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**Communal Land Tenure**

A Social Anthropological Study in Laos

**Tierras Comunales**

Un Estudio socioantropológico en Laos

**Luck Bounmixay**

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# **Communal Land Tenure**

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**Luck Bounmixay**

A Thesis Submitted in Fulfillment of the Requirements for the Degree of  
Doctor of Social Anthropology  
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## LIST OF ABBREVIATIONS

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
BHPG	Bamboo Handicraft Producer Groups
CANSA	Conservation Agriculture Network for South East Asia
CDE	Centre for Development and Environment
CFSVA	Comprehensive Food Security and Vulnerability Analysis
CFSVA	Comprehensive Food Security and Vulnerability Analysis
DGRV	Cooperative Federation for German Cooperatives
CLTs	Communal Land Titles
CPRs	Common Pool Resources
CPI	Consumer Price Index
DLMA	District Land Management Authority
DoL	Department of Land
EMCNA	Ethnic Minorities Committee of the National Assembly
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FDI	Foreign Direct Investment
GDG	Gender Development Groups
GDP	Gross Development Products
GoL	Government of Laos
GRET	Bamboo Development Project
GRID	Gender Resource and Development Centre
GTZ	Lao-German Land Policy Development Project
HDI	Human Development Index
HDI	Human Development Index
ID	Identity
IFAD	International Fund for Agricultural Development
IRD	Institut de Recherche pour le Développement land
LA	Land Allocation
Lao PDR	Lao People's Democratic Republic
LDC	Least Developed Countries

LFNC	Lao Front for National Construction
LFNC	Lao Front for National Construction
LIWGs	Land Issues Working Groups
LMA	Land Management Authority
LSUAFRP	Lao Swedish Upland Agriculture and Forestry Research Programme
LUP	Land Use Planning
MAF	Ministry of Agriculture and Forestry
MDG	Millennium Development Goals
MDG	Millennium Development Goal
MIC	Ministry of Information and Culture
MONRE	Ministry of Natural Resources and Environment
MPI	Minister of Planning and Investment
NA	National Assembly
NAFRI	National Forestry Research Institute
NLMA	National Land Management Authority
NLRRIC	Natural Land and Resources Research and Information Center
NRE	Natural Resource and Environment
NSEDP	National Social-Economic Development Plan
NT2	Nam Theun 2 Hydroelectric Project
NTFPs	Non-timber forest products
NUOL	National University of Laos
ONDA	Oversea Development Assistance
PAFO	Province Agriculture and Forestry Office
PAO	Provincial Administrative Office
PLUP	Participatory Agriculture and Forest Land Use Planning
PONRE	Province Office of Natural Resources and Environment
PPA	Participatory Poverty Assessment
R&R	Rules and Regulations
REDD	Reduced Emissions from Deforestation and Forest Degradation
SNV	Netherlands Development Agency
SUFORD	Sustainable Forest Management for Rural Development

UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
VECO	Vredeseilanden
VFA	Village Forestry Association
VFMP	Village Forest Management Plan
VLUs	Village Land Units
VPF	Village Production Forest
VUF	Village Use Forest
WFP	World Food Program
WWF	World Wide Fund

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## INTRODUCTION

For countless global rural communities, land virtually means life. They work on land to ensure their subsistence and to provide food for survival of their families. Rural households in the south-east Asia and in the Lao People's Democratic Republic (Lao PDR) or Laos<sup>1</sup> in particular sustain their existence depending on access to land and natural resources be it rain-fed agricultural lands and forest in the upland or irrigated rice in the lowlands to produce staple food and raise livestock. Natural sources are made up of forests, agricultural lands, grazing lands, water and fresh water biomass, the latter producing a number of products such as wild foods and fibers. Non Timber Forest Products (NTFP) provide herbal medicines, fuel wood, raw materials for housing tools and handicrafts, which are a vital source of monetary income for rural people to cover costs of non-food products. The benefit that forest people and villagers receive from natural biodiversity and ecosystem services reinforce their sense of spiritual connectedness with nature. When agricultural products and NTFPs are converted into cash for commodities they improve the life condition of remote communities primarily in terms of having money to ensure education and health (Landesa 2002). Having an access to land and forest resources also constitute a guarantee for social, cultural as well as psychological well-being which is a gateway and condition for exercising many civil and political rights (Wickeri & Kalhan 2010). Access to land is also a condition for taking part in rural informal networks and connections that have mechanisms for representation and participation in decision-making as well as leadership (FAO 2010). These characteristics of land dependency are significant in the Lao PDR.

The way people access land and forest resource is diverse because there are complex systems of land ownership. In general, land in a country like Laos is owned by the state, holding all land as its eminent domain. Thus villagers' ownership is seen as a set of different modalities of usufruct rights, some permanent and some temporary. Within the state's eminent domain we find besides state land, both private and customary

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<sup>1</sup> The word Laos is used in the rest of the dissertation as this is the name by which the country is known to most. In Lao language the country is Lao, as the ending 's' originated with Spanish and Portuguese traders that wrote about the population of the area in plural.

tenure which can be arranged under formal or informal, statutory or customary, permanent or temporary registration. Some are legally recognized and registered, others not. At the same time, ownership of the land and forest resources is overlaid by a variety of claims on specific resource niches as such special nuts or resin, where produce is harvested or withdrawn by households that have established claims. In many instances in the uplands, agricultural land is located in the formally state-owned forests but customary rights of access are exercised by communities and individuals as common and private property.

Among the different tenure arrangements ranging from private to communal many economists view that owning land as private property provides the necessary incentives for economic development in land and consequent economic development (Boettke 2005). Private land ownership is seen as a vital source of capital as it opens personal credit markets, leads to investments in the land, provides a social safety net for the private owner, and transfers wealth from one generation to the next (Wickeri & Kalhan 2010). Land does not just transform individual lives; at a time it drives transformation of societies (Peters 2007: 10) and thus also affects poor people that have no rights in land. The “rights to land” are not secure for a number of land users and many are landless (Wickeri & Kalhan 2010).

In line with this appreciation of private property the proponents hold that a common property institution for communal tenure is liable to free riders that can harvest benefits for themselves at the cost of others (Cox 1999: 280). A famous article on this argument is the “Tragedy of the Commons” written by Garrett Hardin in 1986, but later refuted by the school of institutional economics and its Nobel Laureate, Elinor Ostrom. The present dissertation builds on the theoretical background of Elinor Ostrom’s work to present arguments from the uplands of Laos on the strong points of communal tenure in natural resource management.

Scientists like the late Elinor Ostrom who was the director of the Workshop in Political Theory and Policy Analysis, Indiana University, set the framework for analyzing the evolution of institutions for collective action and contributed greatly to the knowledge about common property management. The scholars argued that rights in a common

property are linked to existing internal rules in the right-holding community that define how to share land and withdraw produce. These are the internal management rules and if all agree, no one can be a free rider exploiting the resources at the expense of others.

Communal rights to land and the modes of land and forest collective ownership constitute the critical issues of this dissertation. These customary communal rights are presently under threat because they are not registered and endorsed by the state. The communal rights to land are presently undergoing multiple pressures at present from not only population growth and fragmentation, but also from state-sponsored land use conversion through concessions into big commercial land estates, land grabbing and infrastructure development (Wickeri & Kalhan 2010).

The whole world is currently in a modernization process where land is grabbed for business activities that use industrial technologies in agricultural development. Many developing countries promote Foreign Direct Investment (FDI) through, among others, land concessions for plantations of rubber, bio-fuels, and palm oil, as well as commercial cash crop agriculture and mining. This process is, in fact, not a new phenomenon but the current situation sees an increasing appropriation by FDI of community land in developing countries which means traditional common property to which communities most often have no title is transformed to private or concession property changing or eliminating the livelihood of many rural communities.

Laos is among the many countries in the world that is embedded in a modernization process that is based on five year plans and the government's attempt to increase production, including giving cheap concessions to FDI for production of plantation crops for their export market.

Laos is known as a Communist State founded in 1975 after a protracted civil war. This young nation is one of the East Asia's poorest countries and most of its land and natural resources have until ten years ago been used for subsistence and managed individually and communally dependent on the nature of the resource and the community. During the last decade, the Government of Laos (GoL) has focused on poverty reduction through turning traditional ways of using and managing land and forest in an alleged

modern direction encompassing cash cropping and plantation development. This modernization includes privatizing and re-arranging the use of land and forests. International investment in land and forest through concessions is allowed in many rural areas around the country and now make up 15% of land area of Laos (World Bank 2010).

Laos is a mountainous country and it therefore has many different areas and regions in terms of elevation, cropping patterns, land management and forest cover. It also has many different (tribal) ethnic groups or indigenous people most of whom live in the uplands such as the middle hills and high hills. These areas are at the different stages in the modernization process and many ethnic groups practice a shifting cultivation land use system they have used for centuries.

Many ethnic minorities in remote rural areas in Laos consider agricultural and residential land as communal with no private ownership. In Laos, communal tenure is often the norm among remote ethnic group villages. Grazing lands and village forests are communal lands, and in many instances also the rotational farming or shifting cultivation land with its fallow land is communal in its totality. This system is found in the villages where the government not yet have curtailed land access or undertaken hasty and confining land use planning and certification (Andersen 2010: 7).

The northern province of Houaphan is chosen as basis for the fieldwork to provide data for the analysis in this dissertation. It is a remote province in the Northeast of the country bordering on Vietnam. In this province, communal tenure system is still practiced extensively and local ethnic villagers manage land and forest resources in a customary way. They have created their own rules to share and sustain the resources and this has allowed them to survive and live with nature in a harmony over centuries. Currently, this province is gradually becoming subject to a call for new land management systems where international and national business activities related to land and forest are allowed. Though not yet executed to a great extent, this will affect communal land rights and tenure of local people and their livelihood if they cannot register their land under a communal tenure management. Therefore, I see Houaphan province as a very suitable place to focus an analysis on the main questions of this research.



The interest in the features of customary communal tenure leads to this dissertation. It analyses a range of customary forms of community-based tenure of land and forest in Houaphan province. The community-based tenure of a common property is a system, where all members of a community have rights in the land and forest resources within the community's territory. This community-based ownership is still today a customary system found among indigenous peoples' societies around the world to whom private property has never been the norm. The rights of the families in such a community are based on local rules on how to use and share the land and forest in common. A number of customary internal rules ensure a degree of equity in the way common property resources are shared and the internal rules stipulate how management decisions are taken jointly. Such systems have ensured livelihood conditions among families in the community. Each year land as the common property will be allocated to families by communal decision.

Presently most of the common property system among indigenous peoples in the world is found in areas that are still rich in natural resources and are still relatively remote and undisturbed by the state. However, this is changing as the world's quest for tropical timber and mineral resources have turned its eyes on these remote areas and with endorsement of the state authority, international and national businesses are given concessions for the same areas playing havoc with traditional communities' livelihood. Therefore, a study of common property arrangements and a systematization of customary management rules within the context of government legislation can help bringing about an understanding of the environmental and social benefits of communal tenure. This research argues that communal tenure is a means for local people (especially in Houaphan province) to improve their living condition and that communal tenure is legally recognized by the state can in the 21<sup>st</sup> century help to protect the livelihood of communities against outsiders' quest for land and natural forest resources.

This dissertation is organized in five chapters with sub-chapters. The organization is as follows:

Chapter I introduces the *General Objective* and the *Specific Objectives* of the research.

Chapter II presents the *Theoretical Background* as a result of literature review. This chapter brings into discussion the theory on *Common Property* as developed by Elinor

Ostrom and her Workshop Policy Analysis at Indiana University. The interest in *Common Property* was heralded by a *US Conference on Common Property Resource Management*, prepared by the Panel on Common Property Resource Management, Board on Science and Technology, National Research Council, 1985. It creates a surge in the study and analysis of the characteristics of communal tenure all over the world since the mid-1980s. The aim has been to gather information on its regulatory characteristics and how these regulatory characteristics and internal rules of land management created the basis for collective action in response to the particular characteristics of resources under management. The present study forms part of this academic surge in an attempt to highlight important traditional land management systems in Lao PDR and their contribution to social and economic equity and environmental management in this country.

An additional theoretical contribution from the theory on *Life-mode Analysis* developed by Thomas Højrup<sup>2</sup> will be used marginally to see how the Lao PDR as a state is struggling to survive in the international world through organizing people into groups, reducing poverty, managing land and forest, introducing business that is related to these resources, and how local people are affected.

Chapter III is *State of the Art*. It is divided into five sub-chapters. The first sub-chapter introduces Laos covering geography, seasons and climate, natural resources and economy as well as the State and political system. Ethnic groups are subsequently introduced followed by prevailing poverty issues in Lao PDR. The second sub-chapter introduces forest and land use as a means of livelihood of ethnic people; modes of traditional production. The third sub-chapter is a brief overview of the implementation of different initiatives by the government on land use planning and land allocation and legal land documents. The fourth sub-chapter is a short analysis of the impact of Foreign Direct Investment (FDI) and contract farming and its impact on villagers' land use and land claims. Establishment of farmers cooperatives is discussed because it is related to FDI. The fifth sub-chapter brings into an understanding land use issues in some Asian developing countries.

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<sup>2</sup> Thomas Højrup is a Danish ethnologist working as Professor of Ethnology at the University of Copenhagen. He developed new concepts of life-mode analysis which he sees critical to consider when making development plans.

Final sub-chapter of the Chapter III is a presentation on perceptions towards communal land tenure in Laos.

Chapter IV describes *Field Work Methodologies* and how they were brought into practice including the strengths and weaknesses of the methodologies.

Chapter V presents *The Analysis of Fieldwork Findings* from case studies that analyze modalities of communal tenure in the middle hills and upland of two ethnic groups: Hmong and Tai Daeng from selected villages. Characteristics of communal land use of the said ethnic groups will be introduced followed by an analysis of the nature of the communal land/resources' bio-physical characteristics; transaction and communication costs of a village to uphold the rules; and impacts of the common land/property on livelihood of ethnic villagers in terms of security of tenure, nutrition, and equity. Primary and secondary data are treated subject to the theories on Common Property in order to test evidence as responses to research questions.

The Chapter V begins with a general introduction of Houaphan province. It gives an overview of natural resources like land and forest, ethnic groups of Hmong and Tai Daeng, and poverty status of the province. It presents legal status and traditional use of land which leads to the presentation of official approach to forest and land use management and interrelations between official administration and the management of common property.

The Chapter also analyses the nature of the customary rights to resources within the common property resource system (CPR). It includes governance structures which in Ostrom terminology make up the "collective choice system", determining how the community makes choices and who decides what, identification of village members that qualify as rights-holders in the common property, ways of sharing communal paddy rice fields in lower elevations and the sharing communal land in the uplands for rain-fed agricultural crop production purposes. The collective choice rule is about governance, the second set of the rules are internal to land management as such how common land users share responsibility for sharing upland swidden agriculture land-making fencing, organizing animal grazing land, and irrigation work based on annual decision making. This includes agricultural crop production in the lower elevations as well as the uplands, seasonal rights to specific resource niches in the CPR, including NTFP in village

territory, claimed by particular households. Result of an analysis of CPR is therefore put in this chapter.

The Chapter V furthermore presents *communal rights to non-timber forest products (NTFP)* in the uplands and how these NTFPs allow villagers to improve their socio-economic living standards. It also presents collection of land use fee. As well as how tax/land use fee is collected the Chapter addresses an analysis of *free-riding issues* and presents *conflicts and conflict resolutions*. In the same way, the Chapter brings into discussion *Land Registration Process* in Laos and into an analysis pilot communal land titles the result of this pilot CLT project is analyzed in comparison to the field work finding in Houaphan.

Analytical new outstanding findings from this field work are contrasted with earlier research and put together in the *Conclusion* including personal perspectives with regard to future work in this field of research.

## **CHAPTER I. OBJECTIVES OF THE RESEARCH**

The overall objective of the research is to explore and analyze from an anthropological point of view, the characteristics of customary communal tenure of Hmong and Tai Daeng ethnic groups in Houaphan province, Laos in the context of the changing social, economic and political situation in this country. The broader objective is divided into the following specific objectives which are:

- 1) to investigate existing customs, arrangements and practices of how land and forest is used, shared, managed and changed over time among the ethnic groups of Tai Daeng and Hmong who reside in middle hills and upland areas in Houaphan province;
- 2) to analyze the impact of the policies at different levels and impact on communal tenure;
- 3) to investigate influences of foreign direct investment (FDI) on existing customary communal tenure system of Hmong and Tai Daeng in Houaphan province;
- 4) to analyze the role of institutions for collective action. It deals with interplay between local customary practices and governmental strategies towards: forest and land management policies of the Lao government that are formulated and applied centrally and locally; and the central and local government agencies' approach to potentially acknowledge and register communal tenure officially. This objective is also to analyze the outcome of ongoing pilot projects in Laos that attempt to formalize communal tenure through the piloting of actual land registration and issuing communal titles. The area of investigation will provide the basis for an understanding on the institutional characteristics of a range of land use practices and explain the role of institutions for collective action across history in contributing to environmental sustainability and communities' survival;
- 5) to do with the configuration of rights held by the collective and individual households of the ethnic groups of Tai Daeng and Hmong in managing paddy land and forestland as well as issues or conflicts over land and forest resources between communities and outsiders (concessionaries) and how the conflicts are dealt with customarily and legally. Also, it examines the conditions for collective action in communities such as the influence of group size and group composition on the

functioning of institutions for collective action and social norms that include reciprocity rules that discourage free-riding;

- 6) to study the relation to the Process of CLT registration in Sangthong and Nakai and analysis of NLMA 564 and draft land policy. Here two sets of Rules (Statutes or Bylaws on one hand and Internal Rules on the other) are discussed. This objective involves: 1) the legal incorporation of the community; 2) rules on right holders and members and the inclusiveness; and 3) the conditions for the group to gain the rights in resources, namely land and non-timber forest products (NTFPs);
- 7) to study if there are possibilities for common property arrangements or communal land tenure to be registered to ensure secure long-term benefit derived from land and forest resources of ethnic groups. Working on this area, the following questions are raised:
  - a) How common property resources are a means for the poor to secure access to benefit streams derived from resources and a safety net against vulnerability?
  - b) How does communal tenure provide social and environmental benefits in a way that it socially includes the poor, ensures equity, avoids landlessness as all have rights, protects against concessions, and conserves the environment?
  - c) What are the important traditional property arrangements that are worth maintaining and strengthening to secure accessibility to resources of the rural poor?

## CHAPTER II. THEORETICAL FRAMEWORK

### 1. Theory on common property

This research applied the theory on common property regimes and collective action that has emerged from Indiana University's Workshop in Political Theory under the leadership of the late Elinor Ostrom, who set the framework for analyzing the evolution of institution for collective action highlighting a number of principles that must be in place to render such institutions viable.

*The topic of communal tenure of land and forest has gained academic interest since the 1980s, when the late Nobel Laureate Elinor Ostrom under the American Academy of Sciences initiated a large Workshop in 1985 on Common Property. Since then Indiana University has set the framework for analyzing the evolution of institutions for collective action and has contributed greatly to the knowledge about common property through the Workshop in Political Theory and Policy Analysis, under the leadership of Ostrom. As a result, also professionals in the field of international development of land and forest management understand the need for prior analysis of existing tenure in order to adjust planned development interventions with the tenure situation or in order to craft new institutions learning from the past Common Pool Resource (CPR) regimes (Andersen 2011: 5).*

Common property is not a new concept. Hundreds years ago, commons were prevalent also in medieval Europe. The medieval villages' common lands were used for grazing according to strict village rules for how many heads of cattle a family could send to the commons not to overexploit the grazing lands. In Europe the commons disappeared due to the *enclosure* system that did away with the commons in the late 18<sup>th</sup> century, partly due to the industrial revolution and partly due to land appropriation by the church. Enclosure on a large scale caused dispossession of the inhabitants, and a complete break with traditional usage (Rosenman n. d.).

Communal land in Europe, according to Karl Marx (1982), was taken as private land by powerful people mainly landlords through a means of individual act of violence and use of law as a tool. Mark wrote:

*Whilst the place of the independent yeoman was taken by tenants at will, small farmers on yearly leases, a servile rabble dependent on the pleasure of the landlords, the systematic robbery of the Communal lands helped especially, next to the theft of the State domains, to swell those large farms, that were called in the*

*18<sup>th</sup> century capital farms or merchant farms, and to “set free” the agricultural population as proletarians for manufacturing industry (Mark 1982: 886).*

It can be seen in existing literature that communal ownership has been the norm in earlier days in most regions where private property only came in later. For example, prior to the publication in 1862 of *Ancient Law*, by the English jurist Maine, the accepted view among Western jurists in the 19<sup>th</sup> century had been that the origin of the concept of property was the occupation of land by a single proprietor and his family. However, Maine insisted that, “it is more than likely that joint ownership, and not separate ownership, is the really archaic institution and that the forms of property that will afford us instruction will be those that are associated with the rights of families and groups of kindred”. He viewed the 19<sup>th</sup> century Indian village as “an assemblage of coproprietors” and noted that the “attempts of the English functionaries to separate the two may be assigned some of the most formidable miscarriages of the Anglo-Indian administration” (Maine 1862: 259-260). What Maine says about India also goes for ethnic groups in Laos, including Kmmu in Pak Beng in the north, Brao and Tarieng in the south and this is related to Laos if it is not capitalist, but communist.

In the twenties century, the scholar Elinor Ostrom has analyzed for a number of common property institutions ranging from grazing lands to forest to irrigation water how local communities have used common property or common pool resources over very long periods of time and how the different management arrangements were based on the resource characteristics of the particular area. Ostrom uses the term “*Common Pool Resources*” (CPRs) to describe a wide variety of natural or man-made resource systems (Ostrom 2008: 30).

The CPRs include forests, grazing land, agricultural lands and wetlands or water for irrigation and fisheries to which no individual has exclusive private property rights. All the different resource units found in the area are owned in common by local communities. Formally, though, the land may often be owned by the state but a village, a tribe, or other social groups have established a common property management system of particular areas and resources within this particular eminent domain of the state. Academics working with Ostrom have over years brought the results of numbers of case studies conducted from countries around the world into the discussion and



corroboration of the theory of common property and by 2013 the concept is part of the terminology of development banks such as the World Bank.

In her book: *Governing the Commons* originally from 1990, Elinor Ostrom analyses case studies on irrigation systems in Alicante, Valencia and Murcia in Spain and Zanjera in the Philippines where local communities traditionally governed and managed their irrigation systems communally (Ostrom 2008: 69-87). Irrigation systems provide clear examples of systems of common property of water. Thus, in her lecture on *The Challenge of Building Social Capital in a Sustainable and Desirable Future* for the University of Vermont in Burlington, US in 2006, Ostrom presented the findings from a field research that covered more than 200 irrigation schemes in Nepal. The study compared two irrigation systems: one that is designed, built, maintained and monitored by local farmers and another that is organized by governmental agencies including those financially funded by the World Bank. The result of the study highlighted that farmers using traditional systems had higher level of sustainability of efforts. They defined membership and responsibilities clearly and they were heavily involved in creating rules that could be changed without problems over time based on high level of agreement among farmers living with the system. She concluded from the field findings that farmer-designed local irrigation systems as a common property system would be better maintained and could provide sufficient water better than many irrigation systems organized by government agencies (Gund Institute 2011).

Collective action by all right-holders in a common property resource is the main characteristic of any common property institution. By working together, resource users establish a system that benefits everyone involved while also protecting the CPR for long-term use. Collective action in governing of the common focuses primarily on land management and the sharing of land and forest. But the collective action would often pertain to other aspects of daily life as well. It is believed that collective action and networks among community members can facilitate access to information and allow farmers to participate in technology development. It enables risk sharing and encourages mechanisms for collective self-help. With reciprocity arrangements, collective action offers ways to overcome labor shortages, especially for practices that require intense labor effort in concentrated periods. Provision of services and

infrastructure such as health care and roads to schools, where governments alone fails to do so can be possible through collective action. From this perception, collective action is seen important also to manage the resources (CAPRI 2010: 5-7)<sup>3</sup>. Ostrom establishes 8 principles for a CPR situation which are shown in Table 1.

**Table 1. Eight principles for a CPR situation**

No	Principles	Meanings/Conditions
1.	<i>The CPR has clearly-defined boundaries</i>	<i>Makes possible the effective exclusion of external unentitled parties.</i>
2.	<i>There is congruence between the resource environment and its governance structure or rules.</i>	The resource characteristics and the institutional framework for joint management must match each other
3.	<i>Decisions are made through collective-choice arrangements that allow most resource appropriators to participate.</i>	Communities will call all families in the village to join a general assembly kind of meeting to take decisions, it is not the village headman that can take decisions about village common property alone
4.	<i>Rules are enforced through effective monitoring by monitors who are part of or accountable to the appropriators.</i>	All villagers in their daily life monitor their surroundings when they go to their fields or collect wild edibles in the forest
5.	<i>Violations are punished with graduated sanctions.</i>	The village has developed internal rules on fines if anyone in the village breaks the rules
6.	<i>Conflicts and issues are addressed with low-cost and easy-to-access conflict resolution mechanisms.</i>	The village does not take conflicts to court or police but try to solve it themselves and often the offender would pay a “fine” by sacrificing a pig that the

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<sup>3</sup> Ostrom’s original book “*Governing the Commons*” (1990) has as its full title “*Governing the Commons: The Evolution of Institutions for Collective Action*”.

others can eat while the spirits of the land are happy as well.

7. *Higher-level authorities recognize the right of the resource appropriators to self-govern.* The villagers risk losing their land to concessionaires if government representatives do not recognize the communal management so this is a very important condition of sustainability of the communal tenure.
8. *In the case of larger common-pool resources: rules are organized and enforced through multiple layers of nested enterprises.* This situation may occur because the same land may be classified as state land by the state, as production forest by the forest department and as village forest or fallow land of shifting cultivation by villagers. So each agency has a different interest in the same piece of land and altogether they make up a nested hierarchy of institutions.

(Source: Ostrom 2008: 90, originally 1990)

Common property or common pool resources theory addresses the nature of the bundle of rights that are held in common and how these rights are linked to the characteristics of the common resources. The rights contain the following aspects: “access” to the resources, where *access* pertains to the right to enter a defined physical area and enjoy non-subtractive benefits, for example to camp or rest in an area. *Withdrawal* is the right to obtain resource units or products of the resource system like picking wild plants, extracting timber and non-timber forest products from the forest and harvesting agricultural products. *Management* is the right to regulate internal use patterns and transform the resources by making decisions about access and use, and to undertake management activities (e. g. harvesting rules, planting seedlings and thinning trees). *Exclusion* is the right to determine who can or cannot access, harvest or manage lands

and resources. And *alienation* concerns the right to transfer, sell or lease/rent out (Schlager and Ostrom 1992).

Many of these rights are all found in a given common property situation. They can be grouped as use right (to access the resource and to withdraw from a resource) and control or decision-making rights (to management, exclusion or alienation). These rights are rights held in common by the right-holding community, but the different parts (individuals, families, clans) within the overall right-holding community may hold private rights to certain products within the common property, such as resin from particular trees in the forest, or small areas of paddy land within the common property. While a common property may be partitioned it still is a common property as the claims of individual families are endorsed by the community's own internal rules to which all member families have agreed.

In their paper on Collective Action, Property Rights, and Devolution of Forest and Protected Area Management, Agrawal and Ostrom highlight that the "bundle" of rights (access, withdrawal, management, exclusion, and alienation) are the most appropriate ones for analyzing common-pool resources and that multiple rights along this range of rights should be applied in any analysis rather than focusing on just one right (Agrawal and Ostrom n. d.). The rights that are held in common may make up what is called a communal tenure which is:

*"A situation where a group holds secure and exclusive collective rights to own, manage and/or use land and natural resources, referred to as common pool resources, including agricultural lands, grazing lands, forests, trees, fisheries, wetlands or irrigation waters" (Andersen 2011: 3).*

Tenure means a "bundle of rights" and to have a "right" means to have an "enforceable claim". Some rights which are customary are enforceable by the community itself since the rights are understood by everyone and part of the community's internal rules for resource management. Any piece of land or ecosystem may be subject to a *system* of many different bundles of rights that are enforceable, possibly at different levels. The community's system of collective rights may not form part of the country's legal regulations, but they are still enforceable at the local level as also neighboring communities know of the rules in place among the neighbors. Thus, the rights are

enforceable as long as the State does not interfere. The same area may also be subject to the rights of the state if it chooses to exercise its rights. Or the same area may be subject to collective rights in *different* products or resource units held by neighboring villages. These rights can operate simultaneously and will overlap. For example in Nepal the customary communal tenure has seen that one village has rights only to bamboo shoots and edible plants like mushroom in a particular forest, while other villages may have rights to timber, firewood, higher value NTFP as well as mushrooms. (Andersen 2011: 3). The communal tenure can therefore include specific household rights in withdrawal of particular resource units of the ecosystem. Elsewhere, the communal tenure may pertain to all the land and all its produce or resource units found on it.

Andersen explains in the FAO Working Paper 20, *Communal Tenure and the Governance of Common Property Resources in Asia* that there are various kinds of tenure rights. The state owns public lands, including forests, as state tenure; and private individuals have private tenure on their private plots. And groups of people, such as villages, can have communal tenure on some or all of the land that they use. Where the state endorses communal tenure, the tenure rights become sanctioned by an official regulatory framework such as the Land Law, or the Forestry Law or in special acts for indigenous peoples' rights (Andersen 2011: 4).

Susan Jane Buck Cox has emphasized that dealing with the rights in common property requires an understanding of the true nature of the commons (Cox 1985: 60) that it is, for instance, essential to distinguish between resource systems and the flow of resource units produced by the systems. Based on Ostrom, resource systems can be made up of "stock resources", for example agricultural lands, grazing areas, irrigation canals, forests and streams that are able to produce a flow of benefits or resource units under favorable conditions without harming the resource system itself. Other common property resources may be "fugitive resources" such as fish in a water body of a lake. Fish are fugitive as they do not remain in one place. Both kinds of resources are subject to joint use which means that multiple appropriators<sup>4</sup> can appropriate<sup>5</sup> or "withdraw" the resource units from the system simultaneously or sequentially. Once multiple

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<sup>4</sup> Ostrom uses the term "appropriator" to refer to those who withdraw resource units.

<sup>5</sup>Ostrom refers the term "appropriate" to refer to withdraw (Ostrom 2008: 30-31).

appropriators rely on a given resource system, improvements to such system are simultaneously available to all appropriators. In the resource system, there are, as said, some resource units are not jointly used which are the prerogative of individual families such as *malva* nuts being an NTFP in Laos with a high market price. The resource units are the products that all villagers normally can appropriate from the resource system. It can be tons of fodder consumed by a family's animals from a grazing area, and the cubic meters of water withdrawn from an irrigation channel or other sources of water (Ostrom 2008: 30-32). More examples of resources systems and resource units are illustrated in the Table 2.

**Table 2. Typified resource systems and resource units.**

No	Resource systems	Resource units
1.	Grazing area	Grass, bushes making up fodder that animals eat
2.	Irrigation channels	Cubic meters of water withdrawn from irrigation channels, fish in canals.
3.	Fishing grounds	Tons of fish, muscles, algae harvested from a fishing ground
4.	Forests	Kilos of resin withdrawn, kilos of mushrooms collected, cubic meters of timber harvested
5.	Agricultural land	Hectares of rice, millet, corn, or yam put into cultivation

Adapted from (Ostrom 2008: 30)

In all communal tenure systems, the physical and biological characteristics of the resource system influence the regulatory frameworks that communities establish and one must match with the other. In situations where both subsistence economy and market economy products can be withdrawn from the resource system we may find different kinds of interlinked and embedded rights. In some communities in Laos only a percentage of families may have customary rights since immemorial time to withdraw resin from resin trees in the forest, although the forest is considered common property of the whole village for the extraction of other resource units, be they bamboo shoots, rattan or nuts.

In her FAO Working Paper on *Communal Tenure and Governance in Asia*, Andersen builds on Ostrom's theoretical framework and deals with two communal tenure modalities. These two models differ in terms of the function of the state, the length of tenure and the characteristics of the resource system concerned. We see both modalities as communal tenure systems and they are of relevance for the Lao situation in terms of identifying how the state's recognition of communal tenure in Laos may be formalized.

The two models differ in terms of the bundle of rights that characterize them. The main difference is that one communal tenure system represents a permanent collective right recognized by the state and this is the one this dissertation deals with. The other is a temporary communal tenure, also recognized by the state but only for a specific number of years such as community forestry or community fishery agreements of, for instance 15 years or 40 years duration. The permanent communal rights are found where state legislation provides for indigenous people's communities to have their permanent collective rights in their ancestral domain officially registered. In this case the state permanently relinquishes for good its rights to the land. This has been the case in several South American countries where the indigenous populations have gained such rights, and also in the Philippines and more recently in Cambodia. In this situation, the resource system is often multi-faceted, comprising agricultural lands as well as forest, water and pasture land. Permanent title for indigenous peoples' communal land is a special claim supported by national legislation and by international conventions, covenants and declarations that many countries have endorsed. In this case, the resource system is not uniform and it may comprise agricultural land, forest, grazing lands, streams and fisheries and only the actual agricultural land may be subject to taxation. Asian countries like Cambodia and the Philippines have recognized in their legislation the special concerns and rights of indigenous communities to hold communal land tenure (Andersen 2011: 1-7).

