage it, since government perceives that active management equates to a sense of ownership. This rationale is consistent with the ‘formalisation fix’ argument described by Dywer (2015), whereby ‘formalizing’ management is a means to prevent land grabbing.

Source: Interviews with CIDSE team

The CLT process took 14 days, but this was spread out over three separate village visits by CIDSE-Laos and district staff<sup>7</sup> between March and May 2016. During the first visit, the goals of communal titling were explained and agreement reached on the land to be selected for CLT during separate meetings with men and women. Villagers from Talak hamlet identified one area close by which had been customarily used to grow crops for household consumption, such as banana, chilies and vegetables, although some bananas are sold in the Langkhang market four kilometres to the east. While there was no formal (i.e. written) regulations within the hamlet to allocate this land for use each year, the Talak hamlet head stated that the parcel was only available for Talak hamlet residents, and that no one was entitled to ‘claim’ this land for the purpose of seeking individual property rights. By contrast, Nathin hamlet had only 3-4 ha of agriculture land that was considered “spare”, and it was not deemed worthwhile by CIDSE to invest time and resources in communal title.

<sup>7</sup> District Office of Natural Resources and Environment (DONRE), District Agriculture and Forestry Office (DAFO) and the Department of Interior, which accompanied CIDSE on its fieldwork in its role as a monitor of CSOs.

## Process description

On the second visit a preliminary survey was undertaken to check the proposed boundaries of the selected communal land area with Talak hamlet and written regulations for its use were developed. The third visit consisted of a formal survey using GPS equipment in conjunction with provincial officials from PONRE (Figure 2).



**Figure 2.** The PONRE team with their measuring instruments showing the karsts surrounding the communal land (Credit: CIDSE-Laos)

The collective land title certificate was officially issued on 18<sup>th</sup> July 2016 (Figure 3). It was then subject to a three-month public consultation process, in accordance with the Ministerial Directive on Land Registration and Land Titling 6036/2014, before it could be handed over officially to the village.

A step-by-step summary of the communal titling process is given in Annex 2.

When asked if the CLT process could be shortened, CIDSE-Laos staff replied that this would come at the expense of villager understanding and participation. For future CLT activities, CIDSE-Laos suggested that additional time is needed to encourage young people to participate, since past meetings were attended by the older ‘family heads’ instead of their children who are also using the land and will one day have families themselves. The three-step process used to was considered suitable by villagers and CIDSE-Laos, since “if done in one step, then villagers wouldn’t have time to participate.” This emphasis on full participation is a value that CIDSE-Laos and most CSOs aspire to in their work with villagers.

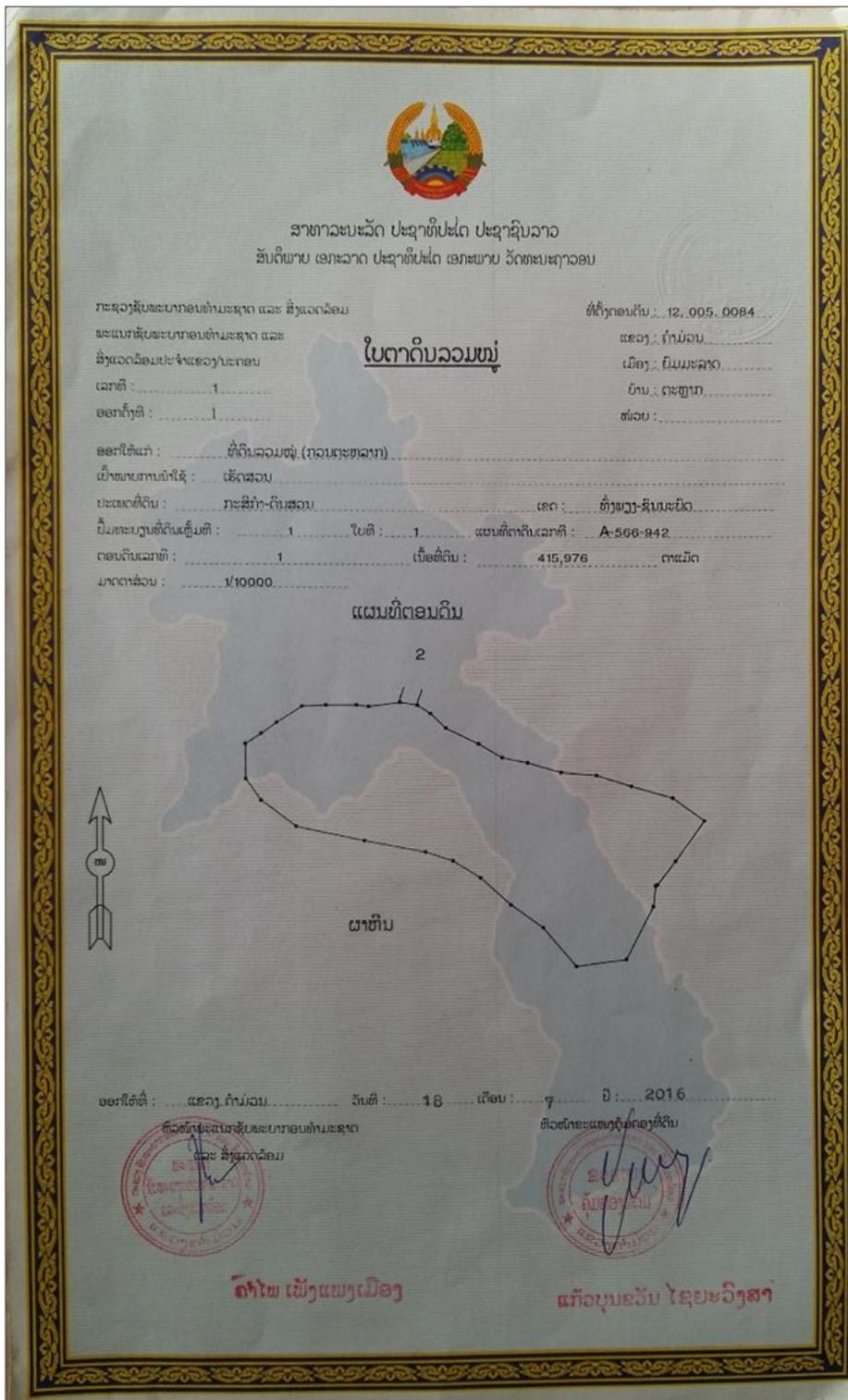


Figure 3. The collective title certificate issued to Talak hamlet, with the signature of the head of PONRE in Khammouane