The second modality is the temporary communal tenure where the state keeps the land in its full ownership. So here the tenure consists of a *delegated management* to defined groups or communities of local people for a specific period of time with possibility of renewal. The system of community forestry is the prime example of this kind of

communal tenure. In the delegated management model, the resource system is often uniform in nature, primarily forests. In the delegated management type the state still sees a role for itself and wants to take part in management plan preparation and retrieve, where possible, tax on produce sold by the community (Andersen 2011: 1).

In addition to the two general models mentioned above, we find as in Laos *traditional customary communal tenure* systems in remote communities where the state does not actually regulate or intervene in the management of resources, but all local communities in the area would know of the local rules of harvesting and withdrawal rights. It means that the state does not as yet intervene in the traditional customary communal tenure system. Both the permanent and the delegated management model many originate from an existing customary arrangement. The permanent registration of communal title in Cambodia recognizes the traditional rules of the indigenous peoples' communities, and the community forestry combined with a silvicultural management plan (Andersen 2011: 2).

Where customary arrangements are no longer present and the resource is degraded and under open access, the formalization of delegated management of, for example, a new community forest, may imply setting up or inducing communal tenure institutions, where they did not previously exist (Andersen 2011:1-2). This induced institutional development for communal tenure is difficult for government and development projects as many communities are not really interested in the resource if it is much degraded and benefits only increase after a decade. However, nowadays fear of land grabbing and concessions make communities, for instance, in Cambodia want to register their adjacent degraded land areas as a communal tenure-based community forest.

These induced institutions set up for areas that have been open access and unprotected are termed crafted institutions by Ostrom. She writes about such crafted institutions that to be viable they must comply with the 8 principles for a CPR situation previously mentioned, for example, must have rules that clearly define the right-holders and membership of the group and define boundaries.



Ostrom (1986<sub>a</sub>) used the term “Institutional Rules” to refer to prescriptive statements that contain forbidden, required and permitted actions and outcomes (Ostrom 2008: 139). According to Andersen, there are two sets of rules: one set is the statutes that allow legal incorporation of the community so there is a legal body to which the land title can be issued and the second set is the community’s internal rules for how to manage and share the resources. She wrote:

*“First are the group statutes or bylaws that set up the group constitutionally as a legal entity in the eyes of the state. These constitutional rules deal with the governance mechanisms, general assembly, committees, and the rules for changing the internal rules, and the relationship with local government authorities. Second are the internal operational rules, which are determined by the group. These internal rules establish the individual rights held by group members to agricultural land and specific resource niches. The internal rules pertain to how the land is managed and shared. The concrete internal rules can be very complex and vary tremendously among the various groups, to reflect both socio-economic characteristics, including status and rights of women, the size of the area, the nature of the resource units, the ecological characteristics of the resource system, including the conditions of biological reproduction” (Anderson 2011: 9).*

It is pointed out in a research on Customary Law in Forest Resources Use and Management with a Case Study among the Dzao and Thai People in North-West Vietnam that there are four distinguished powers relevant in the context of land tenure. They are powers to: create new rules or modify existing ones; make decisions about the particular use of resources; to implement and ensure compliance to the new and altered rules; and to adjudicate in disputes that arise in the effort to create a new rule (CIRUM 2012: 20).

While the main topic of this dissertation is an analysis of existing customary tenure in Houaphan province of Laos, the long term outcome of such analysis and kindred analysis is to examine the benefits of the common property arrangement and discuss about the possibility for arrangement and registration of the communal land by the government and put in the official cadaster of the state. This is happening in Cambodia, but not yet in Laos. In order to take a step further and have a community’s communal land registered with title, the community needs to be incorporated as a legal person with statutes or institutional bylaws and be thus recognized within the given legal framework of the country.

Thus, for regularization of communal tenure by the state two sets of rules mentioned above could be important. In Cambodia this development is, as said, happening at present. In Laos the first steps as in the present dissertation deal primarily with the internal rules of the customary tenure in order to certify that they make up communal tenure. Once this is known it is up to the communities and NGOs and the government to identify how this community can be incorporated as a legal right holding entity in which one title is vested. It is also the internal rules that have been the focus on Ostrom's research as these rules on collective action are the ultimate conditions of sustainability of the communal tenure.

The theory and terminology presented in the above section will be used to guide the analysis of the findings of the field work.

## **2. Life-mode analysis**

To understand Laos and the process of re-orientation and restructuring the country has been passing through over the last decade, we suggest thinking with a theoretical tool which was proposed by the Danish ethnologist, Thomas Højrup and a group of social scientists working together on the Life Mode Analysis that deals with the mutual relations between states, citizens and culture (Højrup 2003, Schriewer & Cayuela 2014). This theory examines, on the one hand, the questions of how states as subjects struggle for recognition from other States in the state system and, on the other hand, the impact of this struggle for recognition of the internal organization of society and cultures.

Højrup is proposing to understand internal life of the state from a critical revision of the concepts of interpellation which is going to be used here. Furthermore, the concepts of social formation, different life-modes and mode of production which can find their conditions of existence in this framework will be mentioned marginally. Regarding this, we have to deal with two types of sovereignty labor of a state. One type is the state's orientation to the exterior trying to oblige the other states to recognize the state in question with its territory, population and political system. This demands specific resources, materials, and ideology which the state has to produce in order to be able to demand recognition. The other type of sovereignty labor has to do with the production

of the resources which produce the necessity to try to organize the interior society in a specific way, working out and achieving specific legal, economic and social conditions that may create specific ways to life being able to produce the resources needed for the exterior sovereignty labor. Interpellation is driven by the struggle for survival. It presupposes that the state subject is able to gain recognition within its domain, creating what Benedict Anderson called an "*Imagined Community*" which interprets itself as the state. To explain this relation between state and its citizens, Højrup makes reference to the French Philosopher Luis Althusser (1970) and his concept of interpellation, which is defined as permanent process of transforming individuals into subjects and they are included as groups of people, organizations, and individuals (Højrup 2003: 161-166)

The crucial idea of Althusser is the mutuality of this process. The superior subject, the state, interpellates the dependent subjects, but at the same time it depends on positive responses, on the acceptance and participation. This is what Benedict Anderson describes as an "Imagined Community". If it is not successful, the state will fail. It means in concrete that a state is always working on a double process: on the one hand it is obliged permanently to work out strategies to maintain the ability to oblige the other states to recognize it and on the other hand to introduce the necessary reforms in a way the population will back up or at least accept them.

Using this theoretical approach it can be said that internally Laos is constructed with a number of those "*dependent subjects*" like villages, ethnic groups, families and individuals. A village is officially recognized as local administrative unit and it has a village headman, a number of village development units, and village residents. The position of the village headman is formal and she/he receives small amount of money as compensation for his/her work. As part of the interpellation, the government is currently trying to increase the compensation and consider the village headman as one of the official staff and to be paid a salary. Doing this, the government expects that the village headman will participate more in its development process.

Also, the government has officially arranged its people into many ethnic groups and they are given legal identity as Lao, Hmong or Tai Daeng, for example. In this case, the individuals are categorized as ethnic people and following this attribution they are

threatened in different ways by the government. However, not everything is officially recognized. Within the ethnic group of Hmong for example there exists informally clan system known by people from within this ethnic community and also by other ethnic people as important in terms of participation in official development activities held in their communities but the clan system is not (yet) formally recognized.

Similarly, many rural communities have commonly used land and natural resources in the forest around them to live their life in a traditional way but these resources, from legal aspect, do not belong to them. In the interpellation theory, one must have recognized property and this can be understood that villagers as a group are not interpellated in a full sense as they do not have security of the property.

The interpellation that takes place in Laos is influenced by the international situation. Neighboring countries like Cambodia and Vietnam have changed a lot during the last decades and elites in Laos perceive that the country has to change as well. This thinking is the perspective of the government, and therefore represented as the official unified will. But it does not necessarily mean that this reflects the will of all people in the country because it is created by a group of elites in the state. These elites could include the person who may have their way of perceiving life in a way that taking into account demands of rural people particularly those in the remote rural areas and their traditional ways of living is not necessary.

Following the unified will, the government promotes a shift from subsistence economy to market economy in order to bring materialized resources and new knowledge to the country. In this process, the state interpellates its citizens in a strong and quick way which a number of country citizens may not understand or interpret as opposite to their interests.

Improvement of economic situation is important in the interpellation process as it is a means to gain recognition. From here, there is a new demand and it is that market economy is introduced as an economic means for the state subject to increase its resource base and to make it more convenient to accumulate capital so that it reaches its development target (Højrup 2003: 209).

In the case of Laos it is required to adapt its society and the different life modes to new challenges which are generated in its internal and external environment. Processes of globalization are expanding in this part of Asia like the growth of markets, liberalization of economies, neoliberal forms of organization, for instance. In concrete terms, there exists in Laos a need for economic resources to maintain the territorial sovereignty and to re-organize the society. For this purpose, international companies are invited to be active in the agricultural sector in the country as investors through two possibilities. Firstly, the subsistence farmers cooperate with foreign companies in contract farming who provide agricultural technical support on know-how-to produce certain types of crops and who provide access to the market where the farmers can sell their cultivated produce. In this case, villagers are self-employed. Secondly, a company lends land as concession and uses it to operate business activities that transform subsistence farmers to wage-earners.

In the interpellation process, one life- mode is transformed to another life mode (Højrup 2012) from subsistence economy farmers to market economy farmers. This shift is necessary in the eyes of the state because the country needs to have monetary resource but it is a challenging task, especially for a country like Laos that is based essentially on subsistence economy among a large group of rural remote farmers that lacks skilled labor. Also, it is a challenge that many ethnic communities are subsistence farmers living in remote settings where it is difficult for the government to approach them.

The subsistence farmers use their own labor, their traditional tools, and knowledge to cultivate whatever agricultural crops they prefer in the common land in the uplands in shifting cultivation and this is the means of their livelihood.

Currently, many rural upland farming families among the ethnic groups in Laos keep using land to cultivate subsistence agricultural crops to subsist their living. These farmers are seen by other ethnic groups such as lowland Lao and the government as poor people as they have only labor and traditional knowledge as their property. These self-reliant farmers decide what their families should directly consume or to bring to the market to sell. They may get involved in business as a family activity but they are still not seen as an advantage for the state because they produce mainly for their own

consumption and there is little or no surplus for market economy (Højrup 2003: 215). From the state perspective, this needs to be changed. Therefore an issue that arises often is whether it is possible to enhance land productivity if the land tenure is communal and not private.

Højrup (2012) describes Self-employed as small family-run businesses including: farming in rural environments, corner shops, handicrafts, and restaurants in urban areas. Doing these businesses, they do not need external investors but they develop their own ideas to produce products or offer services which is called by Højrup Simple Commodity Mode of Production (Højrup 2012). For people in this life-mode, “working time” and “free time” is not an opposite as it is in the wage-earner life-mode. This attributes work for the self-employed to a sphere of liberty because he/she decides what and how to produce. Therefore, it is their inner drive that puts themselves to work and they are responsible for the result of their work (Højrup 2003: 22-23).

Theoretically, it is not necessary that self-employed people have to own land as their private property. They can borrow the land for a certain period of time to produce crops in a way that they are free to make decision on the production. Thus, the self-employed life mode of rural remote farmers in Laos could be a special variant of the self-employed we know from European countries and this will be addressed as the inquiry progresses.

For economic reasons, Lao government invites FDI invest in Laos. Even if there are other possible tracks to attract investments, the way this is done at present implies a transformation of traditional subsistence farmers into wage-earners by giving land to the companies to invest in agricultural businesses activities. As part of the concession business deal, these traditional farmers are promised to be employed, meaning a wage-earner life-mode is created.

According to Højrup (2012), *wage-earners* are employed by a company and are paid a salary for the work that they are delivering according to the time they spent at work and sometimes also how much they produce. In the life-mode of wage-earners, people do not have to be worried about the success of the company after their work and this means they can put work aside and have free time. The labor market makes up the

primary conditions of existence of the wage workers and the labor market itself depends upon a political condition of existence like legislation about contracts and labor system. The concrete conditions are designed by the company but the government can make an influence through policies and practices. There is an assumption that FDI is not very influential in Houaphan so wage-earning life-mode still is not an important issue in this province.

From the Marxist perception, Althusser (1970) presented that all societies include different modes of production: nowadays, in most societies, Simple Commodity Mode of Production and Capitalist Mode of Production can be observed. They co-exist among other modes of production and the co-existence of these two modes of production could be an important tool to understand the socio-political and economic situation particularly in Houaphan province in Laos.

Højrup (2003: 139) uses the concepts of Karl Marx to explain that Simple Commodity Production relates to labor-power (the ability of farmers to produce agricultural crops), object labor (agricultural crops farmers produce), and the means of production labor (land farmers use to produce agricultural crops). In this simple commodity production, labor power and object labor are structured according to labor relations not economic relations. The formula is that the value of a commodity equals the necessary requirement for labor plus the cost of the object of the labor (product of labor) plus the cost of means of labor so only the means of labor is represented in the market. Producers in simple commodity mode are called self-employed in a sense that they are constituted by family or social ties and they work for themselves (Højrup 2003: 22-141).

Klaus Schriewer refers to Karl Marx's work to explain that the capitalist brings in capital and an idea for the production of a product that is produced with help of a working force that is paid less than the value it produces and Marx called this profit exploitation of wage-earners (Schriewer 2014). It is assumed that this capitalist production is not yet greatly influenced locally in Houaphan so it is not focused in details.

This research will therefore deal with subsistence economy that is an important part of the economic life in the rural areas which is gradually substituted by a more and more market oriented production. In case this would be followed by the change of the current life mode, from subsistence farmers to self-employed or wage earners. If people have their own choice to make a decision to support a living that they perceive as a better way to survive we shall see how this interacts with the interpellation process that is related to traditional use and arrangement of communal land and management created by the Lao government.

Therefore, where appropriate, the Life-mode Analysis of Thomas Højrup will be applied to understand how the government interpellates its citizens (Tai Daeng and Hmong) to make them participate in the State development process which is a State strategy to survive as a country in the international world. The Life Mode Analysis theory of Højrup will also be used to see how families/clans and villagers of the two ethnic groups struggle to improve their living condition and how this effort is related to communal tenure.



Map 1: Map of the Lao PDR



Source: [http://concept-bank.com/?page\\_id=629](http://concept-bank.com/?page_id=629)

## **CHAPTER I. STATE OF THE ART**

### **1. Geography, seasons and climate, natural resources and economy**

Laos is located in the heart of Indochina, in Southeast Asia. It is a small, landlocked country sharing border with Myanmar and China to the northwest, Vietnam to the east, Cambodia to the south and Thailand to the west. The country stretches 1.700 kilometer from north to south, with an east-west width of over 500 kilometers at its widest and only 140 kilometers at the narrowest point (Map 1). Totally, Laos makes up of 236.800 square kilometers of land area (UN 2008 & GTZ 2009: 6) which is widely covered by tropical forest and is under heavy pressure from neighboring countries' quest for timber and local people's search for agricultural land.

Laos has three distinct natural regions comprising mountains, plateaus and plains covering about 70%, 20%, and 10% of the total area, respectively (NA 2013: 1; Campbell, Knowles & Sayasenh 2012: 5). The mountainous area dominates the geographical picture of the country with different ranges between 1.500 and 2.820 meters high (UN 2008).

Countrywide, there are three large plateaus located at 1.000 meters above sea level. They are the Xiangkhoang Plateau in the North, Nakai Plateau in Khammouane province in the center and Bolaven Plateau in the South. Only one quarter of the total plateau area is blessed with fertile volcanic soil and it is the fertile land of the country at that elevation and the area is used heavily for coffee production as a cash crop (UN 2008). Houaphan province is a mountainous area in particular and this geographical characteristic therefore pertains to the area of field work conducted as part of this research.

High mountain ranges make the construction of a national communication network difficult and expensive and Laos is one of the countries with the lowest densities of roads in Asia (UN 2008) and many upland areas are often inaccessible by vehicle (Manorom *et al.* 2011: 7). These geographical conditions in Laos have slowed down the practicalities of integrating the remote rural residents into the county's political, financial and social development successfully (Evans 1988).

Laos has tropical climate that is influenced by seasonal monsoon rains. The annual temperature ranges from 22° C to 33° C (even higher) year-round in the lowlands while it is much cooler in the highlands where it goes down to 5° C in the cold dry season. The rainy season starts in May and finishes in October where the dry season begins and lasts until April. The dry season is divided into two distinct sub-sections. The cool dry season runs from November to February and the hot dry season from March to April (Lao PDR 2011).

Laos is ranked as one of the countries with the highest proportion of forest cover of the Southeast Asian region but the deforestation rate in the country is high. In the 1940s, 70% of the land area (26, 5 million hectares) was forested. Recently, land area with forest cover is at 41, 5% or below 10 million hectares (Robichaud *et al.* 2009). Data on changes in forest cover suggest that during the 1990s the annual loss of forest cover was around 1, 4% annually, giving an average annual loss of forest cover of about 134.000 hectares (MAF 2011: v). It is estimated that only 7,4 million hectares of current forest will remain if the same rate of deforestation continues, marginally above 30% of total land area in the next 20 years (MAF 2010: 32) and that forest will no longer be thick natural forest.

Despite of the loss of the forest cover, Laos still has an abundance of natural resources. Beneath the surface of the earth, there are 572 known mineral deposits including tin, iron, gypsum, kaolin, coal, zinc, bauxite, plus coal, copper, gold, silver, sulphur, sapphires, barite, rock salt and precious stones (Dwyer 2007: 7-11). The forest comprises a variety of tree species of high economic value. The forest areas are also rich in non-timber products (NTFPs) that provide, as said, an indispensable income to rural communities as well as daily livelihood requirements (Robichaud *et al.* 2009). Furthermore, the natural geographical characteristics of the country make approximately only 6% of total arable land suitable for agriculture (Vientiane Times: 19 December 2011). This figure includes primary the lowlands.

Former Deputy Premier of the Laos, Phoumi Vongcichit views the yet unexploited national wealth as a picture of a man wearing torn clothes and sitting on a box of gold not knowing how to open it. He implicitly suggested that, the man with thorn clothes needed to learn from others how to open the box of treasure in order to enjoy his

wealth, meaning the government can invite foreigners to help exploit the riches providing technical know-how at the same time. This is the explanation for the present FDI taking place in Laos which with commercial plantations and mining now covers about 15% of total country land area. This statement was interpreted in favor of FDI to build the country's capacity to open the gold box filled with natural wealth and to build modern industry in a long run (Evans 1988). Another phrase used by the government is "turning land into capital".

The economy of Laos is relying on its natural resources. The country has experienced significant economic growth, averaging 6.4% Gross Domestic Product (GDP) for the last ten years, albeit growth associated with consistently increasing inflation (rising to 6% in 2009). GDP per capita followed a similar trend, increasing from US\$ 849 in 2008 to US\$ 878 in 2009 (IFAD 2012<sub>(a)</sub>) which mainly derives from major exports including electricity, timber products, gold, copper coffee and garments (BBC 2011). As a result of exposure to global markets, increased foreign investment in the country's abundant natural resources and a blossoming tourism industry Laos has been the beneficiary of rapid economic boom (Loh 2012). As of 2012, national economic growth stood at 8% (Vientiane Times: 29 December 2012) but not all are seeing its benefits. About 30% of total population in Laos still lives below the global poverty line of US\$ 1, 25 a day in a society where most of the population remains dependent on subsistence agriculture (Loh 2012). According to the statistics, Laos remained far behind both the 2009 world average GDP per capita of US\$ 8.000, and the Association of Southeast Asian Nations (ASEAN) 2009 average of US\$ 8.169 (IFAD 2012<sub>(a)</sub>).

Most people in Laos are farmers, with approximately 80% of its population (equivalent to around five million people) depending on agriculture and natural resources for their livelihoods (IFAD 2012<sub>(a)</sub>). They live in a subsistence economy combined with cash cropping which contributes to more than 50% of the GDP (MAF 2010(a): 5). Rice production dominates the national economy employing an estimated 75% of the population providing 37% to GDP (CIFOR 2012).

Despite the richness in natural resources, Laos is dependent for its development on international assistance. Approximately, 9% of GDP and 84% of the government's

capital budget for investment is derived from donor-funded programs (Lao PDR 2010). In 2010, this country received US\$ 413.79 million in Oversea Development Assistance (ODA). One-quarter of the US\$ 15 billion budget for the government's development plan for 2011-2015 is to be funded by donors and development partners (Vientiane Times 17 May 2012). The external support statistics is now adding up a great deal for which Vietnamese and Chinese are given concessions in return by the government, however, the Lao PDR is still financially self-insufficient.

## **2. State and political system**

Lao is a country with a colonial history. It was threatened and invaded by outside powers, in particular the French, since the 18<sup>th</sup> century until the establishment of Lao People's Democratic Republic in 1975. It is general quoted that all multi-ethnic groups in Laos worked together to overcome difficulties and struggles with full sacrifices until they managed to end the domination and oppression of the colonialists and liberated the country (Constitution of the Lao PDR 1994). Heavy support from communist Vietnam helped the liberation and GoL has since been ideologically closely linked to the neighboring country.

Today, Laos is one of the world's remaining communist states. It has only one legal political party called Lao People's Revolutionary Party. The country has a head of state (the President) and the head of government (the Prime Minister) and it is administered through a five-tiered government structure, beginning at the national level and passing through 16 provinces and one prefecture which includes Vientiane capital, 144 districts, 1,097 village clusters (*kum-ban*) and 8,654 villages, according to the National Statistics 2012 (NSC 2003 & NSC 2012<sub>(a)</sub>).

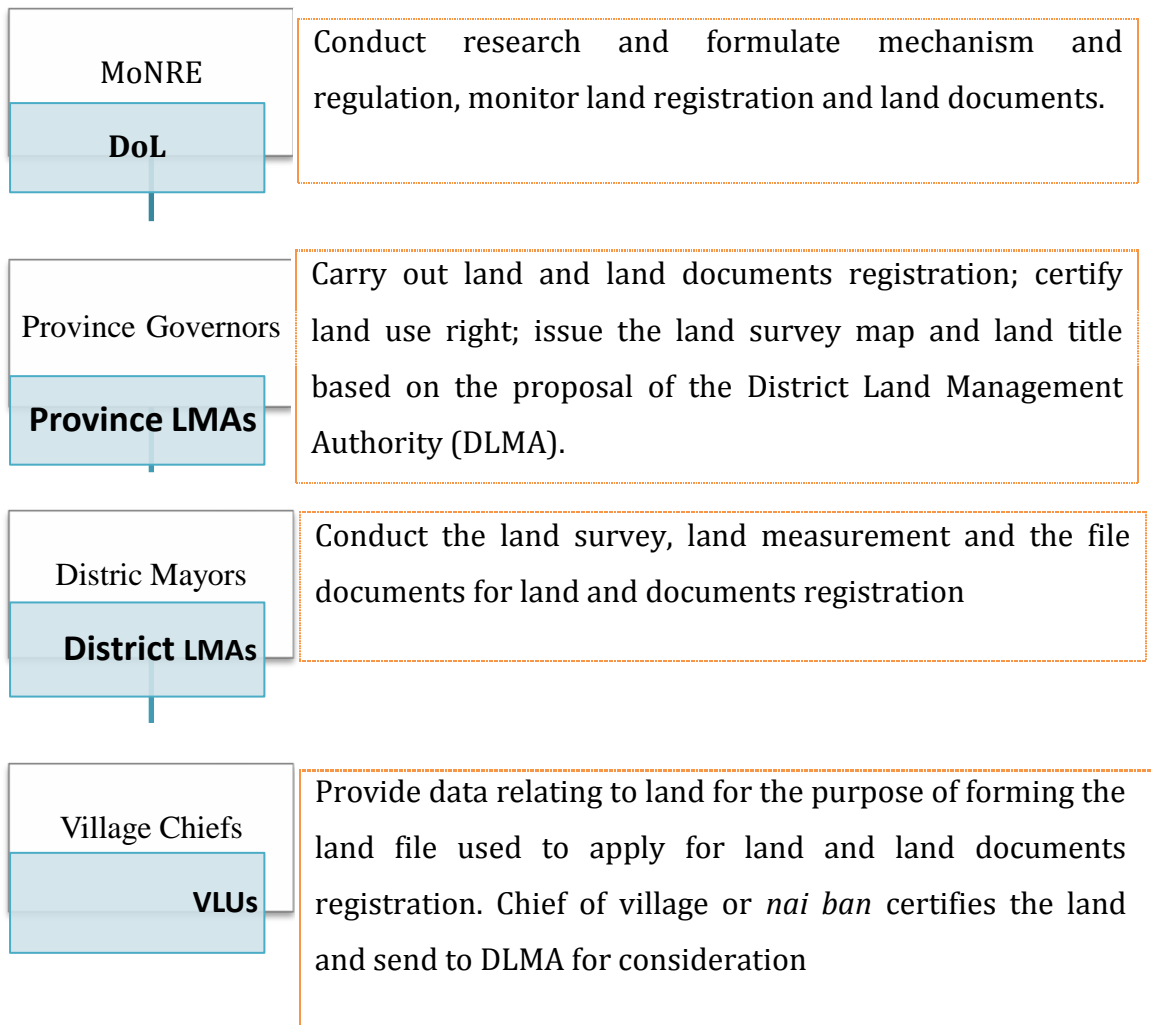
At the central level, the Politburo and the Central Committee determine important government policies and decisions which are discussed and most often approved by the National Assembly (NA). Each province has a governor, each district a mayor, each sub-district village cluster a head of cluster and each village a chief/village headman. They are important representatives of the government in terms of national social and economic development (NSC 2003 & NSC 2012<sub>(b)</sub>).

The village chiefs or village headmen are called *Nai Ban*, in Lao language. The village headmen are elected by the village's population and their position lasts for three years and they can be re-elected. Since villages are administrative territories at the lowest level in the state's administrative hierarchy, the village heads are state officials representing the village and responding to the district administration and to the villagers. Part of their responsibility is to uphold the laws of the state to protect land and forest and mediate land disputes (FAO 2005).

The politics in Laos is based on the belief that people are made up of different ethnic groups and the government has assigned three governmental agencies to work with ethnic minorities in the country. The ethnic groups in Laos make up 49 different groups including the ethnic Lao as one group. The indigenous non-Lao speaking constitute more than 40% of the population. The Lao Front for National Construction (LFNC) is a mass political coalition organization, a union of political organizations, socio-political organizations, and individuals representing all classes, social strata, ethnic groups, religions and Lao overseas. This organization is constituted at four administrative levels with Committee Members at Central level, Provincial or Prefectural level, District or Municipality level and Village level. LFNC is mandated to promote the sense of solidarity and equality among the population irrespective of social status, ethnicity and region for the sake of nation building. It is in charge of planning and implementation of ethnic minority development programs in coordination with the Party, the ministries and relevant committees (LFNC 2012). Under the Party, a mass organization like LFNC is, as said, also based at the village level and its mandate is ensuring social cohesiveness and consensus and it is particularly geared to address ethnic group issues.

The Ethnic Minorities Committee of the National Assembly (EMCNA) works on legal regulation including drafting legislation. The Ministry of Information and Culture (MIC) has two research institutes: the Institute for Cultural Research which conducts anthropological studies and the Institute for Linguistic Research which carries out linguistic research (Yokoyama 2000: A6-8).

**Figure 1: Political structure of Department of Land (DoL)**



(Source: DoF 2006)

The land and forest of Laos is owned by the state exercising eminent domain “on behalf” of the population. This means that all land titles are basically usufruct titles. However, there are different kinds of security of ownership or use rights reflected in the connotation of the different Lao names for title deeds. The state is in charge of managing the land for the whole country in a centralized and uniform way. It created in 2006 the National Land Management Authority (NLMA) under the Prime Minister’s Office, now converted to the Department of Land (DoL) under a new Ministry of Natural Resources and Environment (MoNRE), to be responsible for establishing land policy and a national program of land use planning, and land administration meaning land titling (Barney & Candy 2011: 53). DoL is a line agency with officers down to district level. The government bureaucracy for land administration features a hierarchy of power with

different assigned responsibilities (Figure 1). Based at the village level, Village Land Units (VLUs) are recognized as the most basic level of local land administration, but these units are currently not provided any salary by the government.

Currently, Laos is one of the Least Developed Countries (LDC) in the world. In the UNDP Human Development Index (HDI) 2010, this nation is ranked the 122<sup>nd</sup> country out of 173 countries (UNDP 2011). This ranking gives a very important message to the country to focus in term of development and GoL has laid out its development strategy to eradicate extreme poverty and hunger as its first priority Millennium Development Goal (MDG) by 2015 and to gradually emerge from the least developed status by 2020 (WB 2012). This development goal is also related to other MDGs which include Sustainable Environment that involves effective use and management of natural resources like land and natural forests (Vientiane Times: 5 April 2013).

### 3. Ethnic groups



Photo 1. Traditional houses and living style of Tarieng ethnic people in a remote rural village.



Like elsewhere else in the world, the population in Laos has been increasing. According to the national population census which has been conducted every ten years since 1985, the population of Laos increased from about 3.52 million, to 5.57 million in 1995 and 5.64 million in the year 2005. The increasement then is low in the last ten years and it also shows a change in the country population density from 15 persons per square kilometer in 1985, 19 persons per square kilometer in 1995, and 24 persons per square kilometer in 2005 (Lao Statistics Bureau 2012). This means that the population grew by one million each decade between 1985 and 2005 (UNDP 2012: 38).

Today, about 6.7 million people are found in Laos. Approximately, the population density rate per square kilometers is considered low, 27 persons (Lao PDR 2011). The population is dispersed across the country, with 77% of the people living in rural areas and 23% in urban areas in 2007 (NA 2013). As a nation, the government's ideological aim is that people live together in unity. As a strategy, the government emphasizes nation building but recognizes the ethnic diversity and uses this pro-actively in nation building, for example, when showing documentaries from Liberation War it always includes pictures of ethnic group guerrillas.

The GoL uses an ethno-linguistic system to classify ethnic groups and has established official ethnic names to classify them according to what they are called in Lao. Most ethnic groups have other own names in their own language<sup>6</sup>.

The government uses the word "ethnic groups" as the term for describing the non-Lao language origin of a group. The term "indigenous peoples" is not officially accepted, although GoL has endorsed the *United Nations Declaration on the Right of Indigenous Peoples 2007*, because the word indigenous may generate claims that they were there first and therefore have the right to independence and secession, a claim that would go against any nation building. Nevertheless, the ethnic groups in Southern Laos which belong to the Mon Khmer Austroasiatic language family date back 2000 years long before the Lao speaking groups had moved south into what today is Laos. The Lao speakers arrived around the year 800-900 after Christ. The original Lao speaking

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<sup>6</sup> Katang which are classified as Katang by the government but call themselves *Mubrūam* in their own language

populations are lowlanders cultivating irrigated rice currently make up a bit more than half of the population and are economically, politically and culturally the dominant group in the country (Lao PDR 2011).

In 1973, the government officially classified its population into three linguistic families with 58 ethnic groups. They were Tai Linguistic Family (12 ethnic groups), Austroasiatic Linguistic Family (35 ethnic groups), and Miao-Yao and Tibeto-Burman Linguistic Family (11 ethnic groups) (Chazée 2002: 5). These many groups were then categorized into three major national citizen grouping dependent on elevation: Lao Loum (lowland Lao citizens), Lao Theung (midland Lao citizens mostly Khmu and other Mon Khmer speaking groups) and Lao Sung (highland Lao citizens, mostly Miao and Yao).

Tai minorities were classified by the government as Tai-Kdai Ethno-Linguistic Family or *Lao Loum* (lowlanders) under Phutai ethnic group. Their names as lowlanders referred to their residential location which was mostly situated on lowlands, valleys and low plateau of approximately between 200 and 400 meters altitudes. This ethnic classification criterion did, however, not always fit with the reality. Tai Daeng in Houaphan province, for example, reside at around 800 and 1.000 meters altitudes but belonging to the Tai-Lao language groups and they were always called Lao Loum or lowlanders by outsiders (Chazée 2002: 5-6).

The terminology of Lao Loum, Lao Theung and Lao Sung was abandoned at the *Conference on Ethnic Minorities* in 1981. The major reasons for this includes: “the government has been promoting solidarity and unity among all the people of the nation; and these distinctions do not reflect changes that have taken place in habitat and agricultural production”. LFNC then developed the system of 47 groupings as the official classification of ethnic minorities and it was adopted for the Lao census in 1995 (Yokoyama 2000: A6-1). Later, the LFNC reviewed the system and added two more groups which were legislated by the government as official system of ethnic classification in 2000. Accordingly, this official system of ethnic classification has been used (Table 3).