## 3. Main results

The output of the CLT process was that a collective title of 41.6 ha was handed over to the 33 households of the Talak hamlet in November 2016. Although technically the land is titled as collective, it is considered as communal by all parties. This means that all villagers from within Talak hamlet have a right to the use of the land, including outsiders who move into the hamlet. However, those from Nathin hamlet three kilometres to the west are excluded from using this land on the grounds that it has traditionally been in the use area of Talak (before the two villages were consolidated).<sup>8</sup>

Topographically, Talaknathin village is wedged between limestone karsts to the north (Nakai Nam Theun National Protected Area) and south, meaning that its productive land is contained within the narrow east-west valley of the Nam In River (see Figure 4). It is an easy 10-minute walk across the Nam In River (via a bamboo bridge in the wet season) to the entrance of the communal land, which is a narrow gap between limestone karsts on the north-west corner. It is a simple task to build a fence across this gap to keep out cattle, which is why the area has been customarily used for cropping. However, only about 15 ha (or about one-third of the titled area) towards the eastern end is actually arable, as the western portion was used as a gravel pit during the construction of the sealed road through the village in 2002/3, and is now unusable. Nevertheless it was logical from the villagers' perspective to title the whole area to guarantee future access and possibly controlling additional gravel extraction were the road to be upgraded at some future point.

The communal land is managed by a committee of eight people from Talak hamlet, who comprise elected village officials<sup>9</sup> and is chaired by the village head. The regulations drawn up by the community for the management of the land (see Annex 3) allow for a maximum of 2,500 square metres per household to be allocated to any one family, meaning that the entire arable area could theoretically accommodate 60 households on a permanent basis.

CIDSE-Laos' social justice principles are reflected in the regulations, which require that priority to use the land must be given to poor families. They also state that the maximum use period is five years, thereby ensuring that only short-term crops are planted that are suitable for food. As part of its follow-up support to ensure the land continues to be "managed", CIDSE-Laos has provided a village fund of USD \$500 which the villagers intend to use to build a small weir within the boundary of the communal land to ensure year-round water supply, and also to establish a village nursery with the intention of progressively planting part of the area with community owned fruit trees.<sup>10</sup>

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<sup>8</sup> The fact that only a subset of the Talaknathin can use this land (Talak hamlet) means that this title is neither fully collective (since newcomers to Talak hamlet have a right to use the right) nor fully communal (since Nathin hamlet is excluded).

<sup>9</sup> Village officials represented on the Committee are the village head, deputy head, Lao Front, agriculture, police, Women's Union, forest officer, land officer and Youth Union.

<sup>10</sup> CIDSE-Laos make it clear that this fund is intended to ensure the continued use of the communal land, and is not specifically designed to focus on the livelihood improvements of the poorest households.



**Figure 4.** Google Earth Map showing the location of the communal land relative to Talak hamlet, and the karst limestone topography surrounding the village

Box 3 provides the perspectives of different parties on the value of the communal land based on the interviews undertaken for this case study.

## Box 3. Different perspectives on the value of the communal land

Villagers believe that the formal recognition that communal title provides will be able to protect this land for future generations.

*Without this protection maybe someone will try to sell this land illegally in the future. Even though it has no value now, land near the road in our village can sell for 2-300,000 Thai baht per hectare (Village Committee, 24/11/16).*

Women in the village report that they spend a lot of time in the garden because it is conveniently located and they are able to walk there in a short amount of time. This leaves them more time to spend on household and family duties.

*It is difficult for us to grow vegetable gardens close to our houses because of damage caused by livestock (Ms. Souk, Village Lao Women's Union, 24/11/16)*

CIDSE-Laos believes that the cost and time it has invested in the process has been worthwhile, as it has protected village land from those seeking to expropriate it.

*When the companies came to Khammouane, there was pressure placed on villagers to give up land to them, sometimes at good prices. Land was being lost. Communal land title gives extra protection to communities, since there have been many cases where village heads and district officials have colluded to give away community land." (Mr. Phililuck, CIDSE-Laos' Field Manager, 23/11/16).*

CIDSE-Laos has satisfied its criteria for gender inclusion by ensuring that women were fully consulted and represented in the village land management committee. It has also satisfied its social justice aims by ensuring that each family, regardless of wealth, has an opportunity to use a portion of the land in perpetuity.

Government officials will continue to support CIDSE's communal land titling approach. Mr. Keobounkhouane, Head of Land Management Section, PONRE, Khammouane, noted that:

*CIDSE works in accordance with government policies on land use planning, which are designed to involve villagers in managing their land. Every piece of land in the province should have a title of some sort (23/11/16).*

He continued:

*While presently communal title requires PONRE to support with land measurement, it may be possible in future to increase efficiency by handing over this duty to the district as they gain more experience in CLT.*

CIDSE-Laos has deliberately chosen not to push for a larger area of CLT in Talaknathin for two main reasons. Firstly, the cost of titling large areas of land, such as the 447 hectare village use forest, is prohibitive. As noted by Stadel (2014), there is no clear system in place at present for issuing land title on the basis of remote survey data in Lao PDR. This means that the boundaries of large areas of land have to be laboriously walked by a team of government officials, which is expensive for small organizations such as CIDSE-Laos who are responsible for the payment of survey fees, including per diems and travel costs of surveyors. CIDSE-Laos has to be certain that its investment in land measurement pays off.

Secondly, the village use forest were considered to have no significant long-term management needs by CIDSE-Laos that would justify the expense of titling, since it did not contain valuable non-timber forest products (NTFPs) as a source of food or income.<sup>11</sup> As noted in Box 2, CIDSE-Laos was acutely conscious of the need to guarantee the area was sustainably used and managed by the whole community in its titling process, and this was demonstrated in the 41.6 ha through the existence of traditional use regulations which could be documented and formalized. For both cost and management reasons, therefore, the community did not have the option to seek CLT over a larger area.

A further constraint to the rapid scaling up of CLT is CIDSE-Laos' own principles of working, which prioritizes quality, including legal strength, over quantity (coverage).

#### **Box 4. Principles of CIDSE that need to be satisfied in a communal titling process**

- Close cooperation with local government to build capacity and to ensure continued recognition of CLT when CIDSE-Laos phases out
- All members of the community understand their legal rights with respect to the communal land, and have a say in the future use and management
- Start activities on a small scale and ensure sustainability before scaling up
- Women, youth and other marginalized members of the community fully participate in the titling process to ensure their priorities are included
- A management committee is established comprising elected representatives including women
- Work towards social justice at the local level through more equitable access of land to poorer households and women
- A management plan and regulations needs to be in place to manage the communal land which are understood and agreed to by all

Source: Interviews with CIDSE team

<sup>11</sup> CIDSE is supportive of communal titling where there are valuable NTFPs which are managed by the community. In 2017, it will seek funds to undertake communal land titling on 150 hectares in Phonexay village, Mahaxay district, which has important resources of 'mai tae' (a type of bamboo) used for making sticky rice baskets and other handicrafts.

### 4. Lessons learned

The lessons that can be drawn from this case study are presented below.<sup>12</sup>

#### 1. The socio-economic characteristics of Talaknathin village made it a suitable candidate for communal land titling.

Talak hamlet is a small, ethnically and religiously homogeneous village which has not been resettled and which does not have an influx of migrant families. These characteristics increase the chances of long-term management success, since:

*Small groups are less likely to be divided by arguments or dominated by a minority.... Homogeneity reduces conflict within the group – members with similar backgrounds are more likely to trust each other and accept joint liability for their activities (FAO, 1994:38).*

This distinguishes Talak from many other villages in Lao PDR, where village social systems have been undermined by resettlement and consolidation policies (Baird and Shoemaker, 2007) or social differentiation due to differing levels of wealth (Rigg, 2006).

#### 2. Existing management at village level enhanced legitimacy for communal titling

The land chosen for CLT had customarily been managed by Talak hamlet as communal agricultural land. The chief role of CIDSE-Laos was then to document and formalize this pre-existing tenure arrangement, in the expectation that tenure security would be enhanced. This satisfies the voluntary guidelines recommended by FAO (2012:31):

*Where a community does not object, States should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims.*

The chosen land also contained no islands of private land (titled or claimed), which would have complicated the process by requiring CIDSE-Laos to take a decision about what policy to employ with those holding private land, such as encouraging them to cede their claims for the community benefit or providing private titles for plots within the broader communal land. In their experience in local villages, Liu and Sigaty (2009:7) “do not believe that individuals will choose to relinquish the possibility for individual title to establish collective title.”

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<sup>12</sup> Lessons learned from other case studies on communal titling are available from LIWG (LIWG, 2012a; LIWG, 2012b; and LIWG, 2013).

### 3. The PLUP process previously undertaken by CIDSE-Laos provided a basis for issuing a communal title

Undefined boundaries between villages appears to be a major issue in Khammouane province, due in part to the flat landscape (between karsts) and lack of clear land features. PLUP played a role in resolving these issues in 14 of CIDSE-Laos' target villages, but six of the 20 villages could not complete PLUP due to ongoing boundary disputes. This finding suggests that PLUP works best when done on a village cluster basis, rather than selecting scattered villages.

Where PLUP was completed, it provided a strong platform for engaging villagers with communal titling, since mandated actions in the 2010 PLUP manual include:

- Inter-village boundaries are clearly defined
- Women must participate and be included in decision-making
- Villagers have received training in their legal rights on land issues

When followed by communal titling, these actions do not have to be repeated.

### 4. It is possible to have communal land titling without PLUP under some circumstances

While PLUP may provide an ideal basis for CLT (Lesson 3), it remains true that villagers in Lao PDR have satisfactorily managed their land under customary tenure for generations. The stakeholder interviews suggested that a full PLUP (in accordance with the 2009 PLUP manual) may be avoided as a prerequisite to titling in situations where the proposed area is not claimed by a neighbouring village<sup>13</sup> and where there is confidence that the customary tenure is still strongly recognized by all inhabitants. These factors would still need to be verified as part of the CLT process, but without requiring a full PLUP.

When asked whether this could be done in Khammouane, PONRE staff responded that in theory a village could itself propose a piece of agricultural land for communal title (signed by all villagers), have this land endorsed by the district governor, and request a PONRE team to come to measure the land. It is also possible to issue communal title on village use forest (but not village conservation or watershed forest),<sup>14</sup> with the additional step of preparing a forest management plan (under Article 42 the Forest Law 2007). This suggests that the sectoral approach of GIZ/LMDP, which is to classify areas of communal land according to land use type, has a legal basis in Lao PDR which is consistent with the 'delegated management' model described by Ewers (2011).<sup>15</sup> As noted in Box 2, CIDSE-Laos believes that a management plan

<sup>13</sup> The delineation of village boundaries is Stage 3 of the PLUP Manual (2009).

<sup>14</sup> Under the current Land Law (2003) and Forest Law (2007) CLT is excluded from protection and conservation forests, which remain the property of the State.

<sup>15</sup> LIWG (2013: 6) also considers that classification of communal land is important as a prerequisite for titling: "For each parcel of the communal land, it is required to determine the category, boundaries and target of land use clearly in order to avoid the falsification of communal land use right."

with regulations (for both agricultural and forest land), has greater credibility with government since it proves that the village does have a long-term interest in looking after the land in a sustainable manner. At the same time, developing a management plan that is submitted for approval to local authorities as a precondition for obtaining CLT, is not consistent with the recognition of pre-existing customary land rights of communities as outlined in the VGGT.

PONRE officials explained that according to Presidential Decree 003 (2012)<sup>16</sup> they would not charge a fee for the measurement of land for CLT, but would expect the village to pay for the per diem and transport costs of government staff. However, such a request has never been received by PONRE in Khammouane, probably because the costs would be prohibitively expensive, even if a village was aware of its right to apply for communal land title and was familiar with the titling procedure.

### 5. Communal titling is possible without the need for systematic land titling

Systematic land titling, as proposed by GIZ/LMDP (2015), is seen by the government as preferable to sporadic land titling since it covers the entire village land territory and facilitates future tax collection. This case study demonstrates that communal titling may be done outside the systematic titling process and that it can be a desirable outcome in itself. However, it does come with a risk, as GIZ (2015:18) points out:

*Recent studies from Lao PDR and Cambodia have proven that land registration covering only part of the overall land area used by villagers, e.g. only the “private” plots or only the communal parcels, decreases the tenure security and potentially increases the appropriation pressure on the other, non-registered land areas.*

### 6. Women benefit from communal title located close to the village

In Lao PDR, the combination of land concessions and private investments in industrial plantations (rubber, acacia, eucalyptus, bananas) has reduced the area of common land close to villages which were previously relied upon for food production (Kenney-Lazar, 2016). Women are particularly affected, since they take a greater responsibility for gathering and producing nutritious food for the household. They have to travel further and spend more time searching for foods including NTFPs (Daley, Osorio, and Mi Young Park, 2013). The ability to protect communal land close to the village under communal title can benefit the livelihoods of women and the food security and nutrition of their families.

### 7. Regulations on the use of the communal land ensures land access to poorer families

Rapid and uneven economic growth in Lao PDR is leading to widening inequality (social differentiation) at the village level as those farmers with capital and labour take advantage of the new opportunities in commercial agriculture to appropriate land that was previously a communal resource (Rigg, 2006; Fujita and Phengsopha, 2008; Vongvisouk et al., 2016). CIDSE-Laos describes the titled communal land as “an investment in social justice at the local level” since it is mandated to be available for all villagers in perpetuity, thus providing a social safety net for poorer households. The regulations limit land to 2,500 square metres per family and long-term crops are restricted.