**Table 3. Classification of ethnic groups based on ethno-linguistic families**

<b>Ethno-linguistic Families</b>	<b>Ethnic Groups</b>
Tai-Kadai (8)	Lao, Lue, Nhang, Nyouan, Phou Thay, Sek, Tai, Tai Neua
Mon-Khmer (31)	Bit, Brao, Cheng, Jrou, Harak, Katang, Katu, Khmer, Khmou, Kri, Ksing Moun, Lamet, Lavy, Makong, Moy, Ngkriang, Ngouan, Nha Heun, Oe Dou, Oy, Pacoh, Phong, Pray, Sadang, Sam Tao, Souay, Ta-Oy, Tarieng, Thène, Toum, Tri, Yè
Sino-Tibetan (8)	Akha, Hanyi, Ho, Lahu, Lolo, Phou Noy, Sila
Hmong-Mien (2)	Hmong, Lu-Mien

(Source: Chamberlain 2008: 68)

The Government now uses the term Lao, Khmu and Hmong. As shown above, they were officially arranged under 49 broad ethnic groups consisting of approximately 200 sub-ethnic groups with four different ethno-linguistic categories: Lao-Tai (50-60%), Mon-Khmer (24%), Hmong-Mien (8-10%), Sino-Tibet (3%) (Andersen 2011: 1). Here, ethno linguists classified Tai Daeng as Lao-Tai under the first ethno-linguistically category (Yokoyama 2000: A 6-1).

Hmong are organized under Hmong–Mien ethno-linguistic category consisting of three original groups. Traditionally, they wear different dominant colors, patterns of clothing and headdress and this traditional colorful costume is used as part of ethnic classification criterion giving names to sub-groups of Hmong as white and stripe (*Hmong Khao and Hmong Lay*); green and red (*Hmong Khiew and Hmong Leng*); black and colors (*Hmong Dam and Hmong Si*). Each of the separate original group comprises approximately twenty clans<sup>7</sup> or *Saengxao* in Lao language (Vang 2010:12). The color and pattern of dresses and headers are used as a strategy for not only other ethnic groups to perceive Hmong but it is also used by Hmong themselves to indicate who they are and to which Hmong group or clan they belong . This institutionalized image may change although Hmong will keep calling themselves Hmong. This is related to *Self*.

<sup>7</sup> Supported by United Nations Development Programme (UNDP), there was a study on the Customary Legal practices of Hmong Ethnic in Laos in 2010 by Nengyelor Nawher and Loongyang who reported that the 22 Hmong clans are: *va, chang, lee, loaw, her, xong, ya, mure, tor, vee, kee, kree, pha, ka, kong, ha, xeng, chao, chee, fa, hee, yeng* (Nengyelor Nawher and Loongyang 2010: 4).

In his lecture on *Migrations and the Image of Belongings*, Asle Hogmo (2010) presented from the view point of Max Weber that “Self” is understood the basic qualities that make one person different from others. These qualities can be uniqueness which is the source of consciousness or the feelings, thoughts and actions of an individual to which they are ascribed. The quantities are tied to biological and social existence and through time may endure and belong to the same Self (Hogmo: 20 October 2010).

Hmong get their knowledge, skills and value from their parents and socialization. It can be seen in daily life in Laos that they speak their own language when they are in their private sphere but the language they use in public sphere may be Lao. Many of the Hmong, when mixed with other ethnic groups in the society, do not dress in their traditional clothes which they wear in their special occasions including Hmong New Year Festival (*Boun Kin Chieng*). This shows that, in this case, Hmong use language and dressing custom to show their belonging.

Because of having own languages the ethnic groups are officially now termed “non-native Lao speakers” making up, as said, almost half of the country population (Andersen 2011: 1). The government purports that there are more than 230 languages or dialects spoken by the various ethnic minority groups representing richness in linguistic diversity (Phanthanousy & Sayakoumane 2005: 3-4). Without ability to speak the official Lao language some of these people are at a disadvantage especially when they come into contact with the government officials who may as well not understand the language of the ethnic minorities. Many ethnic groups know the language of neighboring ethnic groups rather than Lao. In the south, many Hmong people speak Hmong, for instance. In most non-Lao speaking communities including Hmong, the village headmen were selected because they could communicate in Lao.

Generally, the ethnic groups without knowledge of Lao language face difficulties to receive information about the government development policies so that services and development activities brought to these communities are not very successful because of flaws in communication. Because of this the government promotes rural education through sending teachers to remote rural areas and helping villages to build schools to allow children to have access to formal education and to learn Lao. Several of the teachers who work in rural schools have ethnic language skills and become main

communicators supporting the communication between the government and NGOs and villagers.

The government also promotes employment of ethnic minority persons prioritizing those with non-Lao language skills for particular jobs. Thus the ethnic minority government staff can be seen in LFNC especially at district level. When the government or international development projects organize meetings at villages where most villagers have limited understanding of Lao, language facilitators, often village headmen, are selected in order to facilitate the communication. Sometimes district LFNC staffs help with the language facilitation. This indicates that the GoL acknowledges the communication issue and attempts to tackle with it.

The new official classification of ethnicity means that ethnic Lao are the ethnic majority and the rest of the ethnic groups are minorities. The choice of terminology by different government departments or by the ethnic groups themselves can also serve as a strategy to gain personal or collective political or economic advantages (Nagel 1994).

Ethnic identities may change according to circumstances and the ethnic people can use identity markers strategically. Thus, Khmu persons living in Vientiane may call themselves Lao and not Khmu to avoid any social stigma. New constellations emerge especially when people come together from different groups as migrants or when put together in resettled villages. Here children may adapt new names or dress differently or use new languages abandoning those of their origin. This construction of identity adapts itself to circumstances.

Historians have estimated, as said, that the Lao people came into what is Laos around the 9<sup>th</sup> century from the north. Available literature establishes that at that time already other ethnic groups were living there, the Mon-Khmer Austroasiatic language group of, for instance, the Khmu people who today constitute the largest non-Lao ethnic group in the country. All over South East Asia, the Mon-Khmer speaking groups were the first to live in this region, including Myanmar, Laos, Thailand, Cambodia and Vietnam. The Tai and Lao speaking groups that today are found in Myanmar, Thailand, South China, Laos and Vietnam came later. The Lao government still this day recognizes the primordial

identity of the Khmu being linked to the land as they were the “first founders” and the government invites the Khmu to assist in state rituals to establish good relations with the spirits of the land (Evans 1994).

Currently, the Lao government plans to integrate customary practices of multi-ethnic groups in Laos into the formal justice system as this is believed to be a means to make the country's laws more coherent and contribute to improvement of the country development's status (Vientiane Times: 3 December 2012). Concerning this, the government opens for support to carry out studies on ethnic groups in order to bring about more understanding on their culture and general background and Hmong and Tai Daeng ethnic groups are presented below.

### **3.1. Hmong**

Hmong practice shifting cultivation or rotational farming in relatively high altitudes and some irrigated paddy in upland valleys (Vang 2010:22). In Houaphan province where fieldwork of this study took place we find several Hmong communities which I studied along with Tai Daeng communities. Below I quote a number of studies on Hmong culture and social organization and afterwards I describe the Tai Daeng culture.

It is believed that the origins of Hmong are in China where stills Hmong communities are found as in Thailand and Vietnam (Nawher and Loongyang 2010: 6). There are many myths about their origin such as perhaps originally from the Mesopotamia region from where they migrated across the northern part of Russia, Siberia to Mongolia and the central region of China. They had lived in this region as hill tribes for at least 2.000 years, according to Cheh (1947) and Yang (1995) cited in Vang (2010: 5).

Today the Hmong communities in Laos are found in the uplands often above 1000 meters while the Mon-Skmer groups are found in the middle hills. Scholars examining the evolution of states in S.E Asia have recently suggested that many upland ethnic peoples of South East Asia may have lived in lowlands before but strategically moved upland to avoid the state and its demands for labor (Scott 2009: 22-24). There is thus a belief that there were three waves of migration of Hmong from China in 1300s. First, they migrated to Laos through Vietnam and resettled in seven provinces in the north (Houaphan, Xiengkouang, Bolikhamxai, Phongsali, Luangphrabang, Oudomxay and

Luangnumtha), another wave came to Xayabuly province through Myanmar and Thailand, and the rest lived along Laos, China and Vietnam borders (Nawher and Loongyang 2010: 6).

In the eyes of the surrounding society the image of the Hmong rests on stereotypes. The Hmong are patrilineal (like Chinese), the men decide and women have few rights and are not to move around outside the village and therefore Hmong women are the ones among ethnic groups in Laos that have the least knowledge of Lao language. The patrilineal structure ensures and perpetuates the role of men as transmitters of property rights and rules of inheritance. The internal rules of the Hmong often are at variance with official laws (GRID 2004: 41).

Customarily, the Hmong community has elders, clan leaders, family heads, and medicine men or shaman. Elders are considered as top informal leaders who control the young strongly. They do not only arrange or forbid marriages as it must follow clan rules (people from the same family/clan are prohibited to marry each other) and they also take care of cross-cutting issues in the village. Hmong clan links across national borders



Photo 2. Hmong girls in their traditional dress

with Thailand, China and Vietnam. Each clan leader looks after his clan members, each family head is responsible for his family members and shaman heals sick people (Nawher & Loongyang 2010: 12).

A study on the *Customary Laws of the Hmong Ethnic Group* carried out in 2010<sup>8</sup> showed that the customary principles for Hmong way of life are honesty, straight forwardness and hardworking. Any biased conduct against customary rules is considered disrespect to the elders.

Specific words for ownership land do not exist in Hmong language. To them, there is no common land, collective land or private land. Land means land in general and it is the property of all and everyone has the right to utilize and claim particular areas temporarily for cultivation where they prefer. The UNDP study on customary law indicated that Hmong do not have customary boundaries over natural resources as long as population density is low. There is no buying or selling of land (Vang 2010: 22). In their practice of shifting agriculture, Hmong leave the cultivated plot fallow after one year and work on a new plot. Other persons may use the land that is left fallow later. The set of customary law included that the first cultivator to the land has the right to it and that land is inherited through clan and patrilineal system, from father to son of the same family. This practice is observed to be changing especially in a village or community that has been influenced by the outside factors.

Hmong may have land types according to where they live but the land types may not be legally owned. They could be related to main vegetation, amount of land, and many other things. In this research I will find out if the UNDP study result, as mentioned above, covers all cases of Hmong.

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<sup>8</sup> In 2010, the United Nations Development Programme (UNDP) supported the Legal Sector Master Plan Support Programme to conduct studies on the Practice of Customary Law of all officially recognized ethnic groups known to reside in Laos. The findings of the study demonstrate that customary law play an integral role in the legal structure of Laos, as each ethnic group has its own customs and practices to resolve local conflicts including conflicts over land. This reliance on traditional rulings was found to be particularly prevalent among communities living in remote areas (Vientiane Times: 3 December 2012).



A prevalent image of the Hmong is furthermore contradictory with the result of the study on customary by Vang (2010) that Hmong persons are entrepreneurs getting the best out of opportunities including claiming land of others or buying land in the informal market if land has a price to grow cash crops (Andersen 2011: 4) and use pesticides to make profit.

In general, Hmong is seen to slow down the development process in Laos. Traditionally they have been known by the Lao society as opium growers as well as opium users. Because Hmong in Laos live in the highlands and many of these places, not to mention about land titles, are far away from the government in terms of control of opium production on one hand and provision of development services on the other. In these circumstances, they use the advantage of their own local resource system to reap benefits in terms of income for their livelihood. As stated by James C. Scott who explored Southeast Asia in order to understand why hill people live in rugged terrain away from the civilization:

*“Particular ethnic groups often settled within a narrow range of altitudes to exploit the agro-economic possibilities of that particular niche. The Hmong have tended to settle at very high altitudes (between one thousand and eighteen hundred meters), and to plant maize, opium, and millet, for example, that will thrive at that elevation. For rice, swiddening or slash-and-burn agriculture seems to be only an option. This farming method requires clearing new fields and occasionally shifting settlement sites. This specialization by altitude and niche within the hills leads to scattering”* (Scott 2009: 18).

Many Hmong have used opium as a source of cash and savings as well. They also use it to treat various diseases, especially in areas where access to health care and essential medicines is extremely poor. At present, opium is a source of cash (Scott 2009: 18). Production of opium poppies is determined by Hmong culture, agro-economically possibilities and poverty. The environmental requirements include water, climate, and high altitude as most is cultivated in isolated mountainous areas. It must be noted that by present day legislation this production is illegal and the Lao government has been trying to eradicate it.

Hmong opium growers are seen as the country's most marginalized and poorest communities where upland rice shifting cultivation is still widely. These highland shifting cultivators find it much easier to travel far across high mountains with opium

on their back to markets where small weight and volume of the product have higher value and higher price, especially when it is compared to rice, pumpkin and vegetables. Currently, many opium traders from outside the villages approach opium growers in their villages to buy opium supporting more opium production particularly when it is seen only as an alternative to earn money (Kramer & Woods 2012: 14).



Photo 3. Poppy opium field in Laos. Source: [www.DANGNGO.com](http://www.DANGNGO.com)

The government has been trying to eradicate its production and use for decades. In the 55th session of the Commission on Narcotic Drugs in Vienna (Austria) in March 2012, Chairman of the Lao National Commission for Drug Control and Supervision (LCDC), Soubanh Srithirath stated that opium is mostly produced in the hills and is illegal because it affects the national economy and causes challenging social issues because of drug addicts. Laos has gradually been able to control to a large extent the opium poppy cultivation and significantly reduce opium poppy abuse. In 1998, the GoL claimed that the poppy cultivation areas were brought down by 94%, from 27.000 hectares to 1.500 hectares when the country declared itself to be virtually free of the crop. Opium addiction was reduced by 80%, from 63.000 to 12.000 people between 1998 and 2006 however it again increased from 1.500 hectares in 2007 to 4.100 hectares in 2011

(Vientiane Times: 22 March 2012). The figures stated could partly be controlled so that they fit the government's aim to reach but the truth can be questionable.

In 2012, the opium price was reported to be at US\$1.800 per kilograms which was considered a good price for the poppy growers. Consequently, poppy cultivation in Laos soared to 6.800 hectares and the number of people engaged in cultivation rose in parallel with up to 38.000 "opium growing households" in 2012 (Straitstime: 13 October 2012). According to the United Nations Office on Drugs and Crime (UNODC), the province with the largest area under poppy cultivation was Phongsaly, with Houaphan in second place. In 2002, 6.092 villagers were officially recorded to be opium addicts in Phongsaly province which made it the highest opium consumer province in the country (Vientiane Times: 10 April 2013). Chairman of LCDC, Srithirath further stated that opium poppy abuse not only is an overwhelming burden on the country's under-resourced treatment services where drug users are detoxified, the abuse also puts burden on families and communities (Vientiane Times: 22 March 2012) prevents the Lao government to carry out its development project successfully.

Laos is a member of Association of Southeast Asian Nations (ASEAN)<sup>9</sup>. Among the members of this association, the Lao government is committed to accelerate national economic growth, social progress, support human rights and cultural development and to promote regional peace. To be free from opium production is an agreement made by all association members as a means to bring about an achievement of their development goals. In relation to this, GoL has set a target to bring down the opium growing statistics in its country by reducing opium growers and dealers including Hmong. This envisaged development progress was presented at the ASEAN, annual meeting on the "Realizing a Drug Free Asian by 2015" in Phnom Penh, Cambodia 2012 (Vientiane Times 22 March 2012).

Being a member of ASEAN, it is clear for a country like Laos that it has an obligation to follow up on targets, but this seems to be a challenging task for the government to implement. Most opium poppy fields are concentrated in remote areas where access is

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<sup>9</sup>Current Association of Southeast Asian Member Nations are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam

difficult for government to destroy the crops. This situation creates an opportunity for some people especially opium growers to perceive that the government destroys their source of living. At the same time, the government also thinks that there are groups of people who pay villagers to grow the crop for them and they are declared immoral.

Poppy growers will only turn away from opium cultivation if an alternative livelihood is available but the government has limited budget and to create alternative jobs for villagers it needs international funding assistance (Vientiane Times: 10 April 2013). Meanwhile, the opium growers are themselves moving further into increasingly remote land to avoid their crops being destroyed by authorities (Straitstime: 13 October 2012).

### **3.2. Tai Daeng**

Tai minorities in Laos including the Tai Daeng are recorded to have migrated from Yunnan, Guangxi in China and northern Vietnam to the south and reached Laos in the 9<sup>th</sup> century. This migration of Tai into Laos happened much earlier than the migration of Hmong into this country.

Arrival of the Tai ethnic group in what today is Laos has influenced the agricultural landscapes due to the fact that they were familiar working with irrigated rice. It is believed that they resettled in the lowlands and valleys at the foot of the mountains near the rivers and conducted agriculture with irrigation. Also, Tai ethnic people cultivated rice by using draught animals (Chazée 2002: 14-15).

Like Hmong, there is a common view of the Tai Daeng that their family ties are strong where family members live together with mutual respect and support. Young people are taught to respect elders and sharing (for example, labor, and land and food) is a core aspect of living together. Tai Daeng believe that they talk openly rather than keeping problems or conflicts unsolved.

Tai Daeng also has a clan system but it is not as pervasive as the clan system of Hmong. Tai Daeng is patrilineal but a young married couple may live with the wife's family until they can establish their own home. Although the father is considered the head of the

family, husbands and wives appear to have a harmonious relationship that they talk to each other before an important decision about the family matter is made.

Like Hmong, most Tai Daeng believe in animism that means that they think they are spirits in the house, land, forest and rivers. In many villages, there are shamans who heal sick people through communicating with spirits of the dead as well as the spirits of nature. In Tai Daeng villages, there are also healers who use traditional medicines in the forests around them to heal sick people. Though still exist, healing ill people through traditional ways have not been as important as before probably because villagers are now better-connected to hospitals through improved roads.

Most of the Tai Daeng villagers live on small valley farms in rural areas. Through rain-fed system, they grow rice in the upland and in the valley or in the foot of mountains using water from small rivers. Every year, Tai Daeng celebrates a New Year Festival in order to show respect to the spirits that, in their belief, they are blessed for productive



Photo 4. Tai Daeng women are sharing traditional Lao wine during the celebration of their New Year.



agricultural production results and at the same time spirits protect villagers from natural disasters and diseases, for instance.

Common for the Hmong and Tai Daeng is the feature of customary conflict resolution through informal leaders. Often conflicts are solved in an acceptable way, meaning conflict parties agree on the solution. For example, families that raise livestock may cause destruction of another's plantation and must pay compensation. Communication among the two conflicting parties take place in front of the village's informal leaders to ensure the situation of each other is understood by concerned parties and to conserve a god relationship which the village sees as utmost important for the community's moral integrity.

The culture of Hmong and Tai Daeng is no doubt influenced by development initiatives of the government. This happens in development projects like investment in land for plantations, dam construction for hydroelectricity, forest management and exploitation for timber, and road infrastructure projects, require a community to be resettled reducing access to natural resources like land and NTFPs to support their livelihood. Multilateral bank-assisted projects like those of World Bank (WB), Asian Development Bank (ADB) are required to design prior safeguards to protect the customary rights of ethnic communities to ensure that they are not affected by the projects in terms of "loss of access to land, other assets, natural resources, and/or potentially adverse livelihood impacts from restrictions to access to resources" (World Bank 2005). In line with this most development agencies promote a participatory working approach to define development projects.

#### **4. Poverty issues**

Life of rural people in Laos is often subject to poverty and it is not surprising that poverty is a topic in public debate. This section introduces the government's poverty classification criteria and includes a presentation of government measures to combat poverty as well as provides an explanation of how, on the other hand, the government's exaggerated concessions to foreign direct investments cause loss of land to rural communities and thus cause poverty. The causes and impacts of the poverty of ethnic

peoples shall be discussed and at the end how the national poverty issue affects the country's image at the international level.

As part of the official poverty reduction goals of the government and partly GoL established criteria to classify the economic status of people in the society in order to define measures for economic development. The criteria have varied over the years and basically operate based on annual income, a criterion which is not fully compatible with the situation of subsistence farmers whose income is limited but who still have enough to eat from own sources. During the last couple of decades, the Lao government defined poverty as not having enough food or adequate clothing, not having permanent housing and lacking access to health, education and transportation services. Any family that, for instance, has a lack of food to eat for some months in a year, live in a poor house, does not have money to support children to go to school, and does not have money to go to hospital when family members fall sick was seen by the government as in poverty (GoL 2006: 4). What is seen by the government as poor may further more relate to cultural practices of some ethnic groups including gender issue and language problem.

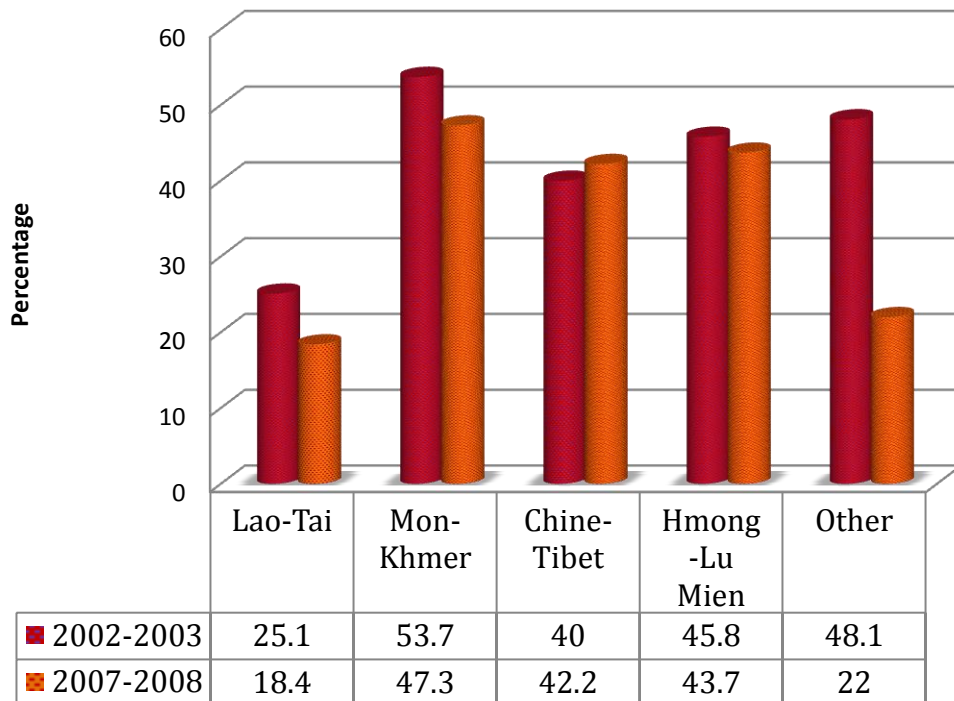
In recent times, income has been used to measure poverty at two different levels. Households are categorized by the government as poor if they are urban households and earn only up to 240.000 kip (30 US\$) or if rural households earn 180.000 kip (24 US\$) per person per month, respectively (PM Decree 2012: Article 3). In reality, persons in many ethnic families in rural areas earn less than 24 US\$ per person per month.

Poverty in terms of lack of income is concentrated in remote rural areas mainly in mountainous regions where ethnic minorities are heavily over-represented with rates of 46% - 50%. These ethnic groups experience significantly low living conditions in terms of, among others, food security, disposable assets, and access to resources and opportunities. During the last decade, around 33% of total population of the country lived in poverty and more than 86% of these were rural (IFAD 2012<sub>(a)</sub>).

Out of all poor in Laos 90% of the rural poor comprise the ethnic minorities most of whom live in uplands. In the lowland, the poorest groups are those who have been resettled from mountainous regions by the government as they lost their assets or conditions of production and were not able to command the same assets when

resettled. The higher incidence of poverty in remote rural areas where ethnicity is more diverse is increasing, according to the report of UNDP 2001 (Wells-Dang & Simmala n. d.: 18). The poverty analysis undertaken for the International Food and Agriculture Development (IFAD) Country Strategic Opportunities Programme (COSOP) 2011-2015 showed that land and resource concessions for foreign direct investment have hampered livelihoods of ethnic minority. The predominantly ethnic province in the south, Sekong has a poverty rate of 47% (53% in rural and 29% in urban) (IFAD 2012 (a)).

**Chart 1. Percentage of Poverty Evidence by Ethnic Language Categories**



(Source: MPIDS 2010)

Shown in Chart 1 is the percentage of the national incidence of poverty by ethnic groups in two different periods, 2002-2003 and 2007-2008. Compared to the ethnic majority group of lowland Lao, the ethnic minorities have experienced far more poverty hardship in the first period. Later, in official statistics 6,5% of the Lao-Tai and 6,4% of the Mon-Khmer speaking poor were cleared from the national poverty list. Only 2,1% of Hmong-Mien managed to escape from poverty status and Chinese-Tibet language groups faced even more difficult living condition (MPIDS 2010).



Poverty status of the household has an impact on the development image of the village and district as government officers are meant according to political ideology to deal with combating poverty. If a village has more than 50% poor families or households is termed a poor village (GoL 2006: 4) and a district where 51% of total number of villages fall in the category is a poor district (PM Decree 2012: Article 6). Nationwide, 72 districts were officially classified as poor including 47 very poor districts (NSC 2003). Here the poor made up nearly 77% of its citizens and they were marked in red on maps (Map 2) to indicate priority development areas (GTZ 2009: 7-8). In Houaphan, there are eight administrative districts and only one district is not officially marked as poor (NSC 2003).

Absolute measures of poverty based on income or consumption found in government statistics are attractive, as they are easily understood by policymakers and the wider population. They also provide a relatively easy way to gauge poverty levels and to measure success in poverty alleviation. The list of 47 poor and priority districts was prepared in 2003 in order to provide them development resources (Andersen 2012<sub>(a)</sub>: 6). However, the definition of poverty by rural communities themselves would include limited land for agriculture, reduced availability of NTFPs, and a lack of family property such as labor and cattle or the distance from communities to the government development services like school, markets or hospitals. It is therefore somewhat different from the government criteria.

The national poverty rate has gradually dropped but remains high. Statistics showed that poverty is pervasive in the uplands, estimated at around 44% compared with 28% in the lowland areas (UNDP 2012: 16) and there were approximately 1.3 million rural poor in 2010 (IFAD 2012) and almost 39% of the population is estimated to be below the national poverty line (IFAD 2012<sub>(a)</sub>). It is projected that the figure of poor will remain at 22% of the total population by 2012 (Vientiane Times: 21 June 2012).

Many different factors have caused poverty but it generally has a direct link to food availability and thus access to land for agriculture. Despite much of the country's land is currently unused, mountainous terrain with river valleys being the most densely populated areas, the paddy fields in such areas are increasing being sold or reclassified.

The majority of rural upland communities are constrained by bio-physical factors to find land suitable for agricultural production with irrigation that yields better harvests than rain-fed upland rice. Access to land lacks security as the rural poor have no title to the land they use (Vientiane Times: 19 December 2011). Most rural families grow food on what the state calls “state land”. This includes land areas that the government officially does not allow for agricultural activities for environmental reasons and where it uses its power of eminent domain of the land to prevent community access. In this case, farmers may lose their cultivated areas when they are claimed by the state.

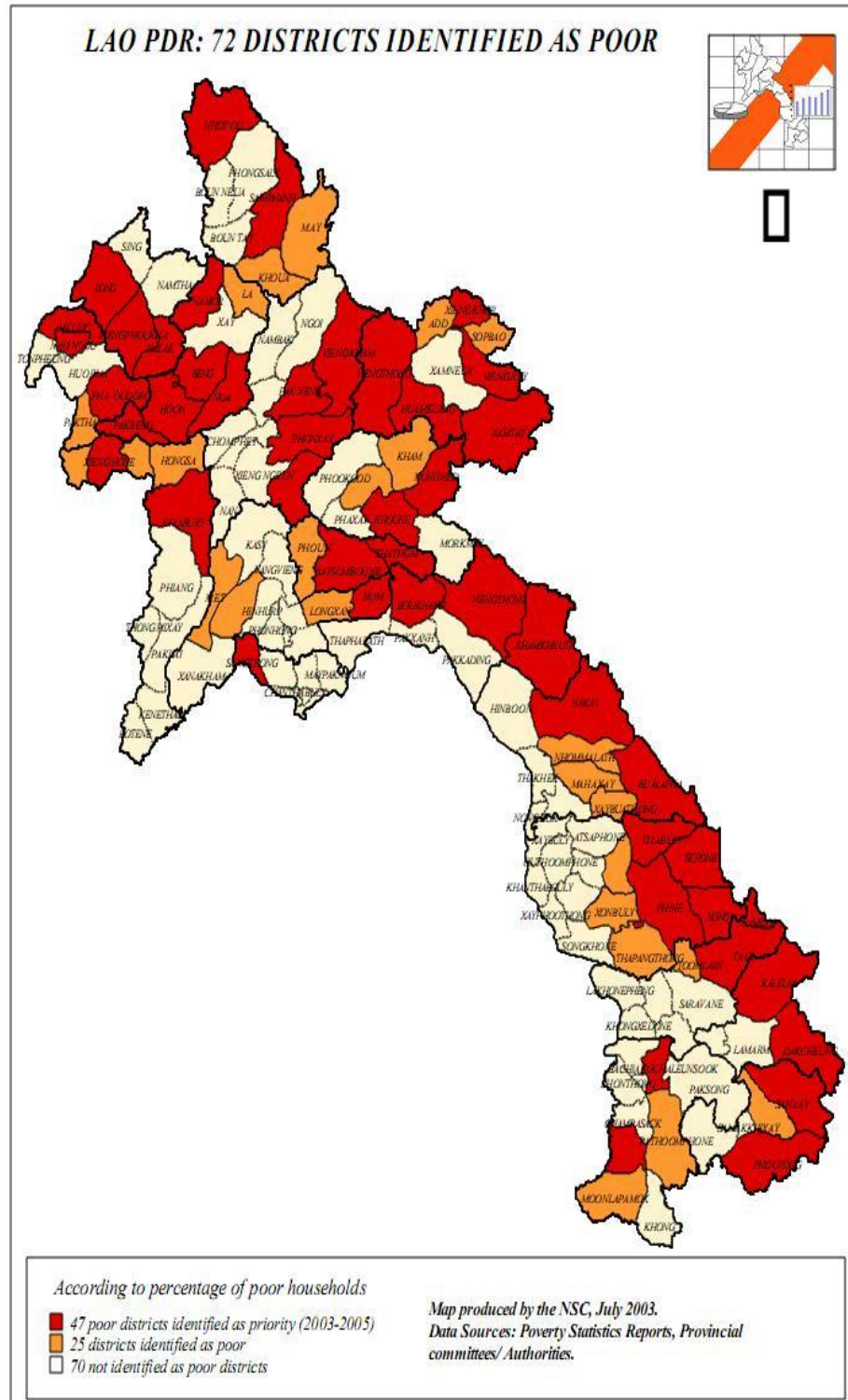
Many rural households lack access to land and landless rural households in Laos are estimated to be 15%, half of which engage in sharecropping or renting land. About two-thirds of these landless farmers subsist below the poverty line (UNDP 2012: 4) including those families with a lack of labor force to invest in land in rural areas.

Land is a valuable asset for all rural ethnic groups in Laos as it is indispensable for livelihood. Villagers cannot produce enough food for their own consumption when they have little land or no land. Only a few households in rural poor communities produce enough surpluses to sell. A Participatory Poverty Assessment (PPA) conducted in 95 villages in the 47 priority poor districts across the country by Asian Development Bank (ADB) revealed that the constrained access to agricultural land, especially for upland rice production had been caused by the government’s attempts to resettle upland communities to lower areas, consolidate several villages into one with the ultimate goal of “eradicating shifting cultivation” (Chamberlain 2007: 3-5).

In the agricultural and forestry sector, FDIs have over the last decade been welcomed to Laos. Nearly 60% of the investment is related to the country’s environment and natural resources threatening the natural resource-based of poor communities. The government has overruled traditional use of land and forest resources and this process has happened in a way that disenfranchised many rural communities when land was earmarked for various development activities including mines, plantations, hydropower development, roads and logging. This business investment leads to deforestation and a loss of land to rapid-paced land privatization for plantations and it takes away the customary right of access to land for agricultural production and reduced availability of

wild products that are freely collected by rural communities in the forest for daily subsistence or marketing (IFAD 2012 (a)).

**Map 2. Seventy-two districts identified by the Lao government as poor.**



(Source: NSC 2003)

The government's practice on boosting its economic growth through FDI seems to have a negative impact on local people in the way it is carried out at present. Families that lose their land to concessions are obliged to find new ways to survive, possibly as wage laborers dependent on the plantation of FDI. Transforming agricultural subsistence economy into cash economy is difficult partly because farmers in Laos have low education level and low modern technical skills (Asian Trends Monitoring 2012: 3) which hinder an opportunity to get employment in the business sectors.

Poverty issues were raised in discussion during the 6<sup>th</sup> Lao Research Network Conference in Vientiane in December 2012. An economist at the Economics and Management Faculty of the National University of Laos (NUOL), Bounleuth Vannalath noted that rural poverty is much more severe than urban poverty. People living in rural communities still lack basic needs including food, health care and education for children and they have benefited insufficiently from the current economic development. Vannalath stressed that investment in rural communities has not really promoted any job opportunity for them (Vientiane Times: 28 December 2012).

Many rural poor families live with rice shortage for three to four months, extending to a maximum of five or six months or more in some years (Bartlett 2012: 14). Poor families spend what they have on food particularly to buy rice. In the Comprehensive Food Security and Vulnerability Analysis (CFSVA) Community Survey 2006, it is noted that poor households spent 75% of their resources on food (WFP n. d.).