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<sup>16</sup> In fact the decree does not specifically mention communal land. Article 83, Section 3.4, refers to the exemption of land measurement fees for ‘poor villages’.

### 8. The potential for advocacy on land tenure reform for small local CSOs in Lao PDR such as CIDSE-Laos is limited, and cannot meet the expectations of some stakeholders

CIDSE-Laos is a small organization working in only one province, which must work closely with government to maintain itself and pay for the salaries of its employees. It lacks the capacity and influence to question an existing paradigm (the 'delegated management' model, or the 'separate parcel' approach to titling) particularly when larger and more influential donors (such as GIZ/LMDP) are using this paradigm as the basis for their own activities.

CIDSE-Laos believes that its role is to improve policies in an incremental fashion, through being able to demonstrate that villagers can successfully manage their land in a communal manner. However, the requirement to prove management as a prerequisite to issuing communal title is seen by some practitioners as an unnecessary complication that delays upscaling of communal title and generally requires the support of external donor agencies.

## 5. Conditions for replication

### 5.1. Scaling up the innovation successfully

The need to scale up CLT, as described in this section, comes in response to a failure by the LUP process to provide legal protection against land expropriation. A key question which needs to be asked of policy makers is therefore:

*To what extent is the Government of Lao PDR (GoL) prepared to extend legally binding tenure rights to local communities on a broad scale, and avoid the time and expense of securing tenure one parcel at a time? How much land and resources, and of what type, is the GoL prepared to give under communal titles?*

A village rights (or territory) approach to formalizing tenure recognition would be the simplest and most effective way to protect all agricultural and forestland within the village, since all land identified in the LUP which does not belong to the State or is privately titled becomes managed by the village within its boundaries. A village rights or village territory approach to formalizing land tenure may not only protect against encroachment by outsiders, but also reduce the current tendency for wealthier and well-connected families within the village to 'claim' *jab jong* or 'reserve' untitled land as a response to growing land scarcity, thereby enclosing what was previously the communal land base of the village. A territorial demarcation of village land would serve as an interim measure until formal registration and titling can be completed for individual parcels within the village territory at some future point.

However, if this village right or village territory approach to registration cannot be guaranteed by the GoL, then development agencies will need to continue to scale up CLT as best as possible on an individual parcel basis. To have a reasonable chance of success this latter approach requires the following conditions.

#### 1. Development of formal legal procedures for communal titling

Replication of the CIDSE-Laos model for small land parcels is possible, particularly in Khammouane province, since mutual trust has been established between CIDSE-Laos and local government and the precedent to issue community titles has been established. However, until a procedure is formalized for issuing communal land titles at national level, it is unlikely that this innovation can be scaled up in other parts of the country. GIZ (2015:7) expresses this challenge succinctly:

*Once the National Land Policy has been officially approved, one of the major challenges for the land sector in Lao PDR will be to revise and adapt the Land Law without further delays. After the Land Law is approved, the Implementation Decree to the Land Law will have to be adapted accordingly. Another requirement in order to complete the legal framework will be to draft a complete guideline on the registration of communal and state land parcels, based on the revised Land Law, the Implementation Decree and this concept document.*

A particular requirement for CLT will be to come up with a recognized system such as the use of orthographic data as described by Stadel (2014), which is capable of measuring the larger areas of land that would be suited to such titling.

Furthermore, local communities need to be informed of their communal titling rights during LUP and how they can be attained, so that CLT becomes “demand driven” not just “donor driven”.

### 2. Recognize village use forests measured in a LUP as communal in the revised Forest Law, and issue CLT

Recognizing village use forests as communal is straightforward, as unlike agricultural areas, there are generally no private holdings within such forests that need to be measured out. The Sustainable Forestry for Rural Development Project (SUFORD) recognizes such an approach with its draft paper on communal titling of village use forests within State-owned production forest areas:

*The PLUP has several legal functions. Firstly it serves as the land and forest allocation plan required by the Forestry Law and Land Law. Secondly, it is the base for village forestry management agreement and plan. Thirdly it is the process in which the village use forest is legally allocated to the village. Fourthly, it is the base for land registration and communal titling of village use forests (SUFORD, 2015:3).*

### 3. Remove the requirement for complete land use zoning before communal/collective land registration can be completed

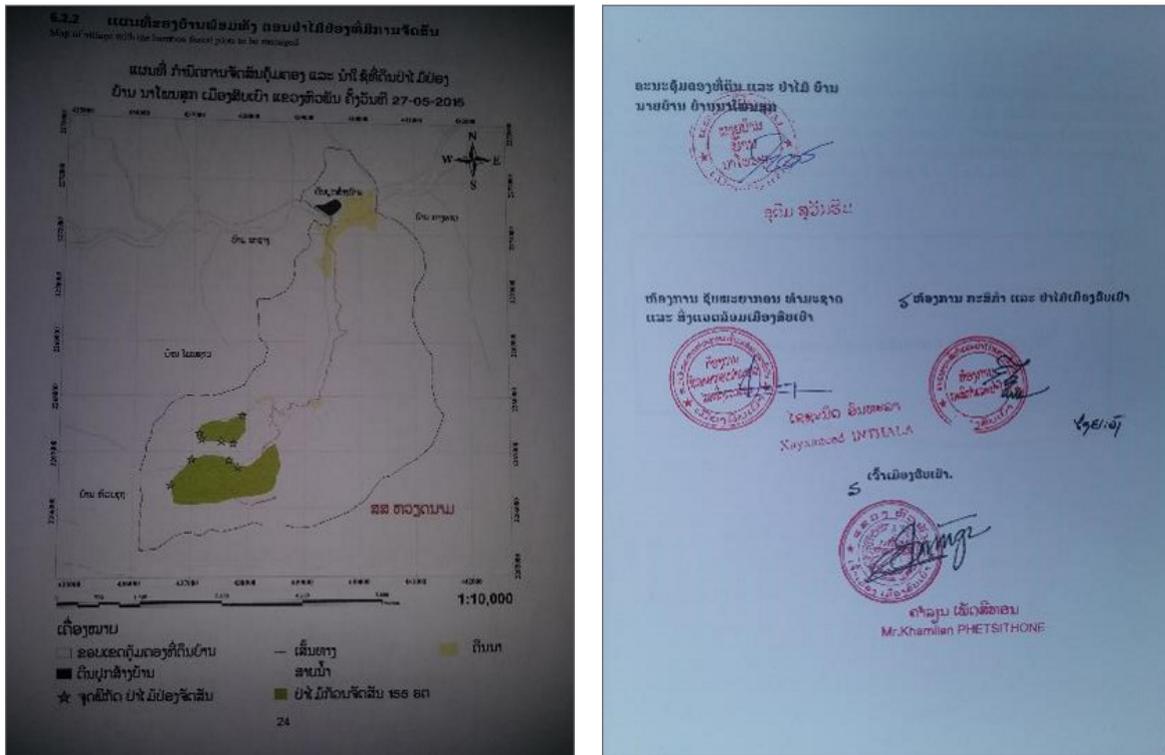
Once the legal framework is in place (as above), local authorities need to be persuaded that communal land title, which is managed by a representative committee, is an option that enhances food security, prevents land exploitation by influential persons outside and within the village (such as illegally cutting timber) and ensures access to land for poor and vulnerable households. Where communal land is clearly identified and can be digitally measured in a LUP process, the registration process may begin immediately.