Rice is expensive especially when it is scarce, often prior to the new harvest season (in August-November) and the poor are affected hard. Based on the National Consumer Price Index (CPI) of the Lao PDR, one kilogram of husked or polished white glutinous rice cost 5.000 kip in 2010. This figure increased from 6.000 kip per kilogram in 2012 (NSC 2012<sub>(b)</sub>) and to 10.000 kip in 2013 (Vientiane Times: 13 April 2013). The price of rice continues to raise so poor families with an income of less than two dollars a day cannot balance other basic needs including education for children and family health care.

Food shortage impacts on the health of the poor especially women and children. The status of a woman's health and nutrition is both important to her own well-being and the well-being of her children. Maternal mortality in this country is amongst the highest in the Southeast Asian region. Two mothers die each day from causes which are preventable or treatable (UNDP 2012: 18). Also the number of stunted children in Laos is critical. Recent estimation of World Food Program (WFP) showed that every second child in rural areas in Laos is chronically malnourished. These statistics have not changed in ten years (ABC 2012) so only about one-third of the people living in rural areas are truly 'food secure' (ADB 2010: 4-83). The stunting rates are extremely high across most parts of the country with an average of 40%. The national wasting rate stands at 6% and the levels of micronutrient deficiencies are also high, over 40% of children under five and 63% of children under two years old suffer from anemia (WFP 2011:6). In 2011, the proportion of rural children under the age of five whose potential growth is hindered by malnutrition reached around 48% and the statistics was higher in rural areas than in cities. For example, only about 16% of children of under five years old were recorded as underweight in cities in 2011, compared to 29, 30% in rural areas (Vientiane Times: 29 December 2012).

As shown in Table 4, the highest levels of stunting were found among the Sino-Tibetan groups (62%), followed by the Austro-Asiatic (56%) and Hmong-Mien groups (54%). The Lao-Tai have lowest prevalence (42%), being which is significantly lower than the Austro-Asiatic and the Sino-Tibetan (WFP 2006: 101). It is estimated that the figure of children below normal weights and stunted will be as high as 37% of total children in the country in 2015 (Vientiane Times: 21 June 2012).

**Table 4. Percentage of nutritional status by ethnic groups**

	<b>Lao-Tai</b>	<b>Austro-Asiatic</b>	<b>Sino-Tibetan</b>	<b>Hmong-Mien</b>
Stunting	42,4	55,5	61,9	54,4
Underweight	28,6	36,1	39,8	25,8
Wasting	8,6	7,6	6,3	5,2

Adapted from (WFP 2006: 101)

Poverty furthermore limits an opportunity for rural poor children to have an access to education. Despite the overall primary education for children between six to fourteen years old is free, the costs associated with uniforms, stationary and contributions are estimated to be from around 120.000 kips to 380.000 kips per child per year. This is a constraint for many poor families to send their children to school (UNDP 2012: 11). In some families, children have to help their parents to find food either through cultivating agricultural crops or collecting some wild vegetables in the forest or catching fish in the river. Many of these children, especially females are also responsible for taking care of their young siblings to allow their parents to work harder so that they can seek for food to survive. Additionally, the country's topography, poor road, and poor transport networks means that about 20% of villages in Laos do not have schools and only half of primary schools offer a full five grades. The long distances to school cause parents' fear for their children safety (UNDP 2012: 12).

Ethnic minority people, especially women dominate the national illiterate population rate. Ethnic minority women illiteracy comprises 70% and most of them cannot speak the national language (IFAD 2012 <sup>(a)</sup>) which makes them disadvantaged in communities in terms of leadership and opportunity. Poor language and numeracy skills often results in difficulty in accessing information. Language problem restricts many women of ethnic minority groups to attend public meetings, make decision in civil life, as well as access health and financial trainings. They are also restricted in communication with government officials, most of whom do not have ethnic language background and many of them apply a communication technique that is top down and which does not fully encourage ethnic women to share their experience that may be important to consider in terms of helping them to improve their living conditions.

Agricultural and wild natural products are inseparable from everyday life of most rural communities especially those residing in the uplands in Laos. The agricultural and natural forest products sometimes provide rural people enough not only to consume directly but to earn cash income and this makes possible an exchange with necessary basic needs farmers cannot grow in their land.

Rural poor families grow cassava, corn and various kinds of roots on the agricultural land for their family consumption. The poor eat cultivated crops and collected wild products as supplement to combat rice shortage or mix with rice. Where agricultural land is limited or taken away by concessions and the forests have disappeared the living conditions for the poor are at risk.

Most poor families in rural areas rely on wild products as a main strategy to deal with annual rice insufficiency. They gather ferns, berries, nuts, and tubers such as wild yams and taro along with insects, fish, and birds.

In the uplands, most of wild foods are available in the secondary forests, for example, in areas that have been cleared as part of shifting cultivation during the past twenty years. They are also found in state forest land and the forest law permits communities to harvest the NTFP for personal use, but pay tax if sold, a payment that is avoided by villagers. Certain types of wild NTFPs are available seasonally and ethnic people can collect all year round as one produce begins at the end of another.

As communal rights, gathering NTFPs has been a routine activity for people from one generation to the next. They often harvest what is available within their communal tenure such as village boundary but sometimes they are allowed in the land of other village to collect some products they cannot find within their own boundary. This also happens to their neighbors in the same way and an exchange of resource is part of rural subsistence.

Until now, 80% of the population of Laos relies on the whole natural resource base of their village territory for their livelihood (UNDP & UNEP 2010) and there is a record of more than 450 NTFPs including edible shoots and other vegetables, fruits, tubers, mushrooms, small water and land animals (NAFRI 2006).





Photo 5. Mother and son are burning off the flower pods of bloom grass. This wild produce is used to make blooms for a household use and to sell

NTFPs contribute substantially to food security and poverty alleviation of rural households. In 2007-2008, over 97% of rural village chiefs reported that the first source of cash income for people in their village was natural resource-based and NTFPs are eaten everyday by all families in Laos. The village elders estimate that each family eats around US\$ 2,5 to US\$ 3,5 worth of forest foods per day. That would represent an amount of non-cash income per household of US\$ 860 - US\$ 1.290, on average US\$ 1.073 per year. In this country, NTFP consumption makes up of about 7% of GDP. Taken together with wide fish, all natural products consumed from forests and wetlands amount to 13.3% of GDP (Foppes 2010: 7-43).





Photo 6. Local women are selling wild mushroom

A household is estimated to make between US\$ 200 and US\$ 400 per year from NTFP, but in many instances a higher income. The study on the values of NTFPs in Laos mentioned above highlights production forest areas where households' income range as low, average and high income scenarios (Table 5). Sale of NTFPs is therefore the most essential coping strategy for the rural poor in Lao PDR, especially minority groups living in the uplands.

**Table 5. Household income scenario from selling NTFPs ranged as low, average, and high.**

No	Income scenario	Amount (US\$)	Source of Income
1.	"low income"	350	NTFP consumption and selling per household per year
2.	"average income"	650	
3.	"high income"	1000	

(Source: Foppes 2010: 31)

The availability of forest products however becomes scarce due to many factors including population growth, over harvesting, deforestation and the aforementioned agricultural commercialization through concessions taking place in the uplands (Bartlett 2012: 4).

The current National Socio-economic Development Plan (2011-2015) of Laos includes alleviation of poverty through fostering economic growth and environmental preservation. This strategy closely links to the development of the agriculture and forestry sector which the government aims to diversify and modernize in order to improve rural livelihoods of the multi-ethnic groups, ensure their food security (IFAD 2012 (a)) and in relation to this secured access to land is important.

The Minister of Planning and Investment (MPI), Somdy announced at the 3<sup>rd</sup> Session of the 7<sup>th</sup> Legislature of the NA held in Vientiane in June 2012 that to achieve the MDGs including an eradication of extreme poverty, Laos needs US\$ 6, 4 billion in funding, including US\$ 993 million in ODA and US\$ 271 million from private investment, to create jobs, raise incomes and bolster economic growth (Vientiane Times: 21 June 2012).

Concerning poverty issue, next section of this research will discuss how the government of Laos organizes its natural resources (land and forestland) and how this relates to communal tenure in order to make possible FDI as a means to deal with poverty and to be free from the least developed list.

## **5. Forest and land use**

Approximately 80% of the total population in Laos lives in rural areas across the country in 2011. Half of this rural population (50%) resides in lowland areas; about one third (30%) is settled in upland areas; and the remaining (20%) dwell in urban regions. The upland areas are mostly located in the north where there are characterized by a mountainous terrain, while the lowland regions, floodplains, terraces, and plateaus, are situated in the center and in the south (MAF 2010). In general, the dominant Lao-Tai ethnic groups live in lowland areas, the Mon-Khmer and Hmong-Lu Mien ethnic groups

in midland (and highland) areas, and the Chine-Tibet in highland areas (GRID 2005: 18). This settlement characteristic in some areas is now changing.

The characteristics of the natural resource systems in the lowland and high lands are very different and thus contribute differently to the livelihoods of people settled in the respective environment. Some areas in the lowlands are quite accessible and give people an opportunity to engage in and benefit from political and economic development activities. Many remote rural places, however, are difficult or even impossible to access. Nationally, about 85.000 households live without road access in rural areas (SCAC 2012: 1). Residents in these areas use their own ethnic languages and follow their own traditional beliefs which need expertise to understand before approaching them.

Settled in a rural environment, ethnic households are closely attached to land and forests around them and most of them practice shifting cultivation. In the late 1990s, around 280.000 families or 45% of the villages in Laos were dependent on shifting cultivation for their subsistence (GoL 2006: 12). This traditional agricultural method is still widespread with large shares of the population, currently estimated at 500.000, living in shifting cultivation areas (LIWG 2012).

The predominant agricultural crop in Laos is sticky rice which is special rice that is steamed rather than boiled. Sticky rice is the single most important food or staple food. In 2011, the total area of rice planted in the country was more than 980.000 hectares: 714.000 hectares of wet season lowland rice, 57.000 hectares of dry season rice, and 215.000 hectares of upland rice. Out of 215.000 hectares of upland rice, about 170.000 hectares are estimated to be under rotating crops cultivation or permanent system and the rest shifting cultivation (slash-and-burn) which is an agricultural system that operates with several years of fallow in between cultivation for the soil to regenerate its nutrient. This is considered by the government as non-permanent (SCAC 2012: 3-4).

With rice is the main crop and staple the national average rice requirement per capita is around 350 kilograms of un-husked rice which means that this is the indicator used (GTZ 2009: 9). It would be equal to a consumption of 170 kilograms of milled rice per

person constituting almost 70% of the person's calorie intake. This is therefore used as the national rice consumption standard in Laos (ADB 2010: 4-38).

Unfortunately, not entire population can manage to meet the national caloric requirements. Upland and remote rural people in particular face seasonal and local rice deficits with high frequency (ADB 2010: 4-83).

As a supplement to rice, villagers turn to starchy produce such as corn and cassava or roots such as yam and taro, besides fruits, vegetables and occasionally animal meat. Depending on regional climatic suitability for production and consumption popularity, farmers grow starchy produce including sweet corn, potatoes, sweet potatoes, cassava and many other crops on their lands, mixed in the upland rice fields or in surrounding areas. Cultivated vegetables in addition to wild edibles have also gradually been taken up as a crop to fulfill family food needs or sale (GTZ 2009: 9-10). Vegetable crops like chili, cabbage, cucumber, onion and melons are commonly grown in small kitchen gardens or on river banks (SCAC 2012: 5). However, many families have limited access to land or their access to land is nil due to poverty related issues including a lack of capital and labor to invest in land, and they cannot rely on the production of starchy products and vegetable. They have to borrow the land of others which means that they have to produce not only to feed their families but also to give part of what they produced to land owners, often better off people to pay off the rent.

For most if not all rural residents, both upland and lowland ethnic groups, cattle have always been important for their livelihood. During cultivation season, large and small animals such as buffalos, cows and goats are pastured in communal grassland, state forest land and village or community forest land to avoid destruction of the rice crop. After rice cultivation, the animals are free to roam on the stubble.

Large bovines ensure secure livelihood of rural families in many ways. They serve significantly as capital if calamities arise and money is needed for emergency cases and hospitals (Andersen 2011: 7). Many rural farmers sell animals to buy means of transport like motorbikes making it possible to travel longer distances in a short time

and to make contact with people from outside community. The income furthermore can provide financial support for buying school uniforms for children.

The majority of livestock producers raise their animals on natural pasture, fodder crops such as maize, or crop by-products such as rice straw. Raising animals in a customary way of free ranging can bring about conflicts. Without land boundaries for animals to respect, they invade agricultural crops and their owners have to pay for the loss. This creates pressure on those poor who have no means to pay compensation. In some cases, they cannot afford to keep their animals and consequently they lose a safe capital for their livelihood. This issue will be further examined in the *Presentation of Fieldwork* in order to see how it relates to communal tenure.

Ethnic minority groups in the midlands and uplands live in close proximity to forest. They hold a comprehensive knowledge of the forest and the land scape in which they reside. Many ethnic villages have their individual intricate tenure arrangements for different resource niches in the forest within their territory. They claim for land and their claims are linked to criteria of season, location and technology, kinship, reciprocity and the government's legal framework. Villagers know the land in a certain distance away from the village very well (Anderson 2011: 8). They use streams, mountain ranges, huge stones and giant trees to mark their land boundaries or territories (Vang 2010: 21-22). However, they may not have or they have limited information on legal categories and whether the land next to their land belongs to different legal land categories including whether the land is liable to be given out for FDI and concessions by the government (Andersen 2011: 8).

## **6. Two modes of agricultural production and Government policy on eradication of shifting cultivation**

The two modes of agricultural production of rice in Laos are irrigated paddy rice and rain fed upland rice swiddens. These two modes are analyzed below to show the ideological connotations of these two ways of production in the eyes of the government and in the eyes of the villagers respectively. In the eyes of the government, shifting cultivation is primitive while in the eyes of the upland villagers this is their preferred

way of production closely interwoven with the natural environment. The presentation below of shifting cultivation includes methods of site selection linked to land tenure, and the organization of the preparation of land and harvesting.

The irrigated rice agriculture of the lowlands is also described as a technology and as a mode of production that in the eyes of the government is the wanted technology. A brief history of the party-sponsored institutionalized collective farming system in lowland in Laos after mid-1970s is included. This compares with similar systems by the communist party in Vietnam and China as well as in Laos. It remains is nevertheless one modality of communal tenure which is found in Houaphan and therefore include in this research.

### **6.1. Shifting cultivation and rain-fed upland swidden (*hed hai*)**

Upland agriculture as shifting cultivation has been practiced for centuries all over the world, including South East Asia. In Laos, mountainous geographical and environmental characteristics allow few alternatives to shifting cultivation for upland ethnic people to guarantee their livelihoods. This agricultural system has been practiced in the hills where the landscape contains dense tropical forest and the soils are crumbly and water drains naturally. It is rain-fed agricultural system which has been integrated with the cultural life of the upland peoples for centuries (Martz et al. 2009: 259). Traditional shifting cultivation is practiced integrating a short annual cropping phase with a long forest fallow phase in rotation. In the cropping phase, many short-term crops are cultivated in the same plot with the main crop being rice. In the fallow phase, which may last ten years or more, the forests generate and produce NTFPs, contribute nutrients to the soil and sequester carbon, control weeds, and check soil erosion for the succeeding later cropping phase (APN 2012).

Shifting cultivation involves land clearance of the plots to be cultivated and burning the dry debris later. It is then followed by planting of various crops mixed or in sequence, rice being the main crop. It can be categorized differently according to methods used by different ethnic groups in different areas. Lao society calls shifting cultivation *hai*, but it is also widely known as slash-and-burn agriculture or swidden cultivation (Gansberghe 2005: 47). Slash and burn agriculture (*tang lair chuud pa hed hai*) moves into forest

land, but most often it is old fallows and secondary forest and bush land which previously, maybe ten years earlier was a swidden. It is therefore often be called “rotational farming” to contrast it with “pioneer shifting cultivation” where more dense natural forest is cut down. Pioneering shifting cultivation is seldom found in present days except in very remote areas.



Photo 7. An upland plot villagers prepared through slash and burn for rice production

Farmers each year in February-April clear small new forestlands by slashing the bamboo, small trees and the bush. Some large trees are left standing in the field as they serve as mother trees for generation and provide support for climbers. The debris is left to dry for a couple of months or even less and then it is burnt around May so that the land is clear for sowing (Andersen, Sophorn & Thornberry n. d.: 6). Slash and burn cultivators abandon the plots after one or two annual rice crops or seasons of rice production (Vang 2010: 21-22). The land becomes fallow and returns to bush and regenerated forest that may be open up again after some years of fallow.

In some communities villagers may not come back to their fallows to repeat cultivation until many years later. Jefferson et al. (2000) cite the suggestion of Harold Brookfield and Christine Padoch (1994) that "abandoned" land is the land the swidden farmer does not intend to use immediately again. This is often in rural remote and mountainous areas where the population density is thin, forestland is large and an expansion of agricultural area into new forest tracks is possible. Instead of "abandon", the term "leave" may be, in this case, a more correct term to use as farmers will eventually come back to cultivate the land after some years.

In other places, where population density is high, land is scarce. It may then also be accessible to roads and the market and the areas are easier for the government to control. Here many shifting cultivators rotate their production plots more quickly. They come back to use their fallows after leaving them fallow for only a few years. The fallow bush land is re-opened in rotation down to 3-5 years. While it lies fallow, the farmers may use it as a place to raise their animals and collect numerous wild products for food. Along fallow however is often viewed as "abandoned fallow" in particular if it is part of a communal tenure arrangement, then any fallow may revert to use by a new person in the community in the new round of cultivation.

Shifting cultivation is often carried out as a complex system of cropping in areas where land is sufficient and the swidden can be integrated with the forest. Often several wild edibles are left in the field growing along the rice and the chili, maize, cucumbers, yams and taro. Clifford Geerts, a famous American anthropologist compared swiddens in Indonesia with an "imitation of nature" since it was clear that the swiddeners used all the natural processes in the environment around them to cultivate their plots (Geerts 1963). Where there are long fallows the soil regenerates and no environmental degeneration takes place. An ecologist, Harold Conklin, conducted an extensive research on the indigenous systems of agriculture in tropical forests and terraced agriculture in Southeast Asia and he pointed out that castigation of shifting cultivation has been blind to the comprehensive environmental knowledge of the swiddeners and called shifting cultivation primitive. In fact, traditional shifting cultivation maintains the general structure of the pre-existing natural ecosystem into which it is integrated,



rather than creating a completely new system. In this way it creates the flow of energy from its great variety of species (Anderson et al. 1994: 2).

Scholars have debated shifting cultivation or rotating and fallow farming systems for decades. In 1951, Karl Gustav Izikowits used the term “swidden” for the Lamet ethnic group of Laos (Goeteborg 1951 & Anderson et al. 1994: 2). In 1966, J.E. Spencer described in “shifting Cultivation in Southeastern Asia” (1996) 18 distinct types of shifting agriculture within Southeast Asia. Other scholars such as Brookfield and Padoch (1994) argued that swidden is not one system but many hundreds of systems (Jefferson et al. 2000).

Many have argued for traditional shifting cultivation. Relatively, the ‘Shifting Cultivation Regional Policy Dialogue Workshop for the Eastern Himalayas’, from 6 to 8 October 2004 in Shillong came up with the Shillong Declaration on shifting cultivation stating that major benefits of Shifting Cultivation are that:

- *“Shifting cultivators conserve more forests on their land than any other farmers, and make it productive at the same time*
- *Biodiversity conservation is favoured in the forest and farm management practised in shifting cultivation*
- *Shifting cultivation is a storehouse of species of commercial value and innovative organic farming practices*
- *Social security is one of the main functions of local institutions of shifting cultivators” (ICIMOD 2006: 1).*

The International Centre for Integrated Mountain Development (ICIMOD) in Nepal has produced a number of articles on shifting cultivation together with IFAD in 2006 “Debating Shifting Cultivation in the Eastern Himalayas. Farmers’ Innovations as Lessons for Policy” compiled by Elisabeth Kerkhoff and Eklabya Sharma. Their argument is that farmers practicing shifting cultivation actually spend many more years growing trees and crops than burning them – protecting the soil, restoring nutrients, fallowing, and resting the land. Their intimate knowledge of their environment is rarely valued by governments, unless it can be exploited for profit. Failure to understand the role of the secondary successional vegetation has also meant that resource managers have often failed to recognize the implications of rotating and fallow agriculture on biodiversity, watershed hydrology, and carbon sequestration. In contrast to commercial agriculture, field surveys have shown that secondary vegetation following swidden

cultivation with longer fallows often has a diversity of species that is comparable with more mature forests and its disappearance may be detrimental for the gathering of foods, medicines, firewood and other forest products that poor people depend on (Padoch *et al.* 2007: 29-41).

Academic studies on the fallows of rotating and fallow taungya systems in Northern Thailand have shown that stumps will always be left in the ground as a source of re-growth from coppice shoots and root suckers, and that trees preserved on the swiddens may act as a source of seeds. Secondary forests in rotational swiddening systems often have larger species diversity than mature stands, naturally also due to the large number of trees in a relatively small area. The most species-rich swidden fallow secondary forest stands contain more than 30 species per 500 square metres in the tree layer alone (Schmidt-Vogt 2001: 748-767).

For Laos in particular Kerkhof's paper at the 'Sustainable Sloping Lands and Water Management Conference' at ICIMOD in 2006 called attention to the need for "Debating Shifting Cultivation in the Eastern Himalayas: Farmers' Innovations Lessons for Policy" has been quoted regularly in favor of shifting cultivation's benefit and lessons for policy by Lao NAFRI researchers (ICIMOD 2006).

The Lao government wants to do away with shifting cultivation. It does distinguish between two kinds of shifting cultivation: rotational shifting cultivation and pioneer shifting cultivation. Rotational cultivation (*hai moun vien*) does not encroach on new forest while pioneering shifting cultivation does. The rotational shifting cultivation involves a rotation between cultivation and fallow for some years where the land is not used, but rests. It implies rotating the fields that belong to the village and lie in its territory rather than moving the villages. Cultivators leave their harvested areas as fallows<sup>10</sup> for an appropriate period of years to allow recovery of soil fertility, during which the villagers will clear a new field which in fact is an old fallow. This clearing

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<sup>10</sup> In the LAO CENSUS OF AGRICULTURE 2010/11 HIGHLIGHTS (SCAC 2012: 19) fallow land is the land that is normally used for growing temporary crops, but not so used during the 2010 wet season and the 2010/11 dry season. Land left idle for more than five years is not fallow. Land cultivated on a two- or three-year rotating basis is fallow if it was not cultivated during the reference year. Land abandoned altogether under shifting cultivation is not fallow.

process will continue until the farmers return to the original field to repeat cropping. Thus, the families leave the cropped land fallow after harvest and come back for crop production when the regeneration has been completed, and a rotational cycle is thus achieved often after ten to twenty-five years (Chazée 2002: 22-23) in the past, but nowadays the fallow period has been shortened due to population pressure. This diminished duration of fallow period also causes more weeds to come up when land is brought under cultivation again and many ecologists are more advising shifting cultivators to establish a kind of agro-forestry system that still imitates natural processes but ensures soil fertility.

A long fallow period allows the recovery of soil fertility and many plants grow and regenerate naturally. Trees or bushes regenerate so that often the untrained eye does not know if an area is village fallow land or a forest (Chazée 2002: 22-23). Fallows allow farmers to collect varieties of traditional mushrooms, bamboo shoots and wild edibles that grow there for food and sale. The fallows are also open for domestic cattle grazing as well as wild ruminants (Sotoshi, Koji & Khame 2006: 11). Many shifting cultivators emphasize the benefit of fallows for wild ungulates that do not like too dense forest like Banteng and Gaur, for instance.

In pioneering shifting cultivation (*hai keaun tee*), highland forests found in upper mountains, upper watersheds and uplands are clear cut and cultivated. These areas may also turn into fallow and later regenerate. But generally pioneering farmers never return to previously cultivated fields and seek out either primary forest or relatively old secondary growth forest for the next cycle (Pholsena 2003: 13). These cultivators move their whole village settlements from one site to another after several years when the nearby forest has become exhausted (Gansberghe 2005: 49-51). Other causes for moving villages may be sudden widespread sickness and deaths possibly caused by malevolent spirits.

Farmers in more densely populated areas observe from their experience that prolonged shifting cultivation with short fallows causes soil degradation and decrease of yield. According to farmers, the variety and growth of the natural vegetation is gradually

declining after each cycle of cultivation and productivity of the cultivation land is declining (Upadhyay 1995).

In this case, farmers consider weed competition as the single most serious constraint to rice cropping if they cultivate the same plots for many years. They will have to spend a lot of time weeding otherwise weeds destroy the rice by using the natural nutrients meant for the rice. Using traditional tools like short handle hoes or shovel to get rid of the weeds to create sufficient space for the rice to grow is known by farmers as time consuming and causing a great demand for labor (Roder et al. 1995).

Existing study on shifting cultivation shows that pioneer shifting cultivators in comparison to those that cultivate the same plots often abandon their field after mostly one or two years and move with their village to another site often closer into new forest land or what in the eyes of the government are state forest or “state domain” and clear new forest areas which are later left (Vang 2010: 21-22).

It is the village community that selects where to establish the rice production fields for the coming year and if not pioneering shifting cultivators which in fact are very few, they must select sites within their own village territory. This land in their territory no doubt is state domain as land is not titled, but as said, in the eyes of villagers, this land is theirs and cultivated under customary communal tenure. In most cases, several groups of families have their plot adjacent to each other in the selected area. The size of each family plot depends on the number of persons in the family and the population density. Families that have other forms of food production or other sources of income usually have smaller upland rice areas. Various criteria are used for site selection, including tree and vegetation cover, soil type, and the potential infestation of leaches, field orientation, and distance to village. Secondary forest is often selected for cropping. Primary forest with many tall trees requires more work to slash the vegetation so only in the pioneering shifting cultivation may this kind of area be selected.

Traditionally, shifting cultivators use long heavy knives to cut down natural vegetation including trees that they do not want to keep in their fields while other useful trees remain. After the fallen vegetation and trees have dried for a couple of months the area

is based on a careful preparation which means most people will burn at the same time to avoid wildfires into another person's field and to make sure it burns as well as possible. A field that does not burn well is bound to require a lot of work to stack the unburnt matter in piles and burn again (Chazée 2002: 23) as well as a liability to have more weeds later. Felled trees can be used to fence the plots and collected for firewood.

After the clearance of the land, a seasonal sequence of crops is planted, first maize, tubers, chilies and later in July the rice seeds. When the rice is about 15 centimeters high the maize is ripe and can be harvested by pulling out the whole bundle of stalks leaving the space open for the rice to grow. In addition to rice, villagers cultivate the same field a variety of food such as traditional cucumber, melons, pumpkins, cotton, cassavas, sweet potatoes, taros, Sichuan pepper, sesame, sponge cucumber, chili, tobacco, and eggplants (Chazée 2002: 22). Mixed cropping in the fields shows the importance of the relation of time and space for securing a flow of crop production throughout the year. It also provides more complete cover and controls weed growth, thus reducing the labor for weeding (Christanty 1986: 230).



Photo 8. A woman selectively harvests upland rice by hands.  
Source:[http://irri.org/index.php?option=com\\_k2&view=item&id=8750:rice-in-lao-pdr&lang=en](http://irri.org/index.php?option=com_k2&view=item&id=8750:rice-in-lao-pdr&lang=en)

Many wild plants that provide edibles are, as said, left in the fields. This includes mushrooms, ferns (*pak kood*), passion flowers, chameleons plant (*pak kao thong*), melientha (*pak varn*), and many more wild edibles that grow naturally in the field during cultivating period. These natural edibles are an important source of daily food for shifting cultivation families.

Women are main collectors of wild edibles growing in the upland rice fields and they are hardly seen to come back home from work without anything in their baskets that they cook for their family meals. They also provide the overwhelming volume of labor in agriculture. In rural areas, women are responsible for 50% to 70% of paddy and upland rice growing; 50% of household's animal husbandry work; 30% to 50% of fishing; at least 50% of cash crop production; 70% of opium production in the villages that still cultivate opium illegally; and a large proportion of household vegetable gardening. In addition, rural women take care of the collection of firewood and other forest products, which are an essential to about 93% of households that use wood as a source of fuel (FAO 2005).

In general, women work long hours. They are responsible for selection of seeds (rice and other crop seeds) to sow in the following season and they are the ones who form a network for seed exchange within the village. Women walk for long distance to the field, do the weeding and transport rice and crops back home for their consumption. Women in families that lack labor help men to clear the land and make fence around the rice plot otherwise these activities are traditionally considered men's.

If only a limited number of production plots are allocated to villagers by the local land allocation committee it will result in a shorter rotation circle making women's life harder with increase of weeding. Based on the research report of Gender Resource and Development Centre (GRID) on Gender, Forest Resources, and Rural Livelihood (2004: 15), the statistic of the female labor force was higher than that of male labor force in agriculture, with 69.5% and 55.6 %, respectively.

When the rice is ripe different ethnic groups apply different techniques to harvest upland rice. Mon-Khmer groups including Khmu prefer a manual stripping method and

it takes more than 150 hours per hectares. This method is mostly applied by communities where families have rice sufficiency for only few months. Since it ensures most rice for long duration, they begin harvesting their rice earlier than the normal harvest season in order to have rice to support their family day-to-day food need. Another reason for manually stripping the rice is that farmers fill their baskets with the rice and directly bring it home on their backs. Using hand stripping method further means that rice is selectively harvested and when the harvest begins in one rice plot other families have to start the harvest in their plots as well or their crops could be a spot for birds or rats. Other ethnic groups, such as Lao-Tai and Hmong-Mien use the sickle method which takes about 100 hours per hectares. After harvesting and drying the rice, it is often stacked neatly into piles to protect it from rain and rodents. Hand threshing and winnowing the rice is another process before it is transported to the village. Upland rice yields vary from between 0.8 tons and 2.5 tons per hectare. The yield is dependent on many factors including availability of family labor for weeding and soil fertility which is linked to length of the fallow, and the spread of the seasonal rainfall (Gansberghe 2005: 56).

Previously, agricultural production was fully meant for own subsistence and not linked to the market and money. Crops were interchanged within a village or villages nearby without money in between. In the eyes of the government this is considered primitive and subsistence economy and it is not an advantage to the state as it does not give much tax to the government.

Expecting that villagers can benefit more from what they produce in their farm if they change their farming system, the government has formulated policies to change subsistence system to market system through building regional market places with stalls, where villagers and outsiders can exchange products money and where government easier can impose taxes.

When the agricultural products become a source of income, villagers gradually switch from not only subsistence but also commercial crop production. Between 1998 and 1999, only 6% of farm households produced for sale but now the figure has risen to 30% (SCAC 2012: 1). More details on the government's strategy on changing from

subsistence to commercial agriculture and how the strategy affects farm families are provided in the next part of the research, where in particular the impact of the market oriented FDI is analyzed.

Today, population pressure is higher than before and there is competition for resources which at places causes a high degradation of the resource base. Where the cultivated land area is limited the fallows become shorter as the farmers need to cultivate each year. A short fallow often means low productivity as soil has not gained sufficient fertility.

As a result, the conditions of shifting cultivation are changing. The government has, as said, repetitively criticized the practice of this agriculture for cutting down trees, for lacking modernity, for using large amount of land including idle fallows, and for lacking sustainability under high population density (Gansberghe 2005: 58).

Earlier the government set targets for total “eradication of shifting cultivation” but it has not been able to meet the targets as the communities would have nothing to eat if they could not practice this land use in the mountains. Shifting cultivators, especially including Hmong in the highland, are seen by the government as forest destroyers. As an element of the “eradication” policy the government has practiced forced resettlement of upland villagers to downhill, often to be merged with other villages of different ethnic groups. In this way, the government says, “it can bring services to the people”. In reality this has meant loss of land to many communities because there is limited land where they are resettled and often they must walk back several hours to their old fields in order to make a living.

In 1994, the Lao Party Congress decided that shifting cultivation should be eliminated by 2000, but by 2003 it has not happened yet. In practice, three ways have been used to include villagers to shift from slash and burn agriculture in the highlands to a form of permanent agriculture such as irrigation agriculture in lowlands. Firstly, there was an intensive search for arable land that had potential for irrigation within the district or province. Secondly, a village or part of the village with a frowned upon shifting cultivation was moved to another district or province where there was “available” and suitable land for permanent agriculture. Thirdly, certain villages located in the remote



mountains were brought down from the remote mountains to a new settlement where the shifting cultivation would be controllable (Chazée 2002: 17).

The government's policy on shifting cultivation includes a wish to concentrate villagers' production in areas that it is possible to control and this is feasible only in a setting of compact, sedentary agriculture or agro-ecological concentrations (Scott 2009: 64). The Lao government therefore without much consultation resettled a number of upland isolated ethnic minority villages so that they would be closer to the government services or to lower land. The government also supported voluntary settlement (Wessendorf 2011: 312).



Photo 9. Village cluster level market where villagers bring their agriculturally cultivated products and NTFPs to sell. This market opens every Saturday morning until 7:00 AM and then villagers are back to their field work

The resettlement strategy is in line with the Party's policy to merge small scattered villages into larger units to make it easier for the government to develop communities and provide services to the poor as well as control the population. In the newly-organized areas, ideally land has been mapped and zoned for farmers to grow rice and

other crops. Many places electricity has been installed, roads and schools were built to improve transport access and provide formal education for children of newcomers (Vientiane Times: 24 May 2012). In the eye of the government resettlement brings political security and provides control with natural resources, which are linked to the national wealth and natural capital of the government.

Collecting tax is a means for the Lao government to create capital, a necessary income for the state in order to provide services and interact with its citizens and the neighboring countries. Currently, most farmers are taxed but this taxation is not yet systematically organized. Most farmers pay tax according to number of hectares not by what they produced and the number of tons they produced but only by the size of the land, around 35.000 kips per hectare (Houaphan 2012). In very remote rural areas, villagers cultivate the land that is difficult to control. Collecting tax can be based on cultivated plots reported by villagers but often the plots are not permanent and not registered. Possibly, this is another reason for the government to resettle them.

It can be seen in practice that Lao government has faced challenges to provide enough land for agriculture and infrastructure for new communities in the lowlands. Suitable land for agriculture is already occupied by existing communities so there is a lack of space appropriate for large scale resettlement (Tapp et al 2004). As a result, new resettlers in many newly resettled areas are provided insufficient or culturally and agriculturally unsuitable or poor quality land (GTZ 2009: 6-8).

A transition from traditional upland agriculture to lowland paddy rice cultivation creates a pressure, on people in the lower areas and on the resettled people. When many villages are merged together as one community, there are more land users some of whom overuse the resource within this resource system. Various ethnic cultures and languages are also mixed in one settlement and within this mixture one's respect for the other may not be so large. Some new re-settlers find it hard to adapt to new culture including beliefs and ways of supporting living practiced by original villagers. Meanwhile, the existing villagers are not well prepared to accept the culture brought with new village members. This creates misperceptions amongst the people within the mixed communities and sometimes leads to misunderstanding or conflicts.

The government as a ruler promises to build irrigation infrastructure for new communities in resettled areas. This plan is not always completed as the government lacks resources and villagers cannot effort building the irrigation schemes at their own cost because it is too expensive for them. In this case, the land that is suitable to convert into irrigation fields is not very useful for agriculture when there is no water. An additional problem is that the shifting cultivators being resettled have no knowledge on how to do irrigated farming and they lack the plough and the buffalos or tractor that the affluent Lao farmers use. The government provides them some related technical trainings, but this provision has moved at a slow pace due to a lack of budget and expertise and as a result the immediate need for food for daily consumption of resettled people cannot be met.

Many shifting cultivators in highlands that voluntarily migrate to the lowlands are in favor of sedentary agriculture but these families are often more well off and move to places where other family members moved before them. But they face many challenges and the most important of them is the limited land availability and it becomes impossible to abandon shifting agriculture and they were reported to return to cultivate their old lands even though located relatively far away (Tapp, Michaud, Culas & Lee Yai 2004).

Some families or villages, in fact, move on own initiative to seek better land and markets and thus voluntarily moved to new places. Many of them follow, as said, relatives that migrated earlier but may risk being perceived as unofficial migrants by other non-kin villagers in a new village. Yet many officially resettled families are put into a position that they have to wait for government support (Chazée 2002: 17).

When it is difficult to obtain arable land suitable for irrigation production in low land areas (MRC 2011: 11), shifting cultivators or voluntary resettlers have to buy paddy fields which can be private property or communal property of existing lowland villagers and to use their own money and labor to develop the land. This poses a real problem for shifting cultivation farmers most of whom have no means to purchase land possible for paddy rice production simply because they are poor (MAF 2010: 42 (b)). Some voluntary families follow their family members living in lowland villages and were given some

agricultural plots. However, this is not always sufficient for them in order to produce enough food for their own consumption. Gradually, they expand agricultural areas into state forestland and sometimes into the land of their neighbors.

Where they are prohibited by the district government officers to undertake agricultural activities in the areas officially set aside, resettled villagers are likely to encroach further away into natural forest and protected areas to produce annual crop of rice. To earn income they may turn to poaching of wildlife or degradation of wildlife and forest resources causing negative environmental impact. Where the reason given by government is the protection of large trees that villagers are prohibited to cut down, the villagers may kill these trees by ringing the bark of the trees so they die (Lestrelin 2011: 316).

Communities still living in mountainous terrain keep on practicing shifting cultivation (Wessendorf 2011: 312 & Andersen 2011: 3-6). Scott (2009) pointed out that hill people "selected" their social organizations, mobility patterns, agricultural forms, crops, cultural traditions and these saved them from legal enforcement. In the hills, they chose shifting cultivation, and grew root crops and tubers because these could be safely left in the ground for up to two years which are important for food security in case they had to run further away from the government. The root crops also were unattractive to the tax collector because of their low value-per-unit weight.

Some local government officials gradually have accepted the livelihood and culture of traditional shifting cultivation life. They know that people in the upland have limited sources of livelihood if they don't practice the shifting cultivation, despite this method being contradictory to government policy. This situation makes it difficult for the government officials especially at local level to strictly control the agricultural practice when the land for crop cultivation is expanded into the state land.

The implementation of the "eradication shifting cultivation" policy was reviewed during the Resolution of the 8<sup>th</sup> Party Congress in 2006. It was found that the government could not meet the target of change from shifting cultivation to sedentary agriculture as shifting cultivation did not disappear. The goal of ending such traditional agricultural

production method was reset and was extended (Wessendorf 2011: 312) but that target also could not be met and most recently the word “eradication” has been dropped in favor of “modernization” or “reduction” of shifting agriculture.

The GoL realizes that land tenure and land distribution is a highly problematic national issue. Tenure security is a necessary precondition for food security of its people particularly remote rural farmers who are poor. Until the land issue is resolved, including recognition of customary communal tenure, the shifting cultivators including Hmong will continue their traditional highland pioneering swidden farming as well as the more sustainable rotational farming. Understanding this situation, the government has finally concluded that an eradication of shifting cultivation is not successful (Tapp, Michaud, Culas & Lee Yia 2004) and, in these circumstances, an alternative must be found. The alternatives supported by international organizations primarily consist of introducing agro-forestry practices which yield an income and protect the soil. These alternatives are not dealt with here in this dissertation as the immediate focus is first to register villagers’ land including registration of the customary communal tenure. Once villagers are feeling secure the extension service can support villagers with possible agro-forestry models.

## **6.2. Irrigated agriculture or irrigated rice production (*hed na*)**



Photo 10. Rice field in mountainous area in Laos. By Philadelphia, PA

Paddy rice production is seen as more demanding than highland farming in terms of techniques and tools used to prepare the land. It includes water management and control, seed bed nursery preparation and transplanting of seedlings in the water as well as the use of draught animals or tractors. However, in comparison to the situation of uplands, it is easier to manage soil fertility and weeds. Water from perennial streams or silt left from inundation in the case of “flood retreat agriculture” bring nutrients to the fields maintaining them productive for a long period. Also, mineral and organic elements brought along with flow of water are sources of fertilizer (Scott 2009: 22-41). Soil fertility is also maintained with the buffalo and cattle-dung left by the animal grazing the paddy stubble in the dry season as well as by provision of commercial fertilizers.

Paddy rice is cultivated by submersion of the plant in water that stands around 20-30 centimeters up the stalk. This is a significant characteristic of the resource system that means no other crops can be grown. It is at variance with the biological characteristics of the upland dry field where many different resource niches can be created and the land converted to different cropping systems simultaneously. Submersion of crops besides rice allows for the growth of some water tubers and some vegetable species like morning glory. Aside from rice and the water tubers, fish are raised through stocking the water as protecting occurring fish in paddy rice fields and these are an important source of protein (Chazée 2002: 22).

According to Scott (2009: 74-75), the history of the emergence of city-states of South East Asia centered on this mode of production, namely irrigated paddy rice production. This was also the basis for Karl Wittfogels’ argument about the “Asiatic Mode of Production” as a special mode of production of the “hydraulic-bureaucratic official-state”. Many societies, mainly in Asia, relied heavily on the building of large-scale irrigation works such as those around the famous Angkor Wat in Cambodia. To do this, the state had to organize forced labor from the population at large. This largely required complex bureaucracy staffed by competent and literate officials, the structure of which was uniquely placed to also crush civil society and any other force capable of mobilizing against the state (Wittfogel 1957).

In lowland areas with paddy growing the formation of states took place around irrigation because it is easier for the government to create a bureaucracy and taxation and establish an army around a paddy-rice core where a surplus could be produced to provide food for king and court and where the population could be concentrated and provide necessary labor. The function of irrigation systems of paddy rice is a permanent and reliable productivity per unit of land which permits higher population densities and in particular a surplus to sustain the king and his court who were not farmers. Paddy-rice cultivators are bound to use the same kind of resources and apply the same rhythm of production simultaneously. For years, they will use their labor on bundling and leveling land and constructing weirs and channels for the same sources of land and water. They plant and transplant, weed, cut and thresh their crop at roughly the same time and in the same way so it helps ensure that the population itself remains in place. Farmers consider abandoning each of their rice field only if there is a better option for their livelihood elsewhere. This social ecology of paddy lowland rice is a stable one which also can be taxed by the state (Scott 2009: 74-75).

Irrigation is therefore the panacea for development and state domain. Thus, the Lao Government has promoted irrigation since the establishment of the country in 1975. After the civil war and communist takeover, irrigated agriculture was the mode of cultivation applied in the collectivization process and it involved mostly lowlanders belonging to the Lao speaking majority. Resources such as land, means of production and labor were pooled together by the state under a collective arrangement to practice collectivization agriculture (Evans 1988: 1-36).

The collectivization policy was geared to enforce an agricultural practice in a persuasive way perceived by the government as an opportunity for farmers in Laos to help each other and to organize labor exchange teams for each farming season. An establishment of “collective management” was a criterion for them to get “collective loans”, share land, animal labor and expand small scale irrigation facilities so that farmers could be food self-sufficient (Evans 1988: 1-36).

Former individual production was gradually transformed into collective production. Some individual land was taken by the government and used as collective property and

government did not allow private purchase and sale of the “agricultural” produce. In the late-1970s, collective farmers were incorporated into low level forms of co-operation called “social cooperatives” practicing “large scale socialist production” on common land or state property. The number of state-led cooperatives initially stood at 1.600 comprising 16% of all farming families throughout Laos. Few years later, the number of cooperatives in the country was reported to increase very quickly, from 1.600 to 2.500 (Evans 1988: 1-36).

The concentration on the numerical growth of cooperatives was beyond the administrative ability of the government because the managerial skills of the official staff were poor resulting in a “top-down” working approach. The people were not encouraged and persuaded to apply for membership in agricultural cooperatives voluntarily. On the opposite, the level of people’s awareness in this field was not raised and peasants in some areas were forced to join the cooperatives. Very often, production resources such as cows and buffalos were expropriated or farmers were offered minimal compensation and they viewed it as a threat to intended security benefits. Distribution of agricultural produce mainly rice in relation to the contribution of labor was seen by farmers too generous (Evans 1988: 36). For example, some families have more workable labor force than other families whose families’ heads are women with young children and they were not yet eligible to work in the field and whose families have old people who cannot work in the field. The families with more eligible labor force perceived that they contributed more work in the common rice field but got similar amount of rice when shared and perceived this as unfair (Thong 2012). Cooperative members slowly lost their interest in collectivized agriculture and the production decreased creating serious tensions for countryside farmers. Consequently, they abandoned the cooperative, turned to other occupations, sold or secretly slaughtered their animals or fled to other countries (Evans 1988: 36).

*“The practice of collective agriculture (na sa ha korn) was carried out in a way that families collectively used their labor. Families used their private property like buffalos and agricultural tools such as knives, shovels, spades and plough to cultivate agricultural crops and to expand the paddy field areas. The harvest was shared in accordance with the distribution of family labor input and materials. After nearly a decade of practicing collectivization in the form of na sa ha korn, the share by family of harvested rice was perceived by mainly cultivators as unequal as the distribution was not enough to feed their families. Many families had enough*



*workable members perceived that private production would allow them enough food for their own consumption. The most important issue in practicing this agricultural scheme was related to free-riding issue. Some families realized that they made more contribution to the production process than others and they perceived that the distribution of the production result as food and income was unequal. Farmers lost their interest and participated less in the production process reducing the productivity of land as it also happened in Vietnam and China (Bounmixay 2012).*

Gradually, the government acknowledged that the inefficient practices of agricultural cooperatives did affect not only production and people's living conditions but it also reflected negatively on the political and economic situation of the country. In short, the practice of collective agriculture was like government having commissioned cooperatives with intention to supervise farmers rather than to provide them assistance or hear from them potential problems. Without appreciation by the farmers the collective modality had an opposite effect on the communist government and thus was unsuccessful (Evans 1988: 36-37).

Subsequently, the government gave up on the idea of collectivizing agriculture in the same way its communist neighbor, Vietnam had done. After the collapse of official collectivization in 1986, irrigated agriculture production in most places has continued under different privatized arrangements. Where possible, often in lowland areas where physical accessibility is not materially too expensive, the government allowed privatized paddy fields by allocating land ownership and land use right to the families or households through land titling program and the government expects that this will create a more effective lowland agriculture. In Houaphan province, the paddy land that was used for collectivized agriculture was not given back to earlier owners but is today used by communities as communal land but under their own customary practices.

It is interesting to point out that various upland people in the hills and uplands were not very heavily involved in the process of the collectivization that took place in the lowlands during 1975 and 1986. They kept using land in upland in a traditional collective or communal way and had limited contact with their neighboring lowlanders. The limited contact with people in the lowland also meant that the traditional communal tenure in the hills or mountain was untouched and it has survived all the

changes including privatization of the land that occurred in the lowland after the failure of collective agriculture.

The government's focus on the irrigated rice lands and its communities and on development of more irrigated land means that the citizens of the lowland in comparison to the upland ethnic communities become possible to monitor when required (Evans 1988). These lowland communities are seen as human capital. They are allocated land where they can work as self-employed cultivators or independent farmers and produce agricultural products not only for their own subsistence but also for market economy.



Photo 11. Investment in irrigation system in Laos.  
Source: <http://www.sedthakid.la/>

Until now many upland people are seen by the government not as a human capital that can increase economical production but as those who disturb the country development process. For instance, shifting cultivators whose livelihood is dependent on clearing forest in order to grow agricultural crops for their own consumption, as already

presented in the previous section of this research, were blamed by the government to cause forest destruction. In comparison to this, lowland population could be more interesting for the state. Meanwhile, the state cannot ignore the people in uplands as their living condition is also important to the state making process. From here, it could be possible to see that there are two kinds of citizens in Laos, people in the upland and people in lowland. Both of them are object to change but one is to be changed in a more intense way than another. Because Laos is trying to eradicate poverty issues it places different focuses on ethnic groups, in this context, people in upland as well as in lowland.

The government has supported lowland agriculture through building irrigation infrastructure since before 1975. A number of large irrigation schemes have been built and managed by the government agencies mostly located on the floodplain of the Mekong River (Schiller, Hatsadong and Doungsila 2006). In 2000 there were about 19.000 irrigation schemes with a service area of about 295.000 hectares in the wet season and 197.000 hectares in the dry season (Khamhung 2002). With irrigation support, there was an expansion of nearly 100.000 hectares of irrigated rice area between 2006 and 2008 and two crops per year were possible in most areas with a harvest of 450 kilograms per capita. In a one year period, from 2009 to 2010, nearly 3.000 irrigation schemes were registered nationwide (MAF 2009 & MAF 2010) and a total of 192.000 hectares of rice were irrigated during 2011 (SCAC 2012: 6). According to the Ministry of Agriculture and Forestry (MAF), the country's wet season rice areas was 710.000 hectares in 2012 (Vientiane Times: 03 November 2012). The country intends to expand its rice field from 700.000 to 2 million hectares by 2020 (Vientiane Times: 19 June 2012). For the quantity of wet and dry season rice in 2012 and 2013, the government has set a goal for farmers across the country to produce more than 3 million tons of rice on the irrigated land (Vientiane Times 17: July 2012). This is a dream that may run counter to physical possibilities but it is a policy formulated in order to create a surplus for income and taxation (Scott 2009: 96). Again, the system of irrigated rice production does not always bring success due to natural disasters like flooding and droughts. For example, Typhoon Ketsana happened in southern provinces in 2009 and there were flash floods in northern province in 2013 damaging a large area of rice, according to UN (Bangkok: 17 September 2013).

An addition to government supported irrigation, many small irrigation schemes have been collectively built by local communities based on primitive water intake made by logs, soil or stone and these traditional irrigation systems have been traditionally used, managed and maintained under customary arrangements (MAF 2010<sub>(b)</sub>). The Irrigated Agriculture National Action Plan 2010-2015 seeks to promote small-scale irrigation development also in the uplands where the government will focus on ridges of mountains and hills, incorporating aquaculture and paddy, with livestock, vegetables and tuber production, and technology development through improvement of communal weirs and the development of small storages for dry season use (MRC 2011: 16). This is part of modernizing shifting cultivation to create a sedentary agriculture.

As a condition put to farmers to maintain in certain places to produce commercial agricultural crops, local government in some areas receives suggestion on village-irrigation schemes. These ideas go to the provincial irrigation departments in order to consider support. Provincial irrigation technicians will make a visit to the site and make the first assessment of project feasibility (Ireson n. d.). However, the government has very limited human and budgetary resources and it relies heavily on foreign aid. What is more, paddy cultivation can in fact be impossible in upland areas except where terracing takes place. Terracing method requires appropriate techniques and high investment especially for irrigation and is therefore often not an option in practice (LIWG 2012). Again, this problem may not be solved with sufficient budget but rather by supporting communal tenure system in which local community arranges the production with affordable cost.

Traditional customary and non-state induced small scale irrigation scheme is an alternative way for the communities to earn their livelihood. This irrigation system has already been well-functioning in terms of how traditional resources including land and water are being used and arranged by informal village institutions (Ireson n. d.). In many areas, the traditional small scale irrigation systems are additional to the rain-fed dry land rice swiddens and this where communal tenure and collective action can be found as will be analyzed in *Field Work Presentation*.

## **7. Implementation of different initiatives by the government on land use planning and land allocation (LUP LA)**

Traditional rights to land in communities can be upheld as customary tenure with local rules and limited interference by the state. The moment the state wishes to control land use and land rights it develops a system for land administration and registration with limited attention to customary norms causing problems for the customary tenure system.

Before 1975, land tenure in the middle hills and uplands was of the customary communal kind. Later, the lowlands were managed and administered in a centralized manner. It focused on building state and collective economies as the main priority and lowland parcels (*din na*) were for agricultural production aimed at agriculture by state-induced collectives. This changed in 1986, when the Party and Government adopted the policy of new economic mechanism opening up its door for international relation and cooperation. The 6<sup>th</sup> joint meeting between the Executive Committee of the Central Party and the Council of Ministers of the 4<sup>th</sup> Congress (1986) defined a new policy of turning the economy into a commercial economy through recognition of long-term land use right of private farming families, state and collective economic sectors respectively. A new policy on international cooperation and promotion of foreign investment was also introduced leading to forms of land lease and land concession and development of a legislation related to land management and administration such as the Forest Law and Land Law. At the same time, efforts were made to distribute these laws and regulations to the peoples of all ethnic groups and to all sectors of the society throughout the country (NA 2013: 1.3).

The present sub-chapter introduces the history of government land use planning in Laos. The first attempt by the government was the *Land Use Planning and Land Allocation Program* (LUP LA) supported by Swedish grants. This LUP/LA was later carried into new approaches to Participatory Land Use Planning (PLUP) as they emerged during the 2000s in a government manual on PLUP<sup>11</sup>. This version of LUP/LA

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<sup>11</sup> Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Levels, March 2010.

was issued in March 2010. It determines the important principles of PLUP implementation, especially in relation to community participation in the process. The manual recognizes that many ethnic groups have different land use systems and farming practices. This calls for forest and land use zoning and the development of land management plans to use a flexible and adaptable approach. PLUP advocates for a land use planning and land allocation that balances the needs of village communities with the need to conserve natural resources (MAF & NLMA 2010: 10-29). It emphasizes secure land tenure, specifically in increasing the opportunity of villagers to obtain secure land titles, including communal land tenure (TAG 2009).

### **7.1. Implementation of Forest and Land Law**

The government of Laos classified land and forest into categories. In the Land Law 2003, there are eight categories of land which are: Agricultural Land; Forest Land; Water Area Land; Industrial Land; Communication Land; Cultural Land; Land for National Defense and Security; and Construction Land (Land Law 2003: Article 11). Forests are classified into three categories: Protection Forests, Conservation Forests, and Production Forests (Forest Law 2007: Article 9).

### **7.2. Land use planning and land allocation (LUP LA)**

Generally, it is widely criticized that legal land and forest management activities were done at a quick pace with little participation of villagers.

*“It has often been noted that LA/LUP procedures are not genuinely participatory. This limited participation can be a cause for the lack of interest or defiance of the villagers towards the process of land allocation. Participation is requested mostly, or only, when information must be collected: villagers are not actively involved during the subsequent steps. Some sources mention that quite often the technicians of DAFO seek to complete the procedure in only one visit and as quickly as possible. Very little is known about the villagers’ understanding of the various steps of the methodology for land allocation, and how they perceive the value of the documents delivered by DAFO” (Evrard 2004 :10).*

Reduced area of land available for families to produce agricultural crops was the underlying intension of government in compliance with Party Congress decisions to

eradicate shifting cultivation. The LUP resulted in shortened traditional rotation periods and decreased agricultural productivity. This impacted on the economic situation and villagers' nutrition. Many villages were forced to act with stealth and cleared forest far.

At the systematic level the LUP LA created lines and boundaries in a landscape where there were no fixed boundaries before. Customarily, villagers use streams, big trees, mountains or even giant stones to remember land boundary but this is customary because resources are shared as common property. For example, neighboring villages share their land to produce rice and they allow each other to come into their village land to collect wide forest products that they don't have in their own land for consumption. Legal boundaries do not only include but also exclude communities with a consequence for rights of access to land and forest resources. Living inside the delineated boundaries, each village is responsible to manage land and forest resources available within their new boundaries. They create rules on the use of resource they control. New rules promoted by government were often contradictory to customary rights especially where no previous private claims were entertained to land but only to annual crops. When rules and boundaries are fixed, the customary practice of reciprocity and fluid boundaries among communities falls apart. Neighbors are no more allowed to benefit from the resources they used to benefit as they did before the village boundary was officially created, their source of food and income are diminished along with the reciprocity. This creates tension amongst people and sometimes leads to conflicts (Fujita & Phanvilay 2008).

Inside the village territory and boundaries there are many categories of state and village use forest. Thus, boundaries between land and forest types within a village territory divide power between village and the state to control the resources. The rights of villagers to use the land and forest resources within their own village territory became regulated by government claims to state forest areas.

LUP LA has brought a significant step that decentralized administrative responsibilities to manage local resources from central government to local authorities. This program did not support customary rights, rather than it cut customary rights and it has been profoundly criticized (MAF & NLMA 2010: 6).

### **7.3. Participatory land use planning and land allocation (PLUP LA): a new version of LUP LA.**

Taking into account experience gained from the implementation of LUP LA, the government has recently cooperated with international organizations to develop a Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level (PLUP LA).

The new PLUP creates a process that gives power to village people to manage land within defined village territory. It identifies village boundary and categorizes different land use zones within the village boundary with participation of villagers. At the end of the process, the village people receive legal document called Land and Forest Management Agreement signed by the district governor (TEDx 2012). Together with mapping, land use planning is a precondition for land registration (TABI 2012).

The PLUP is better attuned to villagers' perception of landscape. It calls for definition of the location(s) of important NTFPs and customary communal agricultural land use. It highlights that communal land titles will be issued for parcels of forestland and agricultural rotational farming land designated in the village land use zoning and land use planning processes. Areas zoned as village sacred land, village use forests and communal grazing lands, communal agricultural land may be included (MAF & NLMA 2010: 12-55). The option to demarcate communal agricultural land is innovative in its alignment to customary practice. In relation to this, there are prescriptions for undertaking official communal land registrations. These procedures can be vetted against the analysis of this research on traditional tenure modalities from Houaphan province.

The Prime Ministry Decree No 88/PM on the Implementation of the Land Law, Article 7 states that village large protection forest, village conservation forests and unexploited forest land are the property of the state and therefore they are not allowed for an issuance of communal land title (MAF & NLMA 2010: 56).



The Ministerial Instruction No 564/NLMA (2007) gives the possibility for the recognition of communal land title. It states in the Article 11 that land use rights are established or recognized by: a) having a complete set of land documents; b) peaceful occupancy and use of the land for ten years with some land documents; c) occupancy and use of the land after resettlement; d) customary occupancy and use of the land without any land documents but verified by the village head and at least three neighbors; and e) land use right from peaceful and lawful occupation and development for a period of 20 years either by the one owner or by different person (s) who have assigned the land to the occupier and developer (Ministerial Instructions 2007: Article 11).

The Ministerial Instructions No. 564/NLMA (2007) furthermore points out that the Lao government manages the collective land but this land can be issued land title to the cooperatives, the collective organizations, communities, group of persons, ethnic groups that have communally used the land with no one is the owner of the right. The collective land is not allowed for sale, transfer, security purpose and lease or concession and it must be protected and developed for only the collective interest (NLMA 2007:15).

The PLUP takes into account the government's will to recognize customary communal rights. It provides communal land titling steps and stages with importance of participation of villagers and the PLUP also has a role in institutional design. In this case, it is important to ask how the rules will evolve. What sanctioning systems should be used? Should a social control be stimulated via regulation by the state? If so, how is social control stimulated via regulation by the state?

#### **7.4. Handbook and Toolbox for PLUP**

With support from *Institut de Recherche pour le Développement* (IRD) and Center for *International Forestry Research* (CIFOR-Indonesia), Lao government established a *Handbook and Toolbox for PLUP* in 2012. In the handbook, land zoning and management plan is designed to allow allocation of community use zone (communal land titling) (NAFRI 2012: 5).

The handbook suggests that village land use system is identified. This can be done through listing all village land use types, number of plots, areas and locations. They include those land types the village used in the past, are using at the moment and may use in the future. These land uses can be cropping system, livestock system, forest, and others as shown in Table 6.

**Table 6. Official land zoning and management plan**

- |                      |   |
|----------------------|---|
| 1. Cropping system:  | paddy field, permanent crop, rotational crop, plantation                            |
| 2. Livestock system: | grassland (livestock area), improved grassland pasture                              |
| 3. Forest:           | conservation forest, protection forest, production forest, sacred forest (cemetery) |
| 4. Other:            | shrub, reserve land, village area, water bodies                                     |

(Source: NAFRI 2012: 8)

As written in the handbook, characterized land types are an input for land use zoning. After this process, the Village Action Plan will be created as a sub-product of PLUP whereby the villagers commit to the implementation of a number of concrete activities including fencing livestock areas and developing tree plantations in identified areas (NAFRI 2012: 22). Characterizing land types therefore is a crucial step for traditional communal land to be legally recognized and the communal land could possibly be found in all land use systems.

Undertaking LUP LA in the village required large budget which was provided by donors to Laos. It is indicated in the Instruction on Collection of Fees and Service Charges by Land Management Sector No 3204/PMO, NLMA dated 9 December 2008 that each parcel of land in mountainous area would cost around US\$30 (250.000 kip). A family that has 2 hectares of land that is not connected will have to pay for both parcels to be surveyed separately. In addition, there can be additional fees of US\$ 1,8 (15.000 kip) for registration (NLMA 2008: No 3).

The cost for carrying out the land registration is a constraint for rural poor families to have hand titles. The government learnt from Viengkham District in Luang Prabang Province in northern Laos and indicated in the Handbook and Toolbox that main constraints villagers face in registering individual land are:

*“(i) most subsistence farmers cannot afford to pay the cost of individual plot registration, and (ii) certain current land use types are not eligible for land titling such as land under rotational crops. Land use of this type represents most of the area classified as agricultural land while paddy land is very limited in Viengkham District as in many other upland areas of northern Lao PDR” (NAFRI 2012: 34).*

Poor communities in rural areas lack money to pay for their land to be titled so they depend on the government to support them to get titling for their land. Meanwhile, it can be seen in general in Laos that families with capacity (money) use the land registration system to get title for their land. This brings about a question on who will pay the costs for a community to register their communal land.

## 7.5. Legal land documents

Many land users in Laos have received official documents that identify temporary and permanent rights to use and own land (Table 7).

**Table 7. Short and long term land documents**

Long-term land documents
1. Land Title ( <i>bay ta din</i> )
2. Land Map Sheet/Land Survey Certificate ( <i>pean vat ti din</i> )
3. Certificate for Original Acquisition of Land ( <i>bay yang yeun kan dai ma kong din</i> )
4. Land Development Attestation ( <i>bay yang yeun kan pat ta na ti din</i> )
Short-term documents
1. Temporary Land Use Certificate ( <i>bay mob sid nam sai ti din sua khao</i> )
2. Land and Forest Management Agreement ( <i>kho tok long kan jad san din lae pa mai lair pa mai ban</i> )
3. Land Lease Contract ( <i>sanya kan nam sai ti din</i> )

(Source: Land Law 2003: Article 11)

Most families in remote rural areas hold temporary land use right documents often outdated from the time of the LUP LA in the 1990s and early 2000s or they hold proofs of land rights in the form of a receipt that shows that they pay land tax.

Permanent land use rights are given to land users through four types of land certificates. Land Title is the highest legal document evidencing permanent land use right. It is titled for individual land holders who have been paying taxes for a certain parcel of land (Hanssen 2007: 5). Only one copy of this official evidence is registered and has been handed over to the land owner since 1997 (Land Law 2003: Article 49). With this land title, the owner can use the land as a security, share, transfer, sale-purchase, exchange and lease or give as inheritance. The land title holder also has the right to assign another person to exercise the right at his or her place but a written assignment with an official notification is required (NLMA 2007). This land title excludes others to access to the land without owner's agreement. It was reported in 2004 that 2.1 million land plots in the whole country were surveyed and 700.000 land plots were given land titles (Socio-Economist Newspaper: 12 May 2014).

A Land Map Sheet may be associated with the title or stand alone as proof, being a Land Survey Certificate. Long-term land use right over the construction land and permanent agricultural land categorized as rice field mostly (*din na*) and fruit garden have land map sheets. Owners of the Land Map Sheet have the rights to use, sale, and mortgage and give as inheritance.

Most rural residents have considered a Land Map Sheet as "land title" as that it is the highest land possession document they is provided. Normally, DLMA or PLMA conduct the land survey and in this way provide insurance to farmers by giving Land Map Sheet. This is carried out in all provinces. More than 90% of all cases were issued through sporadic approach or upon individual request and the rest through a systematic approach as a result of GTZ support (GTZ 2009: 10) but not many farmers in rural areas have Land Map Sheet.

A Certificate for Original Acquisition of Land is another certificate given to villagers who use production land (slash and burn cultivation areas) and degraded forest for regeneration of forest and tree planting (DoF 2007).

The permanent land use document is a Land Development Attestation. It testifies investment on the development of the concerned land parcel has been done in the respective areas (NLMA 2007).

Short-term land use right is allowed through three types of land documents. First, *Temporary Land Certificate* is a certification for land that has been used for more than three years. This certificate has been the government's primary vehicle of certifying utilization rights. The issuance of this certificate is based on the LUP LA Process and the request of villagers. Temporary Land certificate holders have the right to pass on the use right to successors but do not have the right to transfer or use the land document as a collateral or as a capital contribution into an enterprise or to use it as security or to lease (NLMA 2007: 4).

According to the old LUP LA process, District Governor can issue Land and Forest Management Agreement to village to protect, use, benefit and inherit from forest land within the village's administrative boundaries but this has changed after the introduction of PLUP in 2012. Issuance of this second type of temporary land document is considered on a case by case (NLMA 2007: 4).

Finally, there is Land Lease Contract. Any Lao citizen has by the Forest Law the right to use degraded forest land and barren land in duration of up to 30 years to enjoy private interest from its rehabilitation and development. The concerned village administrative office is given authority to certify such contract of the land (NLMA 2007: 4).

Owners of temporary land use certificates cannot sell or mortgage their land and also they have no right to compensation if land is expropriated by government. After a three year period, the temporary land holders have the right to apply for the issuance of land title for permanent use rights (GTZ 2009: 10-11).

As land titles and certificates mentioned differ, villagers may not be clear on the legal status of the many certificates and titles. They may keep the land documents well to protect them from damage; they may consider the documents temporary or permanent but may not be able to distinguish them in relation to their rights to the land. Because of this, villagers need to know their legal rights to land and exercise the rights to secure their source of living and this is important especially in the area where investment activities in land are to be taken place.

## **8. Foreign direct investment (FDI)**

### **8.1. Concession**

This section introduces the concept of Foreign Direct Investment (FDI) in Laos. It analyses the internal and external impact of foreign investment in land based on concessions awarded by the government to foreigners, primarily Chinese and Vietnamese, but also Thai. The investment basically comes in two modalities, partly full concessions where the government provides full rights up to 75 years with possibility to extend (Schumann et al. 2006: 25). Another model allows farmers to keep the land in a contract farming system and the risk of losing land altogether is less.