It is unreasonable that unlike private individuals, communities require a LUP to register and title communal land on demand. The new legal framework should acknowledge that a full LUP may be avoided as a prerequisite to registration/titling in situations in which the proposed area is not claimed by a neighbouring village, is endorsed by the village authorities, and where the district can certify that the customary tenure is strongly recognized by all inhabitants.

### 4. Provide interim alternatives to formal titling that recognize customary land

If registration is not an immediate option, alternative recognition mechanisms based on existing legal frameworks are needed which are quick to establish, provide broad coverage, and are not too complex or costly.

There are examples where CSOs in other parts of Lao PDR have managed to secure communal land rights for villagers without a formal land title being issued. The Global Association for People and Environment (GAPE), for example, reports that it has facilitated the establishment of 18 community conservation zones in southern Lao PDR, of which the largest has been 500 ha (Ling, 2017), while GRET has documented bamboo forest management areas such as that in Figure 5. Documenting customary tenure is an important step towards achieving permanent recognition, were CLT to become available in future.



**Figure 5.** Bamboo management and use zone of 155 ha in Phonesouk village, Sobbao district, Houaphan (left) with the stamps of recognition from the district authorities (right)

## 5.2. Limits to scaling up

The following circumstances limit the scaling up of communal titling by CSOs such as CIDSE-Laos.

### 1. Higher level objectives of CSO's, which require significant investments ensuring participation and management, limits the coverage of CLT

While CIDSE-Laos had CLT as a clear goal, the majority of CSOs see CLT and the promise of tenure security as intrinsically linked to other livelihood objectives. A focus on quality (including social justice rights, participation rights and gender rights - Box 3) typically limits the number of villages and/or the sectoral focus (such as forests or agriculture), thereby restricting the coverage of CLT.

Examples include improved income through market access (SNV in Sangthong, GRET in Houaphan) or wildlife conservation (WCS<sup>17</sup> in Houaphan). Whether through PLUP or another means, and perhaps to ensure accountability to their donors, these organizations wish to invest in identifying the extent of the resource, and developing systems at village level to ensure sustainable and equitable management. They envisage, therefore, that CLT brings with it a responsibility of 'delegated management', thereby reinforcing the government's own position.

## 2. Cost of CLT is expensive, especially without the use of remote sensing for measurement

In rural areas where incomes are low, the cost of titling is typically borne by development agencies rather than villagers. Compared to large bilateral projects (such as GIZ/LMDP), CSOs have only limited funding and work within a small number of target villages. They have to weigh up the cost and benefit: for example, CIDSE-Laos could have pushed for communal titling of a few hectares of forest in the Natin hamlet of Talaknathin, but it simply wasn't worth the effort for an area which was perceived by CIDSE-Laos to have no particular management value.

According to CIDSE-Laos' 2016 financial report, the cost of two CLT parcels totalling 61.5 hectares in the two target villages of Talaknathin and Nasae (Mahaxay district) was \$6,260 USD, or \$102 USD per hectare.<sup>18</sup> The main expenses were per diems and travel for the survey team,<sup>19</sup> measurement fees (150,000 kip/hectare) and the Starfire GPS rental (50,000 kip/ha). Villagers contributed their labour to clear the boundaries of the land so that the area could be easily walked for surveying, and concrete pegs placed in the ground.

With so few communal titles issued in Lao PDR to date a cost comparison is difficult. It is reported to have cost between five and \$15,000 USD per village to undertake communal land titling in Sangthong district, with the cost of forest inventory being the most expensive item (IFAD, 2013:12). The cost of titling 21 hectares around the tourist cave in Nong Ping village, Boualapha district, was reported to be \$5-7,000 USD, which included a high level workshop in Vientiane (Souvanpheng Phommasane, pers. comm., 14/12/16).

Costs per hectare could be significantly reduced if CLT was incorporated into a systematic land titling process, and using remote measurement techniques such as ortho-photos, as described by GIZ (2015). GIZ considers that to be cost efficient and self-financing, land registration should cost between \$10 and \$15/parcel (p. 3), where a parcel includes individual, communal and state-owned land and may be of any size. For efficiency, GIZ contracts out land titling to PONRE in its target provinces, and estimates that an average village costs between 10 and 15 million kip (Julian Derbridge, pers. comm., 17/2/17).<sup>20</sup>

## 3. Provincial and district staff lacks knowledge and experience in communal registration and titling of communal lands

CIDSE-Laos was able to proceed with CLT in Khammouane due to the precedent set by other communal titling cases within that province. For scaling up (assuming the legal framework is in place), a major effort will be needed to inform and train the responsible authorities in the concept of CLT and the process to achieve it.

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<sup>17</sup> Wildlife Conservation Society.

<sup>18</sup> Being \$3,910 USD in Talak and \$2,327 USD in Nasae.

<sup>19</sup> Including five counterparts from district level (DONRE, DAFO, Interior) and three more from PONRE.

<sup>20</sup> Between \$1,250 and \$1,875 USD.

## 4. Swidden farmers are wary of CLT over their customary private land holdings

CLT will be constrained in upland areas by the mosaic of customary private holdings on long-term plantations (such as rubber and maize) and 'claimed' rotational land, which are difficult to measure out. Overlaying a community title over these privately claimed plots has not been well accepted by farmers who feel that their customary ownership is being diluted by giving the broader community additional rights, and is the reason why, despite their best efforts, LMDP and TABI<sup>21</sup> have had little success with communal titling on swidden agriculture lands to date. LMDP has not managed to register any communal swidden areas in its four target provinces, while a TABI CLT trial in Xieng Khouang was abandoned after proving too time-consuming (TABI, interview, 4/1/17).