The two investment modes which are concession and contract business that are operated in Laos will be analyzed in order to see how they affect local people especially their livelihoods. It raises the question of how a government can secure livelihood of rural citizens on the one hand and engage in economic development through FDI on the other. The analysis simultaneously shows how communal tenure may be the instrument for the communities to protect the land and lead to productivity enhancement if given the right support. Because FDIs often lead to loss of land for ethnic groups in the uplands, as they have no title to the land, the FDIs are criticized heavily by many international NGOs and donors.

Impact of FDI in Laos can be seen as a “pull factor” and “push factor”. The first factor is about market demand for agricultural products and the latter is that the country has an intention to turn its natural resources into capital.

In recent years, the world has faced a food crisis where food prices dramatically increased and countries such as China now seeks land for crop production abroad, as far as several African countries. Wealthy investors who have management ability, modern technology, capital resources and markets necessary for large scale investments (GTZ 2009: 26) often lack access to land and natural resources to feed into their rapidly growing industries. They then search for concessions and land use rights in foreign countries especially in developing nations in order to invest in agricultural production to provide business profits as well as food and money back in their home country (GTZ 2009: 26).

In Laos, the government sees subsistence farmers, often shifting cultivators (many of whom are ethnic minorities) as making unproductive use of resources and not geared towards the market and as being resistant to fully integrating into the market economy. Also, the government of Laos perceives that it still has land area available for agriculture or investment of around five million hectares, with a ceiling of 2, 3 million hectares on the land targeted for concessions for all purposes, including industrial agriculture and plantations<sup>12</sup> (Munankami 2010). The government aims to use the “perceived” underutilized land in a more productive way to modernize agricultural sector and to support one of the country development goals of eliminating shifting cultivation.

Modernizing the agriculture in the context of Laos means that the government promotes FDI to make possible an increase of agricultural productivity by using improved seeds, technical knowledge, modern farm machinery such as tractors and threshers, chemical fertilizers and pesticides in an optimal combination with water.

Foreign investors are invited in agriculture and plantation businesses through land concessions on upland communities’ land (GTZ 2009: 13) and the government of Laos expect that the investment will directly benefit rural communities through provision of improved basic infrastructure, off-farm job opportunities and wages (Andersen 2011: 10). Lao government expects that the investment will also provide government revenue which can be used to develop other necessary areas and upgrade the management

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<sup>12</sup> It is not clear whether the 5 million ha on the land targeted for concessions for all purposes include the agricultural land of Lao farmers

capacity of the national human resource base (Hansen 2007 cited in GTZ 2009: 15) that Lao farmers and workers will receive training to do a better technical work and thus later make good use of skills required.

About 85% of all investment in agricultural concessions comes from foreign investors mostly China, Vietnam, Thailand, and India. China is the biggest foreign business that holds approximately 50% of foreign investment in agricultural sector in Laos (Wellman 2012: 4).

Prior to 2000s, it was estimated that about 2-3 million hectares of the whole Lao territory area was under FDI concessions including projects that were not (yet) implemented and active (GTZ 2009: 18). A land concession for agriculture mainly involves rubber, eucalyptus, sugarcane and cassava plantations. By now approximately 15% of the land in countryside has been handed over to FDIs such as Chinese and Vietnamese rubber plantation companies (Andersen 2011: 10).

Between 2009 and 2010, the GIZ-Land Management and Registration Project, LNRRRC, NLMA (now Land Administration Department, under the MONRE) conducted a spatially explicit national inventory of land concessions in Laos. The result of the inventory was that current land leased or conceded to either domestic or foreign parties is about five million hectares of Lao PDR amounting to 21% of the total territory of the country. Roughly 13% of all villages have at least one concession within their village boundaries (Wellman 2012: 3).

International non-governmental organizations working in Laos like LIWGs viewed that investment activities related to land have caused degradation of natural resources at an alarming rate (LIWG 2012). This is also agreed by Lao land and resource experts that land concessions for plantations is one of the main factors contributing to forest loss in Laos over the past 10 years (Vientiane Times: 16 September 2011) and business investment in land brings with it many challenges. Approximately 60% of FDI in Laos are related to the exploitation of the country's environment and natural resources increasing the already considerable pressure on village forests, exacerbating local food insecurity and malnutrition problems (IFAD 2011: 3).



From existing literature, there are unclear estimations on land available for FDI in Laos. This means that there is “chaos” in statistics which creates an opportunity for outsiders or foreign companies to make profit of this situation by talking to regional or local authorities in order to find land. Some local government staff with power to make decision on land concession can use the chaotic estimation of available land as a financial opportunity and take a side business for themselves.

According to Tucker (2009), powerful elites have been influencing the awarding of concessions in an incorrect process (GTZ 2009: 30). There are government officials who have accepted bribes to provide investors with economic land concessions. Here village headmen were also reported to receive a commission from companies to “find” land for investors (Baird 2011). In many instances, large scale concession lands for plantations have been granted without government conducting a prior survey (GTZ 2009: 24-30). In a case of a province in the north of Laos, Louang Namtha, 24.173 hectares of land was leased to land businesses, but only 214 hectares of the approved area are in fact located in the maps for the concession (Dwyer 2011 & Dwyer 2007: 1-6).

Cor. H. Hanssen 2007 wrote that state land can be categorized into land controlled by district authorities, by provincial authorities or directly by national authorities (Hanssen 2007: 5) but the inventory of the state land is incomprehensive (Barney & Candy 2011: 18). Governmental line ministries, departments and divisions at central and local levels have different bits and pieces of information (Schumann et al. 2006: 5) which means that there is a lack of data on existing lease and concession contracts and details on land that could be leased. These shortcomings slow down investment approvals and investors turn to local authorities to search for land for their investment. The investors often have to go to the district and village level to identify and negotiate land deal business (GTZ 2009: 12). More often than not, fertile land that villagers have been cultivating agricultural crops in a customary way or land with forests from which villagers collect food to feed their families and to earn some cash are pointed as preferred investment spots (Dwyer 2011). Hanssen also highlights that land allocation for concessions was sometimes done in a quick pace so that the established system of

rules and regulations governing investment and land use was not followed properly (Hanssen 2007: 5).

In reality, Laos lacks skilled human bureaucratic resources to deal with large scale investment in land. Various line agencies of the local and central government still have a limited understanding of the policies and laws regarding land concessions (Munankami 2010) and this impacts on how the responsibility between central and provincial levels are shared regarding land concessions. This leads to a poor coordination and control over FDI of the government (GTZ 2009: 24-30).

Different government authorities are mandated to award land for concessions (Table 8). In practice, local authorities think and resent that they are given only limited power to authorize state land for concessions. They often exceed the limits in their leasing and concession contracts (Schumann et al. 2006: 13). Local government authorities act on their own and provide investors including their foreign friends living on the other side of the border a piece of land in the district without meaningful consultations with local communities and the central government may not always know what the districts are doing.

**Table 8. Power of state authority to lease state land for agricultural and tree plantation business.**

No	Authorities	Degraded Forestland		Barren Forestland	
		Ha per activity	Duration (year)	Ha per activity	Duration (year)
1.	National Assembly	15.000-50.000	30-50	>30.000	40-70
2.	Government (Land Department/NLM)	150-15.000	30-40	500-30.000	40-60
3.	Province (LMA)	≥150	15-30	≤500	15-40
4.	District			<30	

(Source: PM Decree 2009: Article 28 & 29)

Legally, as the natural landscape ideally is zoned and a concession for agricultural business and tree plantation are allowed only in the degraded forestland and barren forestland (PM 2009: Article 4, 7 & 26) such investment may be seen as environmentally good.<sup>13</sup> However, numerous instances have been observed where good natural forest has been cut to make room for plantations but that these plantations were never established after the timber has been extracted against big profits for the businessman. Furthermore this has happened where ethnic group communities were evicted from their ancestral land. It is stated in a report on Rubber Barons (2014) by Global Witness that satellite images showed a large area of intact forest in Laos which has been illegally cleared by rubber concession companies creating devastating impact on the indigenous way of life.

Land concessions are carried out on what legally is the “state land” that is the land under the state authority based on the “eminent domain” of the state and this, as explained, includes communities’ land where land is not titled. The concession areas are relatively large, often several thousand hectares. Agreement on concession business stipulates the provision of use rights for the concessionaire for a specific period of time in an exchange for a fixed fee and under specified terms and conditions (Anon 2012). However, the fee per hectare is very low and creates little income to the government. It is presented in a study on state land lease and concessions in Laos supported by GTZ that fees and land rents charged from foreign investors by the government range from US\$ 20 to US\$ 50 per hectares per year. The study focuses on agricultural plantations of 10.000 hectare and 21.000 hectares of 30 years duration. They were approved by the central government meeting the requirements set by law and the real charge was different. In this case, 10.000 hectares were charged US\$ 6 per hectares per year and 21.000 hectares were charged US\$ 10 per ha per year (Schumann et al. 2006: 23).

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<sup>13</sup> Forest Law defines degraded forestland as the forestland area where forests has been heavily and continually damaged and degraded causing the loss of balance in organic matter, which may not be able to regenerate naturally or become a rich forest again. Barren forestland is the forestland area without trees caused by natural or human destruction (Forest Law 2007: Article 3). In practice, the definition is unclear (LIWG 20112 (a): 10).

Plantation concession companies clear more land than what is actually awarded. It was found in the report of a prior topographic survey for the approval of a land concession to a Korean company that proposed an area of 1.404 hectares in Maed District, Vientiane province: “the area surveyed consists of fallow forest and degraded forest and is suitable for planting industrial crops, especially jatropha, locally called *mak yao*”. After the concession had been granted, it was found out that the companies cleared not only the approved area which consisted of fallow forest but also 120 hectares of healthy forest (GTZ 2009: 23).

Some land concession companies have as their hidden priority to log the land for timber and sometimes the concession request is an excuse to cut down trees for timber and then leave. Thus the government came to insist for land investors to take out concessions on areas without forest and trees. As shown in the study conducted in Atsaphone district, Savannaketh province by Hanssen, there were more than 7000 hectares of land acquired by rubber, sugar cane and jatropha concession companies (Hanssen 2007: 7-14). In this case, the concession land included mostly mature forests that disappeared during the land preparation process (Dwyer 2007: 1-6). Also, reports on plantations on state lands showed many instances where the tree plantation story was just a cover for logging primary forests on the concession lands with the company involved folding up as soon as all trees were harvested and sold for profit, sometimes leaving heavy logging equipment behind on site (Andersen 2011: 11).

Ethnic minority groups are the people most affected by the FDI policy of awarding land for concession (Andersen 2011: 10). Rubber plantations are often established on common community land areas which are land where various ethnic groups practice a mosaic agricultural production including rotational shifting cultivation, livestock raising, and gathering of NTFPs. But by law, communal lands that are left as fallows for more than three years can be classified as “degraded forest” of the state and thus it can be claimed by the government (ADB 2010: 7-73) for awarding to companies for concession (Hanssen 2007: 4). This law ignores the traditional cultivation method practiced by shifting cultivators who need to come back to their fallow land plots to produce rice after more than three years when the soil generates fertility.

There have been reports on land concessions that included grazing land, swidden, and rice paddy land (Dwyer 2011). This meant for communities losing communal shifting cultivation farmland that is an essential basis for villagers to produce agricultural crop and raise cattle. When arable land became scarce the cycles of fallow periods of swidden agriculture are shortened and rice yields decrease (Barney & Candy 2011: 26) which has serious implications for food security. Ian G. Baird has showed the result of a survey of 189 families in six villages affected by rubber plantations in Bachieng district. It described how the number of families who were able to grow enough rice for their own consumption up to 12 months a year fell from four in five in 2003 to just one in five in 2007 (Baird 2011).

Not only villagers lose their land for cultivation, some concession companies destroy even farmers' crops and trees with modern machines during the process of making way for rubber plantation without informing them (Dwyer 2011 & 2007: 1-6) and this destruction leads to conflicts. Baird (2011: 16) presented,

*"Peoples' perennial crops, including pineapples, fruit trees and coffee were clandestinely cleared at night during a village festival (boun ban in Lao), when villagers let their guard down. They awoke the next morning to find the landscape completely transformed. Changes in landscapes and associated livelihoods are taking place over very short periods of time, with most land being converted within a week or two, a few days, or even just one night".*

Through Global Witness, villagers who are impacted by the rubber concessions said:

*"We feel hopeless because we lost everything...We don't have food now...We cannot gather vegetables or bamboo...The company just came and invaded us."*

(Global Witness: 20 February 2014).

By law, any loss of land for local communities due to land concession is to be compensated, but this is seldom implemented as the local communities have no legal title to the land that they are using. The compensation will cover only the replacement cost of the land (crops and fruit trees) if no title to land is held. But that, as already mentioned, takes place only where the land can be shown to belong to individuals in communities. Degraded forest areas which in fact may be fallow land of a shifting cultivation system and therefore indispensable for agriculture may be given as concessions by the government without any compensation for the land lost. Whole

villages practicing shifting cultivation have thus been moved to make room for concessions. Many foreign companies are aware of the impact on local communities and the resentment they have against giving up their lands. To avoid conflicts, benefits are promised by companies that all villagers most of who are independent farmers will be employed on the plantation of rubber, for instance and that the company will make a road, a clinic or a school. This often does not happen.

It is important to note that land awarded for large scale foreign-owned concessions is not fenced so it later becomes a burden on villagers to keep livestock out of, for instance, rubber plantations. In Nambak district, Loungphabang province, a rubber business covers around 9.000 hectares of which only 1.800 hectares were planted. Villagers in this area gain income from raising cattle mostly buffalos and unavoidably the cattle enter the concession land to eat grass and thus trample on the young (rubber) saplings. By district regulation, the cattle owners or villagers have to pay compensation for the damage to the company. As villagers are poor and their custom has always been for cattle to roam freely demanding less labor from villagers so they are unable to keep their animals (Anon 2012).

Making land available for sale the land concessions would often require relocation of people mostly ethnic minority groups whose right to land is traditional (Andersen 2011:10). The comprehensive Participatory Poverty Assessment (PPA) conducted under the State Planning Committee supported by ADB in 2002 found that the poor viewed resettlement for whatever reasons as a direct cause of the increased poverty that they were facing (GoL 2006: 11). As Olivia Schoenweger and Alfons Üllenberg write about the impact of FDI in Laos, 19% of the population suffer from rice hunger, mostly rice shortage (GTZ 2009: 6).

Where resettlement leads to consolidation of many different villages into one village it is found to create traumatic conditions and cultural shock. Here much more additional family labor is needed to carry out a living on poor soils in overcrowded conditions (Chamberlain 2007: 4). Resettling in new locations means that traditional lifestyles are disrupted and people are removed from the natural resources on which they depend for livelihood (Anon 2012).

Some rural families whose land is taken away for plantation businesses were paid compensation. In this context, there is a condition set by government that families have to be resettled and that the resettlement area is near to the business sites of rubber plantation. A family must have a stipulated number of workers agreed by the company to gain work and to be provided living quarters.

Changing traditional living condition is often perceived by the government as good and as a way to survive as a country especially when it attempts to bring people in control and to address the problem of poverty. Meanwhile many ethnic group families do not comply with this and there are different perceptions towards how local life should continue.

Some argue that villagers should be allowed to keep on living their traditional life, but this argument is contrary to the government that has to move with the world. In this context, the country has to improve its economic status but it has to happen in a way that takes into consideration environmental, social and economic sustainability. From here, the government may see that political reform is necessary and this can be a challenging task as there is a need to integrate people's perceptions<sup>14</sup>.

People who have lost their land to rubber concessions and been forced to work for the companies are often underpaid for their labor if they opt to work for the company but many ethnic group villagers who are forest people do not want to work as laborers.

Local villagers cannot protest as they do not have the social, economic and cultural capital. A French sociologist, Pierre Bourdieu sees the required social capital in the form of knowledge, skills, education, and advantages that a person has, which give him or her higher status in society. In *The Forms of Capital*, Bourdieu wrote about social capital:

*"Social capital is the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition – or in other words, to membership in a group – which provides each of its members with the backing of*

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14 According to Morris et al. (1999), most cultural anthropologists suggest that using emic and etic knowledge is a way to bring about an understanding a culture and is important to the success of the change (Lett 1990: 130). More details on emic and etic aspects are in the Chapter on Research Methodologies.

*the collectivity-owned capital, a 'credential' which entitles them to credit, in the various senses of the word" (Bourdieu 1986).*

It is understood from what Bourdieu described as social and cultural capital that local poor people in rural Laos lack capacity to work as a group with power to bargain with the company in order to receive labor payment rate seen as appropriate in regards to the actual contribution of their labor or work calculated from current market value.

If a comparison of the income earned from contract farming and from sale of labor to concessionaries is made, it is seen that farmers who participate in contract farming arrangements are likely to earn significantly more than farmers who simply sell their work to private sector plantations. Significant fluctuation of the price of rubber has affected the families whose income is depending on the plantation work (Anon 2012). Phongsaly provincial Director of the provincial Department of Agriculture and Forestry, Thongsavan Thammavong stated that one kilogram of rubber was sold for 23.000 kips (28 US\$) to 24.000 kips (30 US\$) at the beginning of the year 2012, but the price dropped to about 10.700 kips (13 US\$) in the end of this period (Vientiane Times: 12 October 2012). Such important change of the rubber price affects families who are depending on the business as laborers as they would be paid less.

The labor demands of the concessionaries' plantations are seasonal and dependent on the stage of development of the trees so few laborers have permanent contracts. Day laborers cannot make enough income to make ends meet when the average number of working days per year is less than a quarter of the year, thus making it very difficult for people to make a living through working on the plantations (Luangaramsi et al. 2008 cited in Baird 2011).

Instead of total reliance on the income from the company villagers in some areas now continue to live in their traditional houses, use "community" land and forest to produce agricultural crops and collect NTFPs to support family needs as food, shelter and cash. Ideally, they work for concession companies only when work is available or when they want (for example, when they are free from working on their land or when they think they are paid appropriately).



In comparison, livelihood of villagers who are wage dependent is determined by the company while independent farmers can decide whether they should produce food on their land or work for the company or take both options. Many independent farmers occasionally are employed to work in the plantation concession and experienced a working pressure and uncertainty that created a feeling that make them reluctant to change their original way of life. Villagers may be willing to change from being independent farmers to wage-earners but this can happen in a condition that their livelihood is secured.

To gain the expected technical knowledge and experience, the Ministry of Labor and Social Welfare directs each provincial Labor and Social Welfare Department to provide training for rubber plantation workers but due to budget constraints they can only train between 40 and 50 workers from the entire country each year (Vientiane Times: 2 February 2013). Also, the National Assembly has put the limit to the number of non-Lao citizens that companies can employ on not more than 10% of foreign laborers of the total workforce. Despite this clear policy, the government has limited capacity to control inflow of foreign laborers (Vientiane Times: 20 September 2011). As a result, about 200.000 immigrants have recently been reported to work in Laos as illegal workers, mostly Chinese and Vietnamese (Vaenkeo 2011). As day labor, some foreign investors perceive them as more effective than Lao laborers. In addition, foreign laborers accept a cheaper pay rate for their work than what the companies would pay for local laborers. Consequently, many local laborers are replaced with foreign labor of Vietnamese background (GTZ 2009: 32).

Beside the labor issue, large monoculture plantation companies create impacts on environment, people's health and their property. Many businesses use agro-chemicals and chemical fertilizers in a way that harms environment and causes health problem (Hanssen 2007: 16). In southern provinces including Sekong, some rubber plantation sites are close to rivers, the water from which local people and animals use. The animals sometimes graze near the rubber plantation areas where the chemicals are applied (Personal Communication, 12 October 2011) and a National Assembly member, Phonemany Kienxayavong acknowledges that this creates negative impact on property of local property (RFA 2012).

Under the funding of UNDP, the Lao National Economic research Institute conducted a study on rubber plantations in northern Laos. The study expressed concerns that a lack of necessary environmental safeguards allows the commercial agriculture to expose land resources to serious environmental risks and the loss of a balanced ecosystem, which can render land use in the country unsustainable and this has negative impact on the capacity to help farmers generate income and alleviate poverty in the long run (Vientiane Times: 18 February 2013).

The government of Laos sees that some of the many land concession permissions issued for the internal and foreign private companies for planting the eucalyptus and rubber trees have provided rural development, job opportunities and income in the project areas. But many doubt and think that the costs are higher than the benefits.

Kham-ouan Boupha, Chairperson of NLMA saw that many problems have occurred because of the absence of a proper land survey in the country to determine which lands are feasible to be awarded in concession. This has resulted in a large loss of forestry resources and it has affected people's livelihood. This view is corroborated by LNRRI, where Palikone Thalongsechanh sees that proper land surveys will contribute to addressing past and present conflicts (Vientiane Times: 5 July 2011).

Presently, Laos faces many land conflicts and there is no effective conflict resolution mechanism. People are struggling to get a fair and transparent resolution of their land disputes including the issue of fair compensation (LIWG 2012 (c)). The International Federation for Human Rights (FIDH) and its member organization, the Lao Movement for Human Rights (MLDH) published a briefing Paper for the 9<sup>th</sup> Asia-Europe Meeting Summit of Heads of State and Government (ASEM9)<sup>15</sup> which was organized in November 2012. The briefing paper highlighted over a dozen cases of violations

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<sup>15</sup> Participating the meeting were representatives from Australia, Austria, Belgium, Brunei, Bulgaria, Cambodia, China, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Republic of Korea, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, the Netherlands, New Zealand, Pakistan, the Philippines, Poland, Portugal, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sweden, Thailand, the United Kingdom, and Vietnam.

including the violations of the rights of ethnic minorities and violations of land rights in Laos which is on the rise (FIDH 2012). Somdy Duangdy, the Minister of Planning and Investment revealed that large plots of land were approved for businesses as concessions without looking into the details to see if the land belonged to the state or local people (Oxfam 2012: 17).

In response to the land issue, NA members have called for more power to the National Assembly in decision making on national concerns in the 4<sup>th</sup> ordinary session of the NA's 7<sup>th</sup> Legislature which was opened in December 2012. They revealed that administrative bodies made decisions they are not legally authorized to take and that the decision were against the national interests. What is more, some government officials have backed up the investors in compensation negotiations, forcing villagers to accept the conditions dictated (Vientiane Times: 21 December 2012). The NA members further revealed that many of them were not familiar with the background of many of the issues introduced. Despite this, they were always given a very short period of time to consider issues and projects of national concern proposed by the government. Almost all proposals the government presented to NA were approved and this undermines the role of the legislative body (Vientiane Times: 24 December 2012).

Some NA members have proposed solutions for land issues. An example is that the NA Economic, Planning and Finance Committee Vice Chairperson, Buakham Thipphavong said, "if negative activities are not fully addressed, they will lead people to mistrust the Party, government, and our new regime" (Vientiane Times: 16 February 2012). In *The Edge Review*, Kham-oun Boupha, a former official in the prime minister's office also expressed his concern,

*"If we take land from people that we have already given them for use in production, trade and services, and allocate it for the (foreign) concession agreement, I think we are in opposition to our own policy"* (Macan-Markar 2013).

By 2012, a stallment on concession for mineral activity and eucalyptus and rubber trees plantation was introduced in order to ensure that the Party Guidance and the periodic Socio-Economic Development Plan focuses on sustainable development including utilizing natural resources in an effective and sustainable manner. The Prime Minister

Order No 13/PM, dated 11 June 2012<sup>16</sup> states that all Ministries, Equivalent Authorities, Provinces and Vientiane Capital City have to pause on consideration and permission for:

*“new investment projects for the searching and exploration of metallic mineral and non-metallic ... as well as the excavation of sedimentary gold along the rivers and streams and on the earth at nation-wide”. “new investment projects for the plantation of Eucalyptus and Rubber trees at nation-wide that should be started to implement since this order became effectiveness until 31th December 2015 in order to check and evaluate the real implementation of approved projects for Eucalyptus and Rubber trees and check the implementation on obligation as contracted and according to the regulation and law” (PM Order No 13/PM 2012).*

The stallment on concession is effective until the end of 2015. Meanwhile, the PM Order further stated that the special task force committee<sup>17</sup> must be formed. This committee will be responsible to monitor and evaluate concessions for mining activities and eucalyptus and rubber trees plantation projects to report to the government (PM Order No 13/PM 2012). The responsibility of the committee members is to carry out the Land Survey and Allocation activity nationwide. In this process, the finding of this field work in Hoauphan is important to understand. Upon the completion of the special task, Strategy Plan for promoting the investment in mining and plantations (eucalyptus and rubber plantation) in the future must be developed and proposed to the government for consideration and approval before the year 2015.

Senior Research Scientist at the Centre for Development and Environment (CDE), Andreas Heinemann sees that the Prime Minister’s order on concession calls for better data and information is the necessary legal background and the highest level of support in dealing with challenges including lack of data, transparency, and coordination for land management in Lao PDR . Despite the slowdown, the government has not closed the door to new investment proposals and new projects were approved, according to the Deputy Minister of Planning and Investment (PI), Bounthavy Sisouphanthong (Personal Communication: 11 October 2011).

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<sup>16</sup> The Prime Minister Order on Cessation for Consideration and Agreement to the Investment Projects for the Mineral Searching and Exploration, the Plantation of Rubber and Eucalyptus Trees Throughout Nation-wide, No 13/PM, dated 11 June 2012.

<sup>17</sup> In the PM Order No 13/PM 2012, the special task force committee consisted of: the Planning and Investment Sector (Team Leader), the Agricultural and Forestry Sector (Deputy), the Natural Resource and Environment Sector (Committee’s members), the Financial Sector and the Local Government (Committee’s members).

Currently, civil society organization such as Village Focus International (VFI), Farmers and Agribusiness network information (LaoFAB)<sup>18</sup> and Land Issues Working Groups (LIWGs)<sup>19</sup> work in Laos. These NGOs believe that land security and local management of natural resources are two of the most critical requirements of healthy rural villages. They bring up land including communal land issues they see at the village level into national discussion level in order to provide decision-makers with better access to information and analysis in order to support rural development (FIDH 2012).

Hands on experience and practical knowledge is seen as crucial by some local government leaders to take into consideration in addressing real life problems especially in relation to concessions to ensure that local communities' livelihood are not adversely impacted.

A government social expert, the Vice-president of Houaphan LFNC, Vongsasi said that a foreign business came to propose for about 100 hectares of land in Hiem (Viengthong) district as concession land to plant rubber but local governmental leaders have observed that land is critical to the living of local villagers and it is not clear how these villagers would benefit from the business. The proposal for land concession therefore was refused by local leaders and villagers will continue cultivating the land themselves. At the same time, these local leaders have observed that villagers have, though not at a quick pace, improved their living condition through working on their own land (Personal Communication: 11 October 2011).

Similarly, the Deputy Governor of the predominantly indigenous Xekong Province, Phonphet Khewlavong has noted that by having rights in land, villagers' right to enjoy

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<sup>18</sup>LaoFAB is a forum for sharing information about Farmers and Agribusiness in Laos. Members of the forum include Government officials, staff of donor agencies and NGOs, project experts, academics and business, see [www.laofab.org](http://www.laofab.org)

<sup>19</sup>LIWG promotes awareness and understanding of the social, economic and environmental impacts of land-related projects, by gathering and disseminating information, facilitating dialogue and carrying out studies, see <http://www.laolandissues.org>,

the benefit from land may be protected. This province also has rejected to give land for concession businesses (Baird 2010: 376).

## **8.2. Contract farming**

In Laos, FDI creates impacts on local life through contract farming often among the upland ethnic groups because of a lack of legal recognition of traditional rights to land, a lack of legal introduction of land use and management activities and implementation of business investment without the control by farmers.

In comparison to concessions, often large scale, the foreign investment in agriculture through contract farming can promote existing smallholder farming that ensures local level benefits and avoids farmers losing their land. According to Oliver Schoenweger, Land policy Adviser for GTZ in Laos, the contract farming gives potential to improve the land rights of smallholders and local communities while also potentially improving land productivity, boosting the local economy, and generating state revenue (Schoenweger n. d.: 4). In this case, if the traditional right of local communities to land is legally recognized.

Contract farming (*sanya phoukphan songson*) means production agreement between two parties - an individual or a group of investors or traders and a producer or group of farmers - entering an agreement for producing and selling specific agriculture products of interest to the investor (NAFES 2012: 6).

As individual or farmer's group business, contract farming is for crop production ranging from maize to rubber and pulpwood and the contract may be for up to 35 years. It is carried out according to the Prime Minister's 2007 memorandum that emphasizes a different approach to FDI in the agricultural sector that would ensure local level benefit while taking into account income, labor availability, and current land use of local communities that practice their own system. Contract farming may be carried out in ways called either "2+3" or "1+4" schemes according to the government's recommendations.

The “2+3” contract farming system means that farmer provides land and labor and the investors provide know-how and technology, capital and marketing. Often the provision of capital is in form of a loan to the farmer for seeds, fertilizer and equipment. The profit is to be divided among farmers and investors, 70% and 30%, respectively (Fullbrook 2007 cited in GTZ 2009: 16). This model aims to maintain villagers’ secure access to their land and a stronger sense of ownership in the crop.

In the “2+3” contract farming system, farmers retain a kind of rights to their land when working on it by clearing the land, planting trees, weeding and harvesting products. Companies do not acquire for the land nor does they invest heavily in production costs because farmers do most of the farm work and government gain revenue from tax without getting involved in concession or importing foreign labor (Hanssen 2007: 20). A major problem which has arisen in this kind of contract farming is the failure of company to actually take and pay for the produce and market it for a profit, leaving the farmer helpless with a harvested crop that he cannot sell. The government is advising government staff to assist in the drawing up of contracts which have safeguards for farmers, who otherwise may rely on oral agreements between company representatives and farmers.

**Table 9. Provision formula of contract farming**

<b>Model</b>	<b>Land</b>	<b>Labor</b>	<b>Capital</b>	<b>Technology</b>	<b>Market</b>	<b>Share of Benefit (%)</b>
<b>2 + 3</b>						
Farmers	✓	✓				70
Investors			✓	✓	✓	30
<b>1 + 4</b>						
Farmers	✓					30
Investors		✓	✓	✓	✓	70

The “1+4” contract farming model is also known as a “concession-like model”. It refers to an agreement where farmers provide land only. The investors plant, maintain the land and take care of the plants or crops with hired labor which may or may not be the labor of landowners or farmers. Correspondingly, the investor will have 70% share of

the profits and 30% goes to farmers (GTZ 2009: 11-16). The formulas of the two contract farming models, between farmers and investors are shown in the Table 9.

The contract farming method known as “1+4” may also be arranged under the condition that the company borrows or lease the land from farmers and pays them as laborers to grow the crop for the company. Prior to each phase of the production cycle, farmers are meant to be provided crop-specific technical trainings. In this case, farmers benefit from being paid for their labor and the rent of their land. They also learn from the training of the agricultural production techniques (Anon. 2012). Like the “2+3” contract arrangement, the government is paid land tax by the farmers but not by the companies that reap the main benefit freely.

Usually the land that farmers contribute to “2+3” and “1+4” contract farming is the land that their families occupy and the land that community use to produce agricultural crop mainly rice as communal land and they think of it as the land of their village. The land may not be titled but farmers still claim the land through holding a receipt for having paid land tax to the government or holding a piece of paper signed by the village headman to witness the occupancy (Anon 2012). In contract farming, farmers can still collect food such as wild edibles that naturally grow on the land. Farmers may also grow some vegetable such as pumpkins, chilies and cucumber without damaging the main crops if the contract farming is for fast growing trees. This is important for family consumption.

The investment in contract farming is often based on trust between the two parties, investors and farmers, but this trust may be waived by district government officers that act as go between for the foreign investors and farmers and support farmers’ loans. Farmers trust the government officers to work for their benefit and the fundamental element of the trust is that producers pay back the loan at harvest time when traders appear to purchase the harvest (Anon 2012). In practice, there are several incidences of foreign businessmen who do not show up to buy the crop as mentioned. On the other hand there have also been incidences where farmers sell the produce at a higher price to others rather than to the one who agreed to purchase based on a fixed price (often low price). As it stands, contract farming can be improved by clear legal arrangements.



For local farmers, being involved in contract farming business put them at risk of losing benefit from land because they lack legal and technical knowledge while the companies have power to negotiate and operate the business contracts. Farmers can be potentially at risk of debts if contracts are unfair or dishonored and if quality standards are not achieved or if the crops fail (Fullbrook 2007 cited in GTZ 2009: 16).

The “1+4” contract scheme gives companies greater control over the plantations and a better share of benefits and it gives villagers fewer sources of alternative income while waiting for crops to bring benefit. After giving land to contract farming, farmers need to earn a living to support their daily food needs so day labor opportunities are necessary. Because this mode of contract farming allows greater control by the investor, farmers may have little sense of ownership or partnership in the investment so they may work with little pay (WFP 2009 cited in GTZ 2009: 31).

It can be seen that remote rural Lao poor farmers or ethnic groups in the uplands often carry the risks of their investment through “2+3” and “1+4” contract schemes. This is because they lack ability to negotiate with the investors to protect their own benefits from the impact of the conditions in the contract they signed including their share of the future profit, because of market changes and crop failure.

According to National Agriculture and Forestry Extension Services (NAFES), contract farming in Laos is dynamic and the models change into different equations. There can be other types of contract farming aside from “2+3” and “1+4”. Where farmers are capable to financially invest on their own or apply techniques for production, 3+2 practice was found: farmers provide land, labor and capital and investors provide market and technology. In some cases, farmers may be more advanced and just rely on investor for the market (NAFES 2012: 9).



Photo 12. Job's Tears. Source: Agroasie in Laos



Photo 13. Villagers dry job's tears under the sun before selling them to traders

Another type of farming is independent smallholder agriculture. It is operated by independent farmers, usually the lowland Lao or Lao speaking ethnic groups who are seen by others as more financially advantaged. Often they are better off-families (including families whose members work in governmental sector in a higher position or operate private business) and they have capacity to develop social networks which further allow them to have contact with people in the wider society and contact with people who can buy the rubber they produced. They grow paddy as well as smaller plots of rubber on their own land using their own capital and labor. These farmers do not have to share this benefit with others. Therefore, these small holdings are independent farmers because they have the means to invest their own money and grow their own trees. They then directly benefit from their land (Ling 2011). These independent farmers still need to command additional land for rice crops for subsistence as it takes up to eight years before a rubber tree can be tapped and starts generating profits (Hanssen 2007: 17).

### **8.3. Farmer cooperatives**

In contract farming, Lao government believes that farmers, if organized, may be stronger to negotiate their conditions. Reflecting this belief is the Decree on Cooperatives 2010 that allows an establishment of production cooperatives in the agricultural and forestry sectors. It aims to enable farmers and small producers to combine their resources into farmer group enterprises, to provide mutual assistance, to expand the agricultural and forestry produce and to meet commercial standards to generate an income that contributes to poverty reduction and better living standard of the ethnic groups in the country (PM Decree 1010, Article 1).

Cooperatives were part of the previous communist political system in Laos. In the past, the cooperatives were seen as a means of centralizing land use, employing agricultural labor, and distributing consumer goods but they did not survive the major economic reforms of the market-oriented. At present, cooperatives are a means for farmers to receive adequate organizational support including an access to credit and opportunity to generate income as small groups. International development projects have supported the government laying the foundation of cooperatives by promoting group based

income-generating activities namely weaving, raising livestock, and providing forms of microfinance for rural villages to produce agricultural crops and handicrafts. These cooperatives, however, are not legally recognized (are not formed as legal entity) and they do not have specific regulatory body (ILO 2006). In mobilizing capital, the government seems to favor large-scale enterprises and this creates unfair competition for small farmer groups or cooperatives (Castella et al. 2011).

Thus, the Cooperative Federation of German Cooperatives (DGRV) has provided funding support for a cooperative development project in Laos. It aims to improve smallholders' farming systems and empower farmers as well as production groups to work on a voluntary basis and member driven through support to setting up farmers' cooperatives and the provision of their respective institutional capacity building efforts under the main principles that cooperatives are self-help, self-responsibility and self-administration (Vientiane Times: 22 February 2013). In many cases, farmer cooperatives are established but without financial or in-kind support from the government.

Vredeseilanden (VECO) is an international funded development NGO that has facilitated the government in Bokeo province to establish Farmer Group Enterprises, around 20 of them. Farmers in these groups join their potential investments including their own labor capacity with a prospect of a share of profit. They do this in consultation with related government entities and other actors, business administration and financial capacity building opportunities. The VECO has brought to local farmers access to credit and increased direct incomes but it did observe that setting up a business association or farmers' groups involved heavy bureaucracy and work on contracts (Ling 2010: 1-3). In such arrangement, the poor are likely to be excluded from the benefits of farmer groups because they lack property such as land as collateral or guarantee to access credit and to pool resources with the group.

Another example related to the setting up of an association is Limited Liability Company that works with villagers in resettled communities that are linked to the establishment of the Nam Theun 2 hydropower project where the government has issues communal tenure for all land rights of these communities (Vientiane Times: 28 January 2013).

Here comes a question that asks if communal land can ensure the benefit of farmers as a group or community including the poor if it is formally legalized. This is actually what to be examined in this research in response the working hypotheses that legally recognized communal land tenure system will secure rights to land and thus social-economic benefit land can produce.

## **9. Land use issue in some Asian countries**

“Land grabbing” is widely used to describe land acquisitions that land dealers do to one or more of the followings: 1) violate human rights; 2) disregard the principle of free, prior and informed consent (FPIC) – under which affected communities are informed about and are able to give or refuse consent to a project; 3) are not based on a thorough assessment of, or disregard, social, economic and environmental impacts; 4) avoid transparent contracts with clear and binding commitments on employment and benefit-sharing; 5) avoid democratic planning, independent oversight and meaningful participation (Oxfam 2012: 5).

Accessible information shows that both foreigners and locals practice “land grabbing” and monoagriculture creating adversely impact on the livelihood, food security and land and natural resource rights and employment opportunities of rural communities (FAO 2012: 9). The immediate impacts of land grabbing on communities have been well documented and include gross human-rights violations, destitution, loss of livelihood, destruction of property and crops, and lack of compensation (Oxfam 2012: 6).

Oxfam has analyzed that during the past decade a significant amount of arable land has been sold or leased globally to international and local investors who are anticipating gains from land deals and land-related investments. Globally, this land area is eight times the size of the United Kingdom which could feed a billion people, equivalent to the number of people who go to bed hungry each night. From mid-2008 to 2009, agricultural land deals by foreign investors in developing countries was about 200%. Every sixth day, between 2000 and 2010, developing countries have sold an area of the size of London to foreign investors but little of the land is being used to feed people in

the same countries which may have serious hunger problems, or to be sold in local markets (Oxfam 2012: 1-4).

According to a research report on *Tipping the Balance: Policies to shape agricultural investments and markets in favor of small-scale farmers*, around 500 million small farms support almost two billion people which is nearly one third of the global population and these small farms need to be protected (Vorley, Cotula & Chan 2012).

Many FDI interventions in Southeast Asia tend to bring up similar experiences. Like in Laos, local people in many developing countries have used and arranged land to produce food to support their living in a traditional way but their traditional rights have not yet been legally recognized. Many customary resource users lose their land when the government gives the land to FDI for plantations. The spokesman for Cambodia's opposition Sam Rainsy Party, Yim Sovann agreed that, "eviction without fair compensation is against the law and seriously violates human rights (Smith and Masis 2012).

According to a Laotian grass-root campaigner, FDI affects sources of livelihood of local villagers and results in conflicts, many of which are serious and some cause deaths because "land is their life, their blood, and that is why they are fighting back" (Macan-Markar 2013).

This section briefly investigates land issues in Cambodia, Myanmar or Burma, and Vietnam to show how national and international development relates to the emerging issues with regard to social-cultural, political and economic sustainability. This investigation includes a comparative analysis of the impact of the urbanization on local communities' land in China and customary land use between two ethnic groups in India in order show that rights to land are important for natural resource-dependent communities. How governments respond to land issues nationally and globally will also be explored.

Many Asian countries do have land use plans to express the sovereign interests of a country to protect and manage its natural resources but these interests, according to

International Land Coalition (ILC), are being overpowered by regional and global economic interests (ILC 2012). Furthermore land policies and governance practices in many nations in Asia are non-inclusive (ILC 2012) and this affects traditional rights to land of many poor.

Cambodia has experienced a great deal of turmoil in land governance. More than 60 % of all arable land in this country has been passed over to private companies (ILC 2012) from China, Vietnam, Thailand, and the Gulf States and the USA. In a seminar on *Cadastral Mapping and Marketization of Farm Land in Southeast Asia*, an expert in economic geography, Peter Lindner presented that a total area of 3.000.000 hectares of land were reported to be taken for long-term business development activities including rubber plantation (Lindner 2012:1). Since 2003, business in land has affected about 400.000 Cambodians. Thousands of rural poor Cambodian farmers were forced to leave their land, as they had no title, to make way for business without being consulted and they lost their land (Blair 2012).

Through media, a violent conflict on land was reported to happen in Kampong Speu province in Cambodia on June 2011. Around 300 police and military police armed with rifles and electric batons to force hundreds of villagers to leave their land in the area of more than 60 hectares which was awarded to Taiwan business without agreement of the villagers who protect their land by using poles, axes and slingshots to fight back (Tapenh 2011).

Published incidents show that many people in Cambodia took part in demonstration against the land grabs and many were arrested, convicted and some were killed. These people included women and highly respected monks (Pilorge 2012). This may not be the end. The Cambodian League for the Promotion and Defense of Human Rights predicts that violence would continue if land-grabbing continues (Tapenh 2011).

As of December 2012, *The Phnom Penh Post* newspaper showed another example of land conflict in Cambodia. The provincial level government granted land in Ratanakkiri's O'Yadav district to two Vietnamese Rubber Plantations. According to local villagers these two companies cleared about 100 meters by 3.000 meters of forest and

agricultural land areas where huge piles of luxury trees were felt down. The concession business affected the land as many as 200 ethnic minority families and they were pressured by the government to sign land titles for individual. This was seen by the district government as the only way to keep forest. However, only 102 of the families agreed to sign the registration and the rest refused because they prefer to continue living their traditional life style communally in the forest linking to their ancestors and their traditional cultural heritage (Seangly 2012: 5).

A country like Myanmar is similarly as well in the heydays of the Junta dealing with a severe land grabbing and land speculation crisis. It was reported in the *Irrawaddy Magazine* that there is a serious land conflict of all kinds across the country. The number of landless people is increasing to more than 30% and this is the single biggest issue in this country today. Like poor Cambodian farming families, rural farmers in Myanmar have been forcibly evicted from their land to make way for foreign investments in rubber plantations, jatropha and farm oil agriculture and natural resource sectors. In 2006, for example, the Northern Region Military Commander Mai-Gen Ohn Myint was reported to support Yuzana Plantation Company to expropriate more than 80.000 hectares of farmland from hundreds of local Kachin farming families in order to create large scale plantations of cassava and sugarcane for export to China (Martov 26 October 2012) and the Dutch NGO TNI (Transitional Institute) has reported how China's support for opium eradication in the Kachin State of Northern Burma is a cover for Chinese establishment of rubber plantations (Krammer & Woods 2012).

Land problems also take place in Vietnam. In 2012, about 80% of all complaints filed to the government of Vietnam were related to land disputes, according to Huynh Phong Tranh, the head of the government's anti-corruption watchdog. Recent years, there have been a growing number of protests by Vietnamese communities who are not happy with what they were paid as compensation for the land taken by the government or business. These disputes were reported not nationally specific to Vietnam. There is negative example of the EcoPark just outside the capital of Hanoi, a business that won an Asia Pacific Property Award recognizing the best practices in the real estate sector across the world. The park was presented in *Vietnam News* as "perfect harmony of humans and nature". In April 2012, villagers were protesting the land expropriation and an



estimated 2000 to 3000 police were called in to break it up with tear gas and smoke grenades in what did not appear to be 'perfect harmony' (NAMVIET: 9 October 2012).

China has experienced urbanization at a rapid pace over the years. During this urbanization process, local governments seized many farmers' land without or with little compensation. In many communities, low compensation for family's farm land has reduced the standard of their living conditions and instead of using land for public purposes, the local governments sold the expropriated land at a higher price to industrial developers. "The unfair treatment farmers face in land seizures are now the primary source of complaints and social unrest in the country", said Wang Kaiyu, a sociologist who had conducted field investigations in rural China for a long time. The director of the Research Department of Rural Economy with the Development Research Center, Xu Xiaojing admitted that current compensation standard for expropriated land in China was inappropriate (CPC: 09 November 2012).

In India there have been vast land conflicts between indigenous Bodo or Boro tribesmen and Bengali-speaking lowlanders in Western Assam in India in 2012. The Bodo indigenous peoples held land in common and the Bengali-speaking lowlanders were settled farmers that moved into the hills. They had been moving into the area for many decades but the Bodo wanted to protect their lands and they were anxious to establish land rights as protection against dispossession. A decade earlier, there was a long, violent campaign for autonomy after which the Bodo got their own Bodoland Territorial Council (BTC) on whose land territory outsiders may not own property. The Bodo considered the Bengali-speakers of the lowlanders as outsiders (The Economist: 25 August 2012).

Historically, communal land tenure was the norm among indigenous communities in Vietnam. The government introduced private rights in communal lands in 1993 but this was problematic because it was difficult to determine the single owner of land plot. Andersen wrote that some Tai villages in Son La province accepted that:

*"So-called 'forest land' (degraded uplands) would be allotted to households; however, they did not accept that irrigated rice fields would be privatized, as these had long been under collective management and distributed periodically (once every three years) based on the number of members of the household.<sup>38</sup> The Tay*

*wanted this traditional system recognized, so they refused to accept individual land tenure certificates for these fields” (Andersen 2011: 18).*

Further a study on ethnicity and development in Vietnam by World Bank stated:

*“Among others, Quang Tri province has showed that communal land tenure rules have remained predominant over state rules, that land within the communities was still allocated to households each year by designation of the village elder and that individual private land tenure rights were not widespread or Recognized” (Andersen 2011: 10).*

The Party in Vietnam like in Laos did start allowing people to acquire “land-use rights” as part of the reforms that helped transform the Vietnamese economy from the late 1980s onward.

Back to late 1970s, the Communist Party of China (CPC) introduced a land system which allowed rural collectives, usually a rural village committee rather than farmers themselves to own land in rural areas. This systematic arrangement was first designed to ensure distribution fairness of land use where land-use rights were distributed to farmer families through long-term deals under a household contract responsibility system (Xinhua 2013).

Under the existing Chinese rules on use of land, the state can nationalize the collective-owned land over reasons like "public interests" and transfer farmland for industrial and construction use (CPC: 09 November 2012). This collective land system influenced collectivization agriculture system in Laos as earlier described in the section: *two modes of agricultural production and government policy on eradication of shifting cultivation.*

Like in Laos and Vietnam, a journalist, David Blair presented that Myanmar makes all land the property of the state granting minimal rights to its inhabitants (Blair 2012). Under current legal framework of Myanmar, according to the International NGO Displacement Solutions (DS), whatever rights over land that are granted are exclusively leaseholds rights, user rights, or rights to cultivate a certain land parcel with a certain crop subject to the approval of local government bodies that are appointed by the central government. In *The Irrawaddy Magazine*, Scott Leckie, the Director of DS reported that the current Burmese government policy and the existing rules and

regulations overwhelmingly favor wealth-connected business people over the impoverished majority (Martov 26 October 2012).

The Bodo tribe in India has demonstrated their interest to keep their communal rights to land and forest which include the right to their ancestral domain. They wanted legally recognizing their communal rights to land take place as this is indispensable for them to ensure a livelihood.

Unlike the Bodo tribe in India, indigenous communities elsewhere may not be capable of protest and they are not prepared to claim for their own rights because they are unfamiliar with land law, illiterate, and unable to use the language used to draft the legislation (Anderson 2011: 6). This will account for the limited protests in Laos particularly in remote communities where people are not yet able to read and write or they have not yet been influenced by business activities and their traditional attachment to the land on which they rely for their livelihood is not interrupted or taken away. People in this setting may, at the moment, not see that current situation of villagers who have already been negatively affected by FDI could turn out to apply to their community in the future. Local people, for example in Laos, are also ideologically dependent on the government to choose for them their legal rights to land and use of natural resources because they feel that they do not have power to do something against the government's decisions or they believe that the government is the most reliable entity to see what is better for their community in relation to land and thus trust the government.

Despite some communities are not yet aware, land issues in many developing countries have gained global attention and changed global perception and this change has reshaped debates on national and international land policies and moved land issue to a higher level in the international policy agenda. In the book: *Environmental Uncertainty and Local Knowledge: Southeast Asia as a Laboratory of Global Ecological Change*, a sociologist Anna-Katharina Hornidge and an anthropologist Christoph Antweiler wrote that natural resource exploitation in Southeast Asia is amongst other issues that increasingly threaten people's livelihood (Hornidge & Antweiler 2012).

Because land is critical for local livelihood land issues can cause very serious problems to the governments if left unsolved. International NGOs and Government representatives from countries and regions have recently started to engage towards a more responsible land governance system.

Under the law of Cambodia, local people are supposed to be consulted and compensation provided if their land is needed for development. In reality, such rules are often broken and any compensation payment is most often very small (Blair 2012).

In relation to traditional rights to land, indigenous communities in Cambodia are allowed to register their ancestral lands under communal titles according to the Land Law of 2011. After the Land Law was passed the Royal Government of Cambodia (RGC) formulated a Policy for Development of Indigenous Communities and Sub-decree for Registration and Right to Use of Land of Indigenous Peoples. These two-main documents are:

*“For the development of the indigenous peoples areas and for the access to their rights by preserving their beliefs and traditional values of living and enjoying the benefits based on the national law, international covenants or treaties related to human rights and rights of indigenous peoples” (United Nations 2010: 8).*

According to Andersen (2011: 6), indigenous communities in Cambodia are “illiterate and depend on NGO support to understand the law and the requirements”. Despite the Laws, areas populated by indigenous people in Cambodia have increasingly comes under threat from land concessions by Vietnamese rubber plantation; mining and agricultural businesses implemented through controversial government land concessions (Irwin 2011).

International NGOs like German Agency for International Development (GIZ) and Canadian International Development Agency (CIDA) financed the Cambodian government to carry out collective land titling in Mondulkiri, a northeastern province. One communal title of the Andong Kralleng village comprises 1.750 hectares consisting of a number of parcels that make up one communal title. This initiative, reported by the International Federation for Human Rights (FIDH), protects indigenous peoples' rights to collective ownership (Irwin 2011).

Under its Land Law, Cambodian government allows a legal person known as a small group of registered indigenous minorities to have legal communal land titles (Seangly 2012: 5) for agricultural lands, reserve agricultural lands and small areas of forest (Baird 2013: 273-277). To receive communal land title, internal rules on managing and sharing communal land must be formulated (Andersen 2011: 21).

Similar to what happened in Laos the Premier of Cambodia has halted concessions on new land for rubber cultivation in May 2012. Until 2015 the government will review and amend the allocation of land for foreign investment projects to ensure that any new investments are properly assessed, that decisions 'do not jeopardize people's means of livelihood' and that there can be 'real benefits to the nation and its people' (NAMVIET: 9 October 2012).

Land issues in China were brought into the discussion during the 18<sup>th</sup> National Congress on November 2012 when the President Hu Jintao stated in his keynote that "we should give more to farmers and take less from them". This means that the reform of the land expropriation system implies that the Chinese government should no longer expropriate the property rights of farmers to reduce the cost of the country's industrialization and urbanization (CPC: 09 November 2012).

In the policy document of 2013, the Chinese government plans to complete rural land use-rights registration within five years and improve protection of farmers' rights to land. This is to make farmers truly feel that they have rights over the resources, and that they are capable of protecting it. For rural land expropriation, farmers will be consulted and expropriation will not be allowed without their agreement, said Qin Qingwu, a Chinese Association of Agricultural Economics member (Xinhua 2013).

In 2012, a meeting was held in Phnom Penh, Cambodia where 100 participants from more than a dozen developing countries met to discuss and build collective action on responsible land governance, engaging active citizenship and governments. Participants to the meeting highlighted the *Voluntary Guidelines on the Responsible Governance of*

*Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGs)* by 193 countries represented in the Committee on Food Security (ILC: 11 October 2012).

The VGs prepared through several regional workshops, for Asia in Hanoi in 2010 were approved on May 2012. It set out principles and internationally accepted standards for responsible tenure practices providing an international framework for responsible land governance (ILC: 11 October 2012). The VGs promotes equal rights for women in securing land title and encouraging states to ensure that poor people get legal help during land disputes. A particular strength of the guidelines is their call for governance to apply to “all forms of tenure, including public, private, communal, collective, indigenous and customary (Oxfam 2012: 14).

The 7<sup>th</sup> Asia-Europe Parliamentary Partnership Meeting (ASEP7)<sup>20</sup> was held from 4<sup>th</sup> to 5<sup>th</sup> October 2012 in Vientiane, Laos, where 250 delegates from 27 countries from Asian and European countries participated and discussed ways to ensure, among others, food security and sustainable development. The Head of the Belgian delegation, Senator Rik Torfs then reminded the meeting of the agreement of the 6<sup>th</sup> ASEP meeting organized in Brussels, Belgium in 2010:

*“ASEP Parliamentarians considered that, in order to achieve economic development and social progress, it is necessary to respect fundamental rights and freedoms, especially the freedom from poverty and the right to choose the way of development”* (Vientiane Times: 5 October 2012).

In his welcoming remarks, the Prime Minister of Laos Thongsing Thammavong announced that there was the need for cooperation in areas of agricultural production associated with food programs as a strategy to food security. Importantly related to food security was land policy, added the President of the NA of Laos, Pany Yathortou who was also the President of ASEP7.

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<sup>20</sup> The ASEP7 is part of the overall Asia-Europe partnership process which serves as a forum for inter-parliamentary contacts, exchanges and diplomacy among parliaments aiming to promote mutual understanding among the people and countries of Asia and Europe. ASEP meeting was held in 1) Strasbourg, (1) France, in 1996; (2) Manila, the Philippines in 2002; (3) Hue, Vietnam in 2004; (4) Helsinki, Finland in 2006; (5) Beijing, China in 2008; and (6) Brussels, Belgium in 2010.

Shortly after ASEP7, Laos also hosted the 9<sup>th</sup> Asia-Europe People's Forum (ASEPF9)<sup>21</sup>. The forum declared that governments have failed to prioritize human rights, environmental security and labor rights, over the profits of companies. This has undermined democratic accountability as elites make decisions and implement policies with little or no scrutiny from citizens, creating the conditions for poverty, inequality, environmental devastation and growing social unrest. Land and resource grabbing in many Asian countries including Laos is accelerating in the name of 'development'. Further, there is a growing body of evidence that large-scale investments in agriculture and extractive industries are resulting in negative impacts on rural livelihood and ecologies, human rights, and local food security and food sovereignty. The consequences of this corporate domination are experienced in the lives of millions of women, men and children not only across Asia but also Europe (ASEPF9: 2012).

Key recommendations of the ASEPF9 to governments are that VGs are an integral first step in protecting the tenure rights particularly the rights of small-scale food producers and ensuring a more equitable governance of natural resources. It is also important that local and national development plans fully recognize the rights of local communities to sustainable livelihood and food sovereignty. The ASEPF9 urges the governments to respect the rights of indigenous peoples to their lands, territories and resources as the material, economic, social and cultural base for their collective survival and development. This includes the full and effective participation of indigenous or ethnic peoples in decision-making processes relating to development including the requirement for free, prior and informed consent<sup>22</sup> of indigenous peoples in

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<sup>21</sup>ASEPF9, representing people's organizations and citizens from Asia and Europe joined together from 16th to 19th October 2012 in Vientiane, Laos. It tackled People's Visions, which represent Asia Europe People's Forum (AEPF)'s hopes for citizens of the (Asia-Europe Meeting) ASEM member countries and the communities they live in. ASEPF9 urges ASEM and its member Governments to recognize the issues, priorities and to take forward recommendations.

<sup>22</sup> Further information on free, prior and informed consent can be found from UN-REDD Programme 2013, Guidelines on Free, Prior and Informed Consent, Available at: [www.un-redd.org](http://www.un-redd.org)

development projects. It is important to note that ASEPF9 acknowledged contribution of indigenous peoples in sustainable development through their simple lifestyles, their traditional knowledge, indigenous techniques and innovative ways of production (ASEPF9: 2012) and they are clearly related to communal land tenure.

### **10. Perception towards communal land tenure and customary tenure in Laos**

It has been made clear that communal land tenure has long been existed in Southeast Asian countries. This is because many communities in upland like in Laos operate a customary tenure of their areas of shifting cultivation. Since this land use implies that the use of extended fallows there is a risk that this fallow land is seen by the government as “idle” suitable for land concessions without recognizing that these land areas are indispensable parts of the agricultural land use system and livelihood security. Therefore, in upland S.E. Asia and issue has risen advocating the actual registration with the title of communal land of a village.

There exists customary communal land tenure in uplands in Laos where local upland farmers often belonging to ethnic groups communally manage their lands and protect them against degradation. This relates to a concept of the “first founder of domain” we observe in Southeast Asia and also in Laos. This means that an ethnic group in, a village has a myth about the first founder, the one who came as the first to the area and cleared the land and settled. The idea of the first founder has supernatural characteristics as such first founder is seen as having special relations to the spirits of the land and thus he is able to ensure the benevolence of the spirits that grant fertility of land and good harvests. In many locations in the country there may be a kind of altar or place to offer food and drink to the first founder during annual ceremonies. People living in the location uphold their descent from this first founder thus having special relations to the spirits of the land<sup>23</sup>.

Land traditionally used by upland rural communities is often considered as land belonging to no one as private property only pertains to one’s knife or the crops in the

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<sup>23</sup> See *Founders’ Cults in Southeast Asia. Ancestors, Polity, and Identity* edited by Nicola Tannenbaum and Cornelia Ann Kammerer. New Haven, Conn.: Yale University Southeast Asia Studies, 2003, pp. xi + 373. Monograph 52: Yale Southeast Asia Studies



given year. The existence for centuries of communal land management has drawn interest that communal land tenure should be legally recognized to ensure the livelihood and avoid landlessness of upland communities (Andersen 2011: 7). The National Agriculture and Forestry Research Institute (NAFRI) has supported the belief that securing land tenure is an important step towards sustainable natural resource management in the uplands of Lao PDR. It considers communal land title as a tool that not only can prevent the risks of land grabbing by external investors but also very likely play a significant role in the policies and actions for climate change mitigation (NAFRI 2012: 34). Secured land tenure is seen as a prerequisite for food security, sustainable land use, and social and economic development (FAO 2012: 6). A researcher Hanssen reports:

*“Rethinking the priorities (for land titling) in Lao PDR is needed in order to stop the current trend toward conversion of communal lands to other uses, mainly agricultural and tree plantations.” Key findings include: (1) communal land use spans the country’s diverse ethnic landscape; and (2) in every community visited, “land held in common by a community or user group plays a crucial role” in the community’s well-being, making communal land certification “well in line with national goals of poverty reduction and sustainable use of land and natural resources” (Hanssen 2007: 15).*

Security of land tenure can be strengthened by identifying the boundary of private lands and commons and the jurisdiction of different stakeholders. Such an approach will help in the effective management and sustainable use of commons (Sedara, Sophal & Acharya 2002: 28).

*“With the advance of the state, increasing land privatization and competition between concessionaires and outsiders for the same land, communities, NGOs and other civil society organizations call for the state to legally recognize customary communal tenure to safeguard community interests and the environment. Because the state holds important domain over all property within its boundaries, in order to formalize communal tenure it is important that the state provides a legal framework for collective land rights and support the development of group statutes and bylaws” (Andersen 2011: 5).*

Without recognizing the customary rights of indigenous people to own the land and the use of natural resources they face the risk that their rights to such resources will be threatened by competing claims, and even lost as a result of eviction (FAO 2012 6 -16). With legally recognized rights of villagers to land, they have possibility to gain more

benefit. According to Andersen, “communal tenure can ensure livelihood and at the same time be a key element in environmental protection”. She further writes:

*“With the emergence of initiatives for Reduced Emissions from Deforestation and Degradation (REDD and REDD+), governance and benefit sharing of carbon finance become critical questions in defining who owns the carbon stocked in forest. Marketable community rights to this special resource unit (stocked carbon) can be supported by national legislation that favors communal tenure of some of the carbon properties. This may lead to a separation of rights to carbon from the broader rights to the forest and land, an aspect not yet addressed by theoretical work on communal tenure” (Andersen 2011: 2-8).*

All remote rural residents or ethnic minorities are still using land that is within the eminent domain of the state. The land is not titled and in the eyes of the state it is state forest land, even though rice is growing in a rotational farming system. Include the case of collection of NTFPs as mention above, any piece of land will be subject to different functional, legal, customary and vegetation cover classifications. It depends on who is talking. The customary tenure in several upland places in Houaphan as well as many other provinces is community based, meaning it is communal. The villagers own the territory in common, also when formally the land is considered state forest areas. In Houaphan, most of the agricultural land in the hills and in many lower land areas is collectively managed and held as land of villagers within a village as a whole and as land of a group of ethnic people or family/clan.

## CHAPTER IV. RESEARCH METHODOLOGIES

I found it practical to conduct field research in my own country particularly in a local area where I was born. It is also important that Houaphan is a place of my origin and I am a member of Tai Daeng ethnic group on my father's side. My parents belong to a generation in transition from farmers to government employees. Despite of this shift, they still have a close connection with their original farming families so being born into this family I was exposed not only to real life of local farmers but also governmental representatives. In society, I gained a certain level of understanding on cultures, beliefs and social relations which have set me a feeling of belonging to where I came from and I realize that this may make me blind to what an outsider may see however I looked at things from different perspectives as I am aware of being biased.

Since this PhD research takes place at the University of Murcia in Spain, carrying out field work in Lao PDR has required on the Lao side a series of formal permissions but this is not something new to me. Also, there have been deliberations on the selection of informants including gender aspects, language differences and the difficulty of accessibility.

I have on purpose paid attention to gender issues among informants as the general social attitude and perception among men see women as weak. This could be an "emic" approach determined by local custom, meaning, and belief (Headland, Pike and Harris 1990). The emic view takes point of departure in the context being studied to uncover findings by putting aside prior theories and assumptions in order to let the participants and data "speak" for themselves and to allow themes, patterns, and concepts to emerge (Lett 1990: 130).

Most cultural anthropologists suggest that combining emic with what is called 'etic' knowledge can bring a deeper understanding of a culture. Morris et al. (1999) defines etic knowledge or the etic view as the view from outside where generalizations about human behavior are considered universally true, and commonly it links cultural practices to factors of interest to the researcher, such as economic or ecological conditions, that cultural insiders may not consider very relevant. An etic approach is useful for a researcher who takes an existing theory or conceptual framework and

conducts research to see how it applies to testing the hypotheses that guides the research. This etic approach allows for comparison across contexts and populations, and the development of more general cross-cultural concepts. Using emic in combination with etic allows the researcher to gain potential new and groundbreaking data (Anon 2008).

A formal bureaucratic process was important and necessary to have to approach the governmental sectors in Laos. A *Field Work Support Letter*<sup>24</sup> was required from the University of Murcia. This document was attached with a *Working Plan* and sent to DoL<sup>25</sup> where a *Permission Letter* to carry out field work at local government level was issued. This letter was shown to the Provincial Administrative Office (PAO) of Houaphan before approaching other authorities at this level. In the bureaucratic system, carrying out the study at district and village levels needed official permission letters from province to districts (PAFO to DAFO), from district to village headmen and from a village headman to villagers. When this study was acknowledged by province and district governmental authorities, the *Support Letter* from the University of Murcia was carried directly to PAO. More details of the bureaucratic process needed for this research are demonstrated in the Figure 2 but this process is not the only way to approach national and local government of Laos.

In order to collect necessary data, the fieldwork had to be carried out at three different levels:

National Level: Department of Land (DoL) under the Ministry of Natural Resources and Environment (MONRE), Department of Forestry (DoF) under the Ministry of Agriculture and Forestry (MAF), and Lao Front for National Construction (LFNC).

Regional Local Governmental line agencies in (Houaphan) province (P) and district Level: (D): Land Management Authorities (LMA), Agricultural and Forestry Offices (P/DAFO), and Lao Front for National Construction

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<sup>24</sup> The letter provided by Academic Advisor from the University of Murcia was in English and it was translated into Lao, official language of Laos.

<sup>25</sup> The letter could be sent to DoL or DoF or LFNC

(P/DFNC).