## 5. Rapid transition to a market economy is reducing available land for communal ownership

The rapid changes in rural livelihoods described by Rigg (2006) which resulted in the privatization of the commons has only increased in recent years as Lao PDR has opened up further to foreign investors. While land concessions have been responsible for the loss of large areas of communal land, commercial agriculture and rising land prices have also encouraged farmers to convert communal lands to private use. These changes have been further encouraged by the lack of recognition of communal lands and customary systems, and policy priorities given to private titling and permanent agriculture. Some examples are:

- In Houaphan province, the communal swidden landscapes are being replaced by privately owned plots for commercial agriculture (Broegaard et al., 2016).
- In Sangthong district, land ownership steadily changed over time from customary to temporary, and finally to permanent land use rights (Bouthavong et al., 2016).
- In two ethnic Ta Oy communities in Ta Oy district, Salavan, all remaining communal land in the village was individually claimed (and taxes paid<sup>22</sup>) by villagers who could appreciate the rising value of their land following the construction of a sealed road (Ling, 2017).
- In Tai Deng villages in Viengxay district, Houaphan, the traditional system of reallocating communal paddy land every three years is breaking down to private ownership as farmers work the land more intensively (such as applying fertilizer and maintaining bunds) and feel aggrieved at having to rotate it on to other families (Ling, 2017).

These examples show how the market economy and growing conditions of land scarcity are altering customary institutions intended to ensure group protection of subsistence rights, in favour of those that allow for the creation of informal private property.

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<sup>21</sup> The Agro Biodiversity Initiative. See: <http://www.tabi.la/>

### 6. There is a trend towards a sectoral approach to land titling which may undermine the ability to title large areas of communal land

The small area communally titled by CIDSE in this instance, and the fact that it is only upon agriculture land, raises the issue of how the remaining communal land within the village will be treated. If governments and CSOs are willing to title such small areas, it may put at risk tenure security, because the government might claim the rest of the land for themselves.<sup>23</sup>

The key concern is that it could lead to a sectoral approach to CLT in which agricultural land is registered and titled separately to forest land by different departments (as distinct from a territory-based recognition which includes both communal use areas and household areas). This posits real problems in terms of recognition of customary land where land uses cut across these government-imposed land categorizations, particularly for shifting cultivators who rely on a mosaic of fields and forests to sustain their livelihoods (Box 4).

#### **Box 5: Sectoral land titling constrains CLT on steep lands**

According to the 2007 Forest Law (Article 23), land over 35 degrees cannot be used for agriculture and farmers must return it to forest, even if it has traditionally been used by the village for shifting cultivation on a communal basis. In practice, however, agriculture on steep lands is 'tolerated' in some areas simply because farmers have no alternatives, and such lands have been registered, but not titled, by GIZ. They could, however, be titled as communal forest lands, provided that a suitable forest management plan was put in place as described above, but the net result would be a loss of agriculture area. Without proper consideration, CLT and its required management plan could increase pressure on upland agricultural land, leading to reduced food security (Fujita and Phengsopha, 2008).

<sup>22</sup> The tax on developed land in the two villages (Ban Lapheung and Ban Sapong Kokhai) was reportedly 15,000 kip/ha/year. However, villagers were prepared to pay the undeveloped land tax rate of 50,000 kip/ha/year to secure individual rights to the land: of course, not all villagers could afford to pay this amount, thereby contributing to social disparity within the village.

<sup>23</sup> "In Cambodia, some NGOs have become frustrated with the communal land titling process lately because they feel that too little land is being allowed to be put in titles. Some have even withdrawn from the process as a result, because they don't want to be involved in something that actually reduces the amount of land available for villagers, rather than helping to secure more land for them." (Ian Baird, Land Portal/MRLG Dialogue Forum on Customary Tenure in the Mekong Region, 15/2/17, <https://landportal.info/debates/2017/recognition-customary-tenure-mekong-region-dialogue#comment-1558>).

### 7. Lack of will by local government to allow collective title over large areas or those slated for development

Local government was willing to accommodate CIDSE's desire for communal titling because the area involved was only small, there were pre-existing tenure rights and the area titled was not considered to be contested by future developments. In other words, it was 'easy'. The government may be more reluctant to agree to issue CLTs on larger areas of agriculture land as the current legislation allows these areas to be exempt from land taxes, and this may forfeit a significant part of the village revenue base.<sup>24</sup>

However, GIZ (2015:47), quoting Presidential Decree on Land Tax (01/2007) states that:

*Communal and state land is exempted from land tax. Nevertheless, commercial use of communal land is taxable. This means that resources harvested from communal land for household use would not be taxed, but that the profit from selling natural resources harvested from communal land would be taxed.*

State owned lands or areas considered sensitive, including designated production and conservation forests, zones for planned projects (such as roads and dams), or places with opium poppies will not be considered for communal titling.

### 8. Past decentralization of forest management was not considered successful by the Lao government

The historical 'baggage' of village forestry in Lao PDR is impacting upon present efforts to issue communal title for forests in Lao PDR. The Finland/World Bank funded FOMACOP (Forest Management and Conservation Programme), which ran from 1996 to 2000, was designed to handover the management of forests to local communities. However, it was not extended by the Lao government due to disagreements over revenue sharing arrangements. Subsequent forestry projects have adopted a more modest approach, emphasising benefits of forest management for both villagers and government. However, lack of secure land and forest tenure consistently emerges as a key factor behind forest loss. FOMACOP's successor, SUFORD, has drafted a proposal to issue communal title to village use forests (SUFORD, 2015), but the document has not proceeded beyond the draft stage "as the government has no will to revisit the past" (Interview, 24/1/17).

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<sup>24</sup> In some cases, districts set a tax target to be met by the village. This is an incentive for the village to allow '*din jab jong*' (privately 'claim' or 'reserve' untitled land') as a preference to communal land. Dwyer and Dejongsa (2017) found that *din jab jong* raised between 29 and 35 million kip in land taxes per year in Ban Som, Chomphet District.

## 6. Conclusion

This village case study of communal land titling led by a local CSO demonstrates that with community and government support, it is feasible to issue a communal title on a relatively small parcel of agricultural land in Lao PDR despite the lack of a complete legal framework to do so.

Talaknathin village was one of two villages initially selected by CIDSE-Laos and local government for CLT, since it had no existing land conflicts and exhibited strong unity and leadership. The communal title issued on 41.6 hectares of agricultural land built upon existing customary tenure practiced by the village. It was preceded by a comprehensive PLUP process that ensured villagers understood their legal rights and considered their future needs. All three groups of stakeholders – villagers, CIDSE-Laos and local government – were supportive of the process and respected its outcome, which reflects its local ownership. Despite the relatively high cost of titling a small piece of land, CIDSE-Laos believes it has been worthwhile since customary land rights are secured on the communal land parcel that will protect it from internal and external threats, a well understood system has been established to manage this land in the long term, and poor households and women are assured of having access to this land for their food security needs.