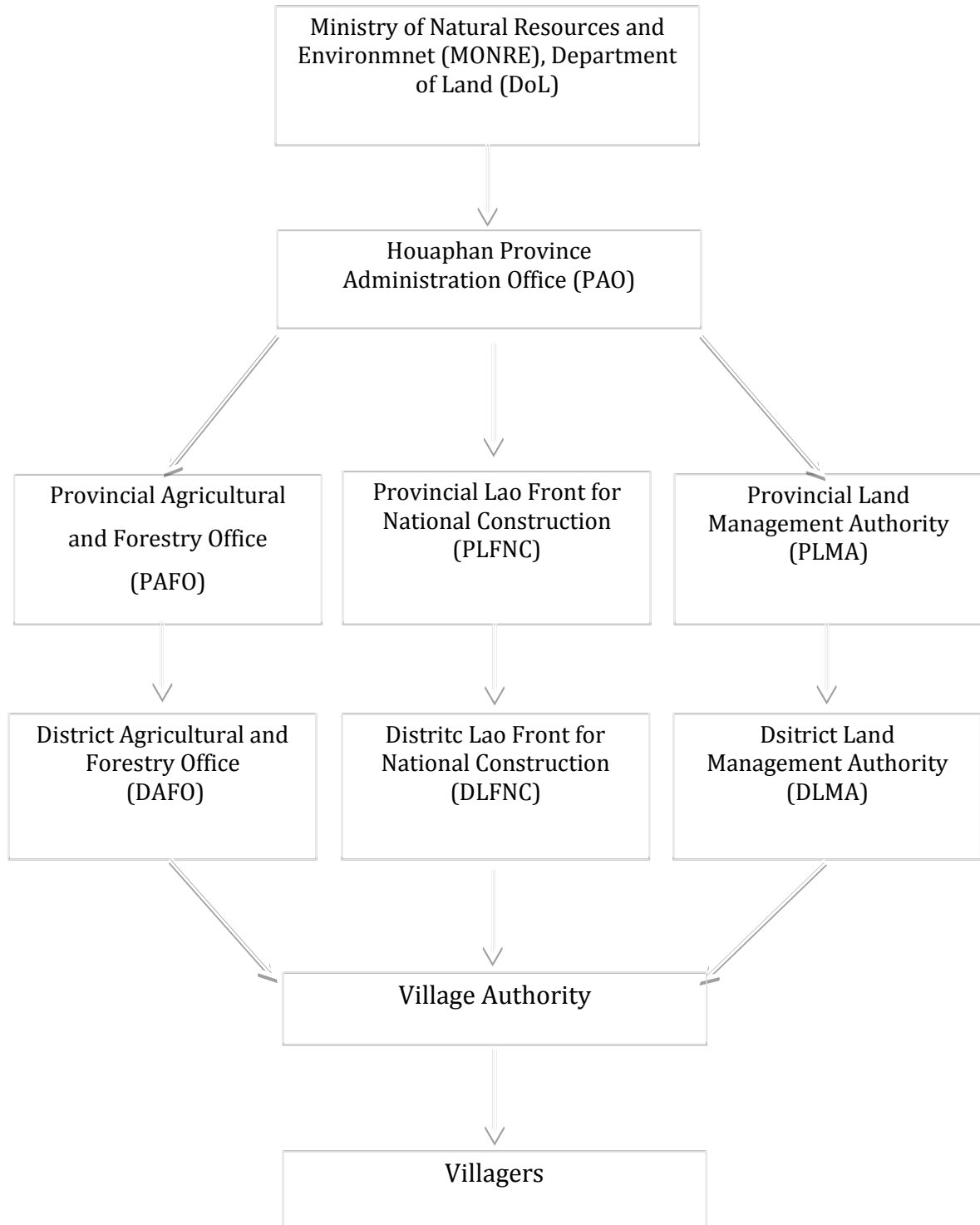
Local Level: 13 villages comprising 6 Hmong and 7 Tai Daeng from 3 districts which are Xum-Nue (politically central area of the province), Viengxay and Sopbao.

The field research was carried out three times with a total duration of 5 months. The first field work was between November 2010-January 2011 when I involved mostly national and provincial governmental authority levels. Rules, laws and policies on land and forest as well as available data on ethnic groups were collected from libraries of DoL, DOF and LFNC in Vientiane as well as from several academic sources. In Houaphan province and districts, I visited governmental authorities to have them issue a support document (*bai kit sam phan*) allowing interviews with district authorities. I gained primary sources of data including local government documents, seminar and conference proceedings, statistical records, plans and reports. Aside from collecting these documents, I interacted with concerned local governmental representatives, and some visited villages. The official data served as a complementary element to the other data collected during the research thus making the best use of the existing resources (Merriam and Associates 2002: 13).

The second field study happened between November 2011 and January 2012 when I worked closely with governmental representatives at districts and six villages (Table 10). In these communities, I studied their customary communal tenure systems which are organised under different set of rules and institutions.

To validate my research findings, I organised the third field work from August to October 2012 and worked with villagers in seven new villages (Table 10). This time, I placed particular attention to the differences between communal land tenure systems in lower areas with irrigated paddy land and upland (rice fields and forest) of both ethnic groups since it is an assumption in common property theory that the institutions for collective action must match the resource characteristics. Thus, the *permanently* irrigated fields differed from the temporary shifting cultivation fields in terms of how the resources were shared commonly.

**Figure 2. Presentation of the bureaucratic process as a requirement from the government to carry out field study in Laos.**



**Table 10. Visited villages in Houaphan province (2010-2012)**

Districts	Villages		Ethnic Groups	Notes
	Lao <sup>26</sup>	English		
Sopbao	1. ລ້ອງເງິນ	Long Ngeun	Hmong	
	2. ພຽງໄຊ	Phiengxay	Tai Daeng	
	3. ສົບເບົາ	Sopbao	Tai Daeng	
Viengxay	4. ໂຮມພັນ	Hormphan	Hmong+Emien	
	5. ເມືອງລຽດ	Meaung Lied	Tai Daeng	Re-visited
	6. ເມືອດ	Meuad	Tai Daeng	
	7. ນາໂພ	Napho	Tai Daeng	
	8. ພູໄຊ	Phouxai	Hmong	Re-visited
	9. ປອກ	Pok	Tai Daeng	Re-visited
	10. ເມືອງບົວ	Mouang Pure	Tai Daeng +Lao	
Xum-Nue	11. ຫົວຄັງ	Houakang	Hmong	Re-visited
	12. ຄັງແຄກ	Kangkaek	Hmong	
	13. ສິວິໄລ	Sivilay	Hmong+Kmuu	

During my (initial and final) field trips, I did an assistant work<sup>27</sup> for the International Fund or Agricultural Development (IFAD) project<sup>28</sup> where communal land tenure system in the uplands can be found as well. In addition, I attended seminars by international NGOs<sup>29</sup>: LIWG, GRET, and SNV during my first and second visit to Laos. In

<sup>26</sup> Including village names in local language will help reduce confusion as English translation could possibly be not exact to the name that is locally called.

<sup>27</sup> October 2012: Assistant to Project Consultant carrying out “An analysis of poverty, gender and ethnic group issues in Attapeu, Sekong and Saravan in preparation for the design of the” Southern Laos Food Security and Market Linkages Programme” (IFAD) Lao PDR. 2011 January: Assistant to Project Design team of the International Fund for Agricultural Development (IFAD) in Oudomxai and Xaiyabouly Province with focus on land issues.

<sup>28</sup> IFAD project focused on food security of local villagers in many provinces in northern and southern parts of Laos (Attapeu, Sekong, Saravan, Oudomxai, and Xayabuly

<sup>29</sup> The international development agencies are Bamboo Development Project (Gret), Netherlands Development Organization (SNV)

addition to meetings<sup>30</sup>, workshops<sup>31</sup> that were held at national, provincial and district levels and I joined field trips to villages<sup>32</sup> which were singled out by NGOs to pilot the actual registration of communal tenure.

In total, 73 interviews were conducted involving governmental staff at the regional and local level, villagers and NGO staff (Table 11). Generally, the interview with governmental representatives lasted between one and two hours, while the session with NGOs normally lasted in one hour and interviews with village headman took more than one hour and 30 minutes. Sometimes, I spent over nights in villages where I had opportunity to talk more with villagers including women about their land and observe how they spent their days.

For data collection, I employed a qualitative research approach to understand the pluralistic nature of the villagers' management arrangement because this approach does not only reflect "the everyday life of individuals, groups, societies and organizations" (Punch 1998: 149) but also explains the "why", the "how", the "what" (Harison 2001: 79).

I used data triangulation to consolidate findings. It involves using and matching different sources of information in order to ensure validity of the study.

As already mentioned, documentary data provides the background for the most important part which is the fieldwork interviews in the villages. In order to analyze the

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<sup>30</sup> A Workshop on Communal Land Title, the case of Sangthong which was organized by Land Issues Working Groups (LIWG) and held at Learning House in Vientiane on 6 October 2011.

<sup>31</sup> A Workshop on Land Management for Bamboo Development was organized by GRET to share the results and outcomes of the study in pilot villages of the project in two villages: Ban Earn and Ban Napo in Viengxay district and Napung and Piebxay villages in Sopbao district. The workshop was held on 31 October 2011.

<sup>32</sup> Visit to Bamboo Producer Groups in villages of Netherland Development Organization (SNV) project in Sangthong district, Vientiane Capital on 2 November 2011.



conditions of collective actions in the framework of Elinor Ostrom’s theory a large number of interviews with different segments in the village are necessary.

There are various forms of interviews including Structured Interview, Open Interview, Individual Interview, and Focused Groups. Interviewing involves asking questions and getting answers from participants in a study in order to get to know the story behind a participant’s experiences. Through interviews, I can pursue in-depth information around the topic and the interviews were useful as follow-up to certain respondents to questionnaires, for example, to further investigate their responses and this experience is seen by McNamara (1996) as positive.

**Table 11. Details on interviewees/informants and number of interviews**

<b>Interviewees/informants</b>	<b>No of Interviews</b>
<i>Representative from governmental sectors</i>	
▪ Social experts, 1 from PLFNC and 3 from DLFNC	4
▪ Land Administrators, 2 from PLMA and 3 from DLMAs	5
▪ Foresters 1 from PAFO and 3 from DAFO	4
<i>Villagers</i>	
▪ Village headmen	11
▪ Vice-village headmen	6
▪ Head of village LFNC	2
▪ Head of village’s LWU	3
▪ Other villagers (informal leaders, village foresters, women, and representatives from village land and security units)	35
<i>Representatives from NGOs</i>	
▪ BDP staff working at province (1) and Viengxay district (1)	2
▪ SNV staff at the province level (1)	1
<b>Total number of interviews:</b>	
	<b>73</b>

I used a structured interview (close-ended interview), a quantitative research that the interviewer asks the respondent a list of prepared questions and answers from the

respondents to these questions could already be pre-arranged (Nichols 1991:131). The same questions are used to ask different respondents to explore how they feel about a topic. Using this structured interview is suggested before using another method like observation or in-depth interview to gather deeper information. Also, I found it important in terms of identifying respondents whose views are worth to work on in more detail.

Unstructured interview (open-ended interview) is not structured by a standard set of questions. It is an informal style which allows the interviewer to deal with particular topics of interest in any order and to generate new questions (Nichols 1991: 131) based on the responses of the participants. This type of interview often uncovers information that would not have been exposed in the structured interview (Santiago 2009). Generating new questions is a possibility to gather basic factual data on participants (age and gender) and to focus more on the participant's thoughts, feelings, experiences, knowledge, skills, ideas and preferences (Thibodeaux and Media n. d).

Individual interview is a face-to-face communication. It is a personal contact between the interviewer and the informant (Valenzuela and Shrivastava n. d.) that allows possibility for interviewer to probe beliefs and experiences of interviewees (HHS n. d.). In combination with close and opened interview, I applied individual interview approach with governmental and NGO staffs, village headmen, vice-village headman, village LWU and other villagers from whom I checked the information received from the officials.

Group discussions (focus group) were also used in this field research. Villagers were brought together in a small group to discuss certain topics of the research. Each group ranged from three to five people and they were about the same age, were the same sex<sup>33</sup>, and shared similar backgrounds. This research method is used to stimulate people in making explicit their views, perceptions, motives and reasons' (Punch, 1998: 177) that they have towards a particular topic like their perceptions on the use of

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<sup>33</sup> According to my research experience, I see working with women without presence of men is a way to encourage women from a particular set of culture to share information openly.

communal paddy land in the lowlands and uplands as well as harvest of NTFPs. During the group interview, I took a role as a facilitator encouraging the participants to interact to the interview questions without feeling nervous about revealing the views of others.

A combination of individual and group interviews was useful as one was used to validate the other. Moreover, observation technique was used when possible. This method

*“Involves the researcher “getting to know” the people they’re studying by entering their world and participating - either openly or secretly - in that world. This means you put yourself “in the shoes” of the people you’re studying in an attempt to experience events in the way they experience them” (Sociology 2003: 1).*

A set of questions was prepared in English that was translated into Lao when used to guide the interviews. It was prepared based on the working hypotheses that guide the inquiry as well as on the knowledge gained from a revision of secondary data during desk research at the university. The questions were mainly open-ended which allowed for response that could be probed into deeper. Since there were a variety of interviewees, the list of questions was designed differently in order to benefit from the different views of each group. The list of questions was divided into three sections. The first section was designed to guide interview with government staff at province and district level to obtain general information on legal framework in the eyes of the government to use and manage land and forest resources. The second section was prepared in order to direct the conversation to the specific issues in question. It had two sub-sections. One was about communal tenure system in middle hills with irrigated land and the other geared towards information on communal systems in uplands. The third section was used to guide interviews with NGO staff and ascertain their influence on land use managements. Some questions were useful for the interview and discussion with more than one group of informants.

I recognize that staff from DLMA, DAFO and DLFNC know about general situation of villages in their administrative area quite well so I selected study villages with their involvement after having informed them of my interest. I set criteria for characteristics of the villages to be selected including both Hmong and Tai Daeng as well as settlement history (including new resettlement), ecological location, distance from district town, socio-economic status (poor and better off) and most importantly the perceived

customary land tenure with examples of communal land system in the uplands and middle hills as well. The list of the selected villages was proposed to one of these concerned district authorities (DAFO or LMA or LFNC) in order to get a visit approval.

Fieldwork in villages also requires bureaucratic endeavors as an appointment must be made prior to arrival. The concerned district authority (DLFNC or DLMA or DAFO) must support an arrangement for meeting with villagers by preparing an appointment letter and send it out to the village headman to ask for the village support to the study visit. This letter informs on the visit purpose as well as who and when to meet. Communicating this agreement with villagers was sometimes possible through telephone calls but not every village has telephone access.

In each village, the village headman was the first person to approach. The venue for the interviews was a place the informants preferred, for instance, at their houses. Here, interviews occurred in a more informal way. I introduced myself as a learner and the introduction of visit purpose emphasized to them that the villagers were the experts in terms of knowledge on traditional use and management of land and natural forest resources and therefore I was enthusiastic to learn from them.

During the interview, I allowed those who had comprehensive experience of land issues to talk freely while keeping listening and questioning balance in order to help clarifying the issues, for example, the 'give and take' nature of qualitative research (Dyer and Choksi, 2002:342). I also went with the flow in order to remain as open as possible to the nature of informants by allowing them to add other information that came to their mind to the interview.

After the interview with village headman, I was given permission for further study and this included walking around the village, making interviews with villagers often without presence of the village headman and even to stay overnight in the village when possible and necessary. All village headmen introduced individual villagers who they considered particularly knowledgeable about the topic in question such as sharing, using and managing communal land and natural forest resources for agricultural crop production and animal grazing areas. In some villages, the village headman gave me a small piece of

paper with a message that asked villagers to participate in interviews or send someone to guide me to the introduced persons. I recorded details (name, position and telephone number) of the village headman for further contact before asking for his recommendations on my study.

As a strategy to absorb the culture of Hmong and Tai Daeng, I disappeared into the village and mixed with villagers. Getting entrance to the field via village headman has some advantages and disadvantages. Approaching primarily villagers who were recommended could mean that I got to ideas and information that were controlled so that it fit a predefined understanding of livelihoods and resource use which could not be seen as a point of government discontent. In this case, I may miss an opportunity to learn something from other villagers whose ideas and lessons would be different. Meanwhile, being led to informants who have specific knowledge could also mean approaching the right source of information. Being cautious about this, I listened to what I was told by the informants with observation and analytical thinking. Also, I asked more specific questions to check and clarify my understanding.

Throughout the field study period in villages, participatory observation was used to get knowledge from villagers on how they live their life in relation to land and forest as common property. Observation took place during visits to villages during the days and nights while walking around the village, while talking to villagers in their houses or while seeing daily chores carried out in the village. Observation technique was also used while working with government and NGO staff but this was mostly to record their perception on land and natural forest resources in villages.

The research used note taking, voice recorder and camera to record data provided by informants during the field visits. Noting down information in a notebook was a technique that was mostly applied while working with the representatives from governmental and NGO organizations as well as villagers like village headmen. When note taking, I showed no emotions that could influence answers to future questions. During interview with villagers, in my walk around there was no note taking being as informal as possible. Voice recorder was used after obtaining permission from the informants. Using this technology sometimes hindered a flow of communication, as

informants were observed to be aware of sensitive issues. Most interviews were tape-recorded after I was given permission by the informant. Camera was an important tool frequently used to capture pictures which later helped to recollect what happened in visited places.

Using modern technology to record information relies on its quality and faults with technology can cause a loss of data but writing down what villagers said as soon as possible when the mind was still fresh could document most of the important information but recalling numerical statistics was challenging and this required a double check to ensure proper function of the technology. Frequently, I used a camera to capture as many real scenes of daily activities of villagers and nature as possible to help me remember information I wanted to use and also to avoid a need to return to the sites to take photographs.

After each interview, I did a reflection on the applied working techniques, working throughout each interview notes, filling out the information gap to make sure that it makes sense, transcribing important pieces of information<sup>34</sup>, and writing down any observations made during the interview. For example, where did the interview occur? When? What were reactions of informants during the interview? Were there any surprises during the interview? During this review session, I developed based on answers some new questions which gave me better understanding of the research questions and this information was then used in the subsequent interviews.

After completing the fieldwork, the process of data analysis began. The advantage of having various sources of information was that the findings could be linked together in order to crosscheck and triangulate, in an attempt to avoid bias and data invalidity. During the data consolidation process, all information from the document reviews, observations, and interviews was summarized, grouped and conceptualized. The data need to be consolidated without significant loss and care was taken to examine it in its context (Punch 1998). Each individual case was analyzed separately, and cross-case

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<sup>34</sup> Spoken language is different from written language so I adapted the sequences from the interview into a writing structure which I presented as study cases in the *Presentation of Field Work of this Research*.

analysis was carried out. The aim was to understand why each interview had produced the results concerned and what the causes of success or failure were. Eventually, general explanations were derived from each case in order to answer the main research question and the evidence was interpreted in accordance with the analytical framework of the study.

During this field research, I faced opportunities and limitations. At present, the Lao government considers field research conducted at village level as an important input to legal land and forest resource management process and this research topic is related to the development issue which is currently discussed at all governmental levels in the country as an important aspect. But the government is also wary that no critique of government policy is forthcoming.

In interview with government officers some of them made sure that they did not mention something contradictory to the government's perceptions. Governmental academic staffs most of whom do actual work in the field at the village level have experienced actual development issues by themselves however their political knowledge may be limited to their expertise and often they were not the ones the authorities select to provide information for the research. Meanwhile, villagers seem to tell their life stories related to land and forest resources around them the best. NGO staff also has its own stand point which often serves their project objective.

At the district level, I was informed by selected local government staff that the Hmong in certain villages did not participate in official development activities such as meetings organized by outsiders including governmental entities. This is actually not a new piece of information for me but the outspoken perception was noted for its (negative) attitude towards Hmong people that influenced my feeling. At the same time I was curious to prove if it was true so I did not ignore visiting Hmong villages.

Arriving in a Hmong community as a stranger, I felt like villagers look at my presence as a representation of the government to find out prohibited activities like clearing state forest for rice production. This is my internal reaction which gradually changed after self-introduction and the introduction of my study purpose, time was spent with

villagers, and especially when culturally appropriate working techniques were applied. I gained this knowledge from my previous work experience and reading existing literature as a preparation for the fieldwork.

Both Hmong and Tai Daeng villagers shared with me their life stories involving how they carry out shifting cultivation in the upland that required forest clearance which many outsiders perceived as politically sensitive as it is contradictory with the government development's policy on reducing shifting cultivation. This has brought a lesson that outsiders including me perceived villagers with limited understanding. In this case, I found it important to set aside personal thinking in order to get to know villagers from their viewpoints.

Originally coming from the culture, there is background knowledge that local people have awareness of the political rights and wrongs in dealing with potentially sensitive issues and informants were aware about this. For example, some of them (including regional local land administrators, social experts and villagers) shared issues on rights to land and forest resources (including timber) which were influenced by some powerful government officials but this information was asked to keep secret. I thought that villagers believed that I already knew how to deal with this issue wisely or they would not share with me the information.

What is more, I know local geographic conditions and places I approached were not a new world to me. Despite of this, my ability to approach Hmong and Tai Daeng was different due to culture and language skills. In some Hmong villages, villagers grow rice in upland fields that take hours to arrive by walking. This required villagers to leave home early in the morning and return late in the afternoon. To avoid wasting time, most of them stayed in camps in the fields during cultivation seasons and only elderly people who could not carry out farming work and children who had to go to school stayed in the village. Without appointment, village headman and vice-village headman who had power to permit me to conduct study were not present in the village. In this situation, I told elderly villagers about my visit purpose and had informal conversation with them. During the conversation, they were guided to share with me their life stories in relation to my research area. This was done without note-taking or question paper.



It is, in fact, not a new story for me that being shy is a cultural characteristic of local people especially women in the studied villages. Most elderly Hmong women were reluctant to communicate with outsiders and they tended to leave the communication to men. I knew this cultural issue beforehand and a mixture of interview and participating observation was applied. In addition to local dialect, I approached both Tai Daeng and Hmong women by getting involved with them while they were working around the house, walking to forests and rice fields, collecting NTFPs and carrying out agricultural crop production activities in the fields without the presence of men.

In visited Hmong villages, all village headmen use Lao language quite well but this is not the case of adults and older people including women. Often they have good knowledge of history of land and forest use but they have limited Lao language skills which limited their ability to share the knowledge with me. This is not only my personal perception but is also what village headman think of them.

It was a challenge that I do not have the ability to conduct the research in Hmong. Dealing with this issue, local language facilitation was used to work with the villagers who have difficulty in understanding Lao. Often village headmen voluntarily interpreted Hmong to Lao and vice versa. Some young people do have Lao language skills and they volunteered to provide support. In this situation, the information was made short and simple by using languages/terms that are easily understandable for the villagers and I re-visited the villages when possible.

Another challenge occurred during the 3<sup>rd</sup> visit to the field happened when there was a difficult political situation in the province and this affected my research. Many local people believed that some of Hmong gained support from outsiders in foreign countries to form an anti-government group and they secretly planned to fight against the government. This belief created a situation that makes people feel that Hmong could cause any harm to people from other ethnic groups. According to local people, it happened in mid-1980 when some travelers were killed during their journeys along the road, from XumNue to Viengxay district. In this situation, approaching some Hmong villages was not recommended by local government and there was no visit to these communities as a result.

Carrying out this field work, I found access to villages as the main constraint. Not to mention about public transportation, many villages are accessible through dirt roads, geographical condition of which was difficult and risky in many places especially when it rained. Because of this situation, motorbike was a possible means of transportation in some areas and I had to ask a local person and sometimes my family member as a volunteer to accompany my trips to villages so that I felt convenient to conduct my research.

Though women are generally perceive to be unfit to do fieldwork I learnt from my own experience that being a woman is not as important as having ability to apply appropriate technique and build trust. They are necessary and essential part to have especially to work with villagers in a meaningful way. In two Hmong villages, village headmen were reluctant to involve in the study at the beginning of the meeting but this reaction gradually changed especially when they were explained the purpose of the visit and especially when they were shown respect as the leaders of the learning process and that I was truly willing to learn from them their culture. A related example gained from my field work is shown below:

When I arrived at a village headman's house in a Hmong community, I saw him fixing his tractor which was probably used a lot especially to carry things aside from preparing agricultural land, I assumed. In a polite manner, I greeted him, introduced to him that I was a student from the district, and came to the village to ask for his support to do the study. He nodded his head and then kept on working on the tractor making me feel like he was trying to ignore my presence.

A few seconds later, I moved closer to him, looked carefully at what he was doing and got involved with him through asking questions, one in a time, and the questions include: how did you learn to fix a machine? What did you use the tractor for? How much it cost you to maintain the tractor each year? The village headman responded to my questions with smile and sometimes laughter. About 15 minutes later, he asked me again about my purpose of visit to his village. I told him that I was a student and was interested to know how Hmong live their life in relation to their rights to natural resources like land and forest to support their livelihood. I asked him to continue fixing

the tractor and I would wait until he finished his work. He said: “your study is more important” and invited me into his house. After giving me a pillow to sit down, he disappeared into his kitchen and came back with two glasses of water (one for me and one for himself) and a bunch of yellow bananas he said his family grew in his land and asked me to enjoy them. As a return, I gave him a pack of milked-candy and then the interview began.

I did not know exactly what he thought about my presence at the beginning but it was very clear to me that my uneasy feeling disappeared completely after time and talk. During the interview, the village headman told me that villagers had a shortage of agricultural land to grow rice because they were allocated limited land after they were resettled by the government. Villagers had to use their neighboring village’s land and this created conflicts between them. I thought that the village headman believes that I will make the village land use issue known to concerned governmental authorities and bring about an understanding of their situation and solve the problem in a win-win-manner. This experience made me think that trust is an important aspect in conducting field work.

Another incidence related to trust occurred during the first time in a Tai Daeng community whose neighbors were newly resettled Hmong and Emien. Tai Daeng villagers did not mention about their perception on use of land and forest resources within their administrative village land territory that was somehow related to their new neighbors. This issue was shared openly during my re-visit. Also, Hmong villagers revealed a reason why they expanded agricultural land area into forest despite official prohibition only when I visited them a second time.

*“The government told us the state forest area where agricultural activities are prohibited but we have to enter the area and clear part of the forest to grow rice to feed our family members because there is no other alternative. We cannot find other pieces of land to grow rice. We already cultivated rice on the same upland plot longer than we used to do and we worked hard on weeds and yet the harvest was low and it was lower every year. We cannot and will not let our children suffer from hunger if we still alive so using state forest land is something we cannot avoid.”<sup>35</sup>*

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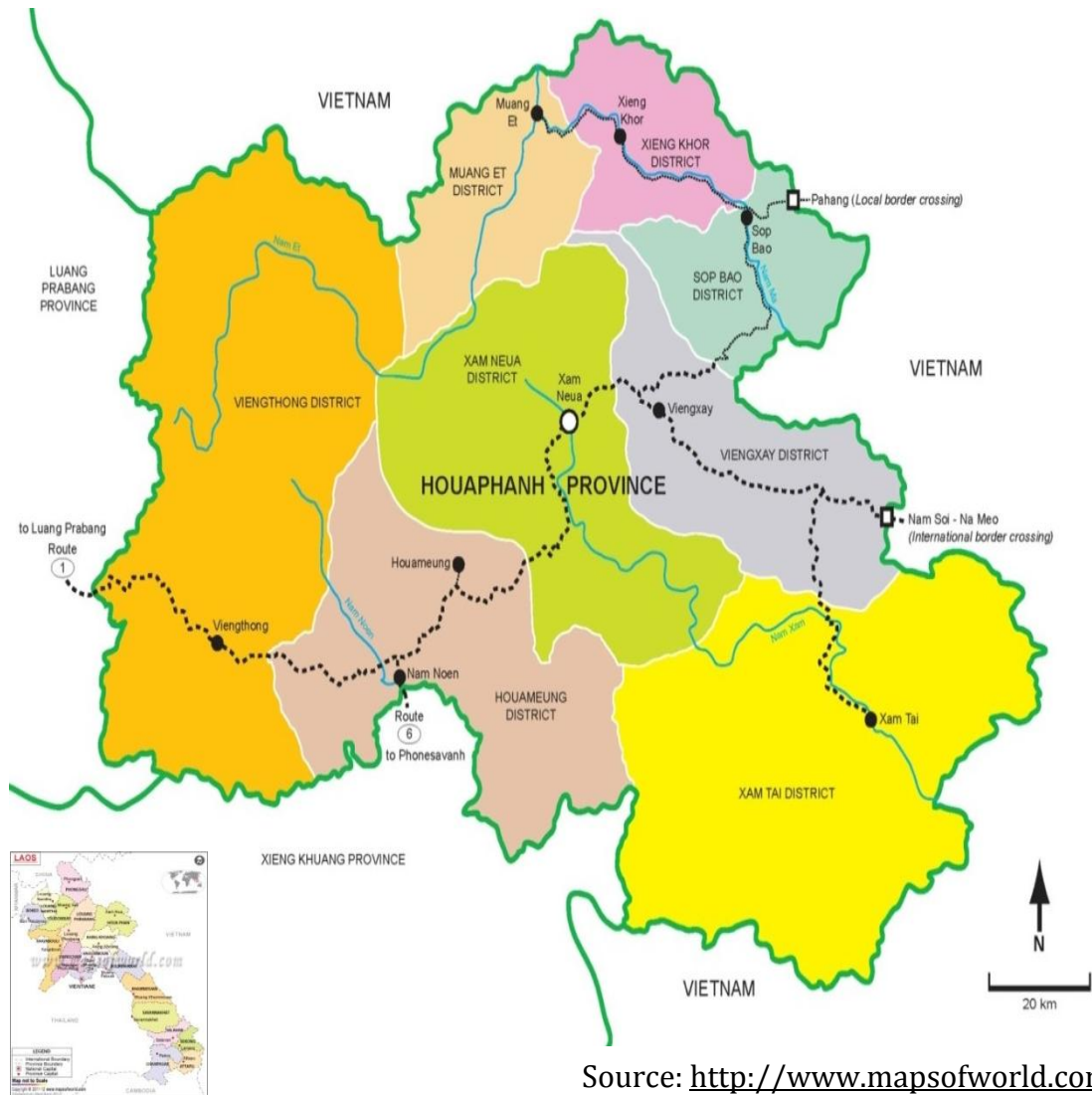
<sup>35</sup> Research Interview (V4. VX), Village headman, Viengxay district, Houaphan province, Laos, 29 October 2011.

I observed from my field work that when trust was built, villagers showed an expectation that outsiders would bring positive change in terms of development to their community. This includes provision of secure access to land, financial and technical investment for agricultural production and conflict resolution, for instance. Dealing with this expectation by giving promise to villagers was personally perceived as a negative thing to do as the promise may not be followed. This can destroy villagers' trust that once was built. In this case, I introduced impact of my research result to villagers as a possibility, not a promise and I share with them my understanding that solving the problem requires cooperation of many concerned parties and it is important that information is shared.

In general, I learned from the field research that a research strategy that worked well with an ethnic group in this village may not be as such in a different village even of the same ethnic group. This reflects a need to always improve working approaches, based on real situation in locality, in order to make them practical. Also important to note that getting to know villagers' real life stories is like watching series of a movie that is always possible for continuation. However, with a clear set of study objective and a certain allocation of time a conclusion has to be made.

Next chapter presents the finding of this field work. It is organized around the natural resource characteristics of the particular common property resources in line with Elinor Ostrom's assumption that there must be congruence between the resource environment and its governance structure or rules. For these resource environments are constituted by paddy land and rain-fed uplands and one relates to another. Where applicable, the theory on Life-mode Analysis will be used.

**Map 3. Administrative map of Houaphanh province**



Source: <http://www.mapsofworld.com>





Photo 14. The capital of Houaphan province a home of about 21,000 inhabitants of different ethnic groups

Photo 15. The Crystal Ball (*nuay keo*) built right at the center of Xum\_Nue district in Houaphan province. The ball represents the beginning of the country revolution which later happened in other provinces in the country



## CHAPTER V. PRESENTATION OF FIELD WORK FINDINGS

### 1. Houaphan province

#### 1.1. General Introduction

Houaphan is located in the north eastern part of the Lao PDR, sharing its north, east, and southeast border with Vietnam. Nationally, it shares border with Louangprabang province to the west and Xiengkouang province to the southwest. Dominated by rugged and dense mountainous forest, the province is one of the remotest, the most ethnically diverse and poorest provinces in the country, according to the government's *National Growth and Poverty Eradication Strategy of 2004* (SNV & CWW 2009).

The province is about 700 kilometers away from the capital city of Laos. Reaching this place from Vientiane by bus is time consuming as it takes up to 20 hours. In many areas, the road is narrow and winding through hills and mountains with steep slopes. Sometimes mist dominates the light and makes the road slippery limiting the vehicle's movement to only around 30 kilometers per hour. Traveling to the province from Vientiane by plane is possible within one hour and a half but the scheduled flights are limited and uncertain. Due to the physical difficulty of access, the province is known as a "physically difficult area" (*ket tu la kun dan*), or "mountain top area" (*houa phu*). Thus, the geographical condition plays an influential role on how people in this administrative area live their life especially in relation to the use of land and natural forest resources.

Houaphan is administratively organized in 10 districts<sup>36</sup>. Xum-Nue is the capital of the province. About 35 kilometers from Xum-Nue through Road No 6 (A) to northeastern part is Viengxay district. This town center is surrounded by a landscape of limestone peaks and forests with rocky caves used as shelters by local people and many former leaders of the country during war time, between 1964 and 1973. To reach Sopbao district from Xum-Nue is possible through Road No 6 (A) and turn left at Road No 6 (B) where they meet. It is about 86 kilometers but it can take more than 3 hours by car during rainy season. In Sopbao, there is the river Ma (*nam ma*). It comes from Vietnam into where it flows back after running through the land of Laos for about 40 kilometers.

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36 The districts are Et, Xieng Khor, Houa Maung, Sopbao, Xum-Nue (the capital), Xum Tai, Viengthong (now Hiem), and Viengxay. Koaun and Xone (not included in the map) are new districts which were separated from Xum Tai and Viengthong, respectively.



In terms of fish and agriculture, the river is an important source of local life. Sopbao shares border with Moc Chau district, Son La province of the neighboring country, Vietnam.

In the whole province, there are 91 administrative clusters, 720 villages, more than 36.824 households and 46.000 families (PLMA 2010). Located in a rural setting, most villages have access roads but many of them are in poor conditions (dirt, narrow and slippery especially in rainy season). An example is shown in the Table 11; the distance from town center to villages where the study took place is around 30 kilometers which may not seem to create any obstacle to access villagers. However, three villages: Pok, Meuad and Napho in Viengxay district are officially recorded as accessible (by vehicle) only in dry season (Houaphan 2012<sup>(c)</sup>).

Despite accessibility constraints, Houaphan is nationally known as a place where important political activities