However, rapid scaling up of the CIDSE-Laos process to other areas may be difficult. Firstly, while it is not necessary to undertake a comprehensive PLUP as a prerequisite, the high proportion of boundary conflicts in the CIDSE-Laos target villages (6/20) demonstrates that initial efforts to define borders are critical. Like GIZ, PLUP is also regarded by CIDSE-Laos as a necessary step that provides the legal understanding, equity and gender considerations and village planning (according to land classification) for engaging in the subsequent CLT process. Secondly, it is costly and time-consuming to ensure that CIDSE-Laos' values of participation, gender and social justice are fully embedded into the structure, regulations and management plans of the communal land. This is particularly the case when tenure security through titling is only achieved for a single parcel, rather than the larger village territory. Thirdly, the trend towards commercial agriculture and growing land scarcity has seen an increase in private land claims within customary systems, resulting in a complex mosaic of land ownership patterns which add to the measurement costs of CLT, as well as the potential for community conflict.

Finally, the area chosen for titling by CIDSE is small-scale and uncontested, meaning that it doesn't threaten or set a precedent for questioning the existing development plans of the Lao government. This is consistent with land titling efforts elsewhere, which have focused on formalizing areas that already have relative tenure security, while those areas experiencing greater levels of tenure insecurity remain untouched (see, for example, Bugalski and Pred, 2010; Grimsditch et al, 2012; Dwyer, 2015). Moreover, experience with land titling programs in Lao PDR and elsewhere in the region have shown that titling single plots risks increasing the tenure insecurity of surrounding untitled land as this land then appears as 'available' on maps (Hirsch 2011). Security of customary tenure must be understood in terms of continued access to the range of land and resources on which villagers depend for their livelihoods. Compared to the area used by the community (e.g. village use forest for cattle grazing), the titled area is small, and it only covers communally managed agricultural land.

The case study provides opportunities for wider discussion with CSOs in Lao PDR, and for further advocacy in developing the legal framework and accompanying procedures for CLT and village tenure recognition more broadly, as follows:

- The initial land zoning process (PLUP in this instance) should provide interim tenure recognition to the village territory which is legally binding, so avoiding the additional time and expense of formalizing tenure parcel by parcel.
- Community forest lands should be registered as communal by default and this could be incorporated into the revised Forest Law. Where possible, communal and private agriculture lands should be differentiated so that the former can be easily measured and registered during the PLUP process. Once registered, there should be a clear pathway for formal titles to be issued.
- Require that local communities be informed of their communal titling rights, including the benefits and the processes to achieve them, so that CLT is also “demand driven” not just “donor driven”.
- Clarify the tax treatment of CLT to ensure that exemptions do not result in a significant loss of tax revenue – it may be reasonable for individuals to pay taxes on communally titled land when it is used for commercial purposes.
- Ensure that large areas of land can be measured simply using ortho-photo or other procedures, since the current system is too costly for small CSOs like CIDSE-Laos to scale up.
- Where village boundaries are already clear, interim agreements already made between village communities with local government (GAPE, TABI, GRET) should be recognized and converted to communal land without the need for further expensive processes.

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### Contact point for CIDSE-Laos

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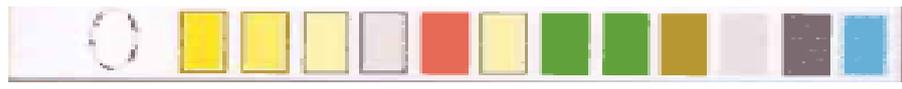
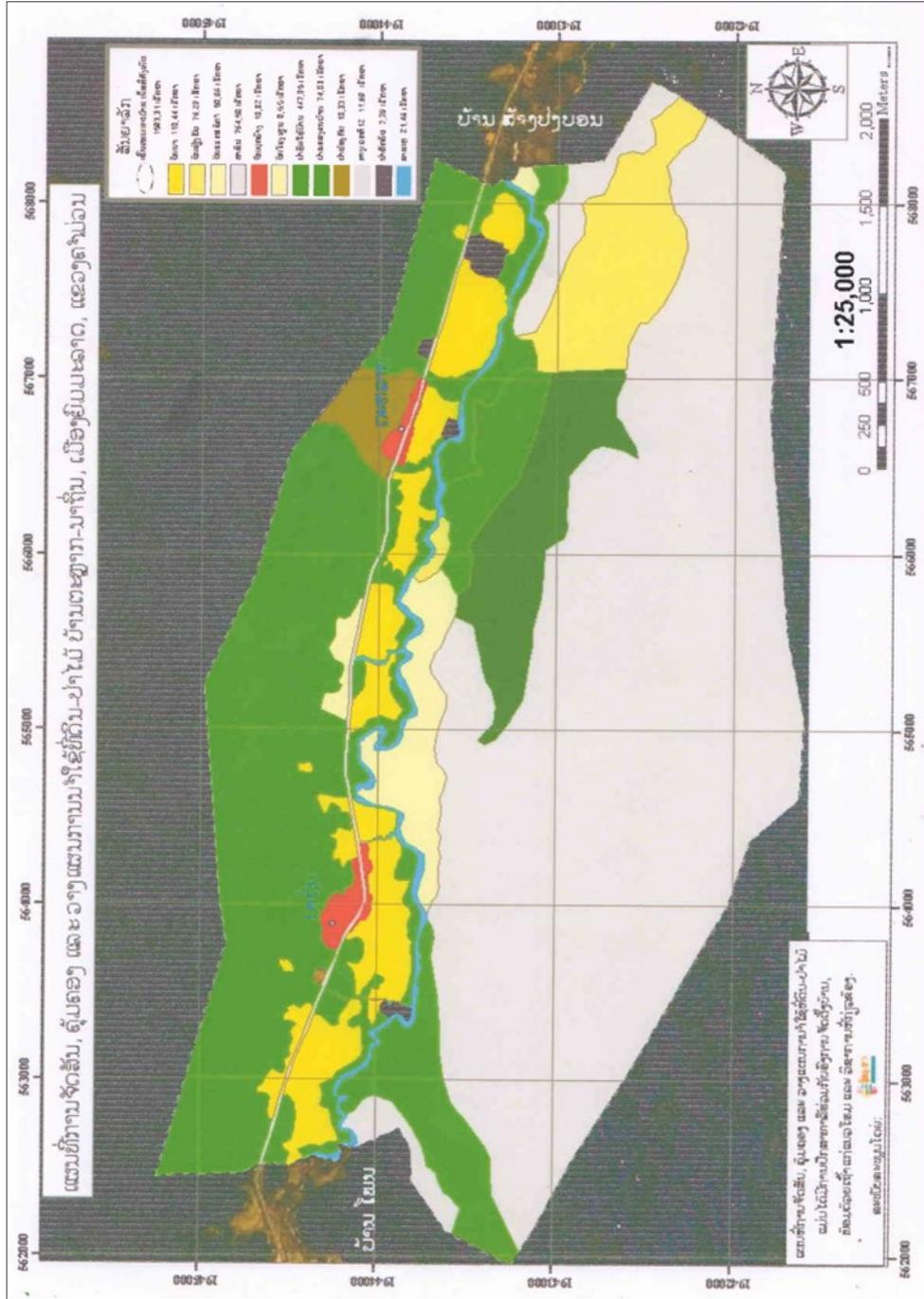
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# Annexes

Annex 1. Final PLUP Map of Talaknathin village, Gnommalath District, Khammouane Province



## Annex 2. Timeline of the CLT process in Talaknathin

2011: PLUP completed in Talaknathin village by CIDSE-Laos, with the intention of using this as a basis for communal land titling.

2013, 2014: CIDSE-Laos proposed to their Steering Committee during their regular meetings to begin communal land titling as stated in the MOU, but were asked to wait until a formal process for communal titling at central level was established.

2014: Land title issued for 21 ha in Boualapha district at Tam Nam Loth. After that there was a mechanism for PONRE to follow.

2014: PLUP process completed for 14 villages. Two villages (Talaknathin and Nasae) chosen to test communal land titling in conjunction with the district authorities (one in Mahaxay and one in Gnommalath districts).

March-April 2016: Two visits with district officials from DAFO (2 staff), DONRE (2 staff) and Interior (one staff). The first visit consisted of explaining the goals of communal titling and reaching an agreement on the land to be selected during separate meetings of men and women. In the second visit a preliminary survey was undertaken to check the proposed boundaries of the communal land and develop regulations for its use.

12<sup>th</sup> May, 2016: Management regulations for the use of the communal agricultural land are approved by the village head, DONRE, District Justice Office and the District Governor.

23<sup>rd</sup> May, 2016: DONRE approves CIDSE-Laos' request to send a team to the field to measure a communal land plot in Talaknathin for the purpose of obtaining a CLT.

24<sup>th</sup> May, 2016: The District Governor approves CIDSE-Laos' request to send a team to the field to measure communal land for titling in Talatnathin.

End May 2016: Formal survey undertaken using GPS equipment in conjunction with provincial officials from PONRE. Each family had to sign a document that they agreed to the issue of the communal land title.

18<sup>th</sup> July 2016: The communal land title for 41.5976 hectares is issued by the PONRE, with a consultation period of three months.

November 2016: The communal land title certificate is officially handed over to the village.

## **Annex 3. Communal Land Use Regulations, Talaknathin (English translation)**

### **Regulations for the Management and Use of Collective (communal) Land Talaknathin village, Gnommalath District, Khammouane Province**

#### **I Objectives**

- To enable the distribution of land to poorer households within the village
- To encourage agricultural production (with short term crops) in order to improve livelihoods
- To develop the ability of villagers to manage village communal lands without outside support in the long term

#### **II Target Group**

- Members have to be active, enjoy agriculture, not gamble, have a high level of responsibility and be honest
- Members have to have resided in the village for at least one year
- Members must have insufficient agricultural land
- Members must prove knowledge of the management and land use regulations of the village and take ownership in their strict implementation
- Poor persons and those lacking opportunity will have priority when selecting members
- Members must be willing to use the communal land and write their own letter of request

#### **III Management committee**

Village members are able to elect a Management Committee of eight people for a five year period, of which at least one must be female:

- The village head is the Chair of the Committee, responsible for monitoring, inspection, calling meetings, summarizing and reporting on the work regularly to the district
- The deputy village head is deputy Chair of the Committee, responsible for accounts (recording information on the activities of members)
- The Lao Front, village agriculture, village police, Lao Women's Union, village forest officer, village land officer and village Youth Union are committee members, responsible for monitoring and inspection of the communal land use of members

#### **IV Method of implementation**

- The committee and members need to have a meeting at least twice a year in June and December or before allocating land to members

- All members must clearly state their intention for using the communal land in advance and receive permission from the Management Committee before using it for production
- The Management Committee will allocate land to members according to their needs but this must not be more than a plot of 50m x 50m or 2,500m<sup>2</sup>
- Communal land is the responsibility of the whole village: if the Management Committee approves land which is subsequently not used (claimed only) the village has the right to reallocate it
- Members have the right to use the communal land for 5 years; if they wish to continue to use the land then they must write a new request to the Management Committee for their consideration
- All members who use the communal land must take care to maintain soil quality and the environment
- It is prohibited for members to buy and sell, use as a deposit or transfer the use rights to others of their communal plots
- It is prohibited to plant long term crops or use dangerous chemicals that impact upon the environment or society

### **V Penalties for Offenders**

Members who do not implement the regulations, lack responsibility, are dishonest or fraudulent are penalized appropriately according to the following schedule:

- First time: receive a warning or re-education in front of other members
- Second time: receive re-education and written warning from the village committee
- Third time: Loss of membership in writing and kept as evidence

These regulations are prepared and agreed by the people and the village authority of Talaknathin on 12/5/2016 and come into effect with the signatures below.

Talaknathin, 12/5/2016

Head of District Justice Office

Village Head of Talaknathin

District Governor

Head of District Natural Resources and Environment Office



The **Mekong Region Land Governance Project** aims to contribute to the design of appropriate land policies and practices in the Mekong Region. It responds to national priorities in terms of reducing poverty, improving tenure security, increasing economic development, and supporting family farmers, so that they can be secure and make good decisions on land use and land management. MRLG is operating in Cambodia, Laos, Myanmar and Viet Nam since April 2014, with the support of SDC and the German cooperation. For more information on MRLG, please visit [www.mrlg.org](http://www.mrlg.org).

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**CIDSE-Laos** is a locally managed international non-governmental organization which is part of an alliance of Catholic development agencies working together for global justice. With activities in Laos dating back to 1988, CIDSE-Laos' goal has been to assist communities gain secure tenure of traditional lands and resources via legal education and participatory land use planning. In March 2017, CIDSE-Laos closed down. A locally registered association, Promote Sustainable Natural Resource Use Association (PSNUA), continues to work with rural communities in Laos to secure their land and livelihoods and promote the sustainable and equitable use of natural resources in the country.

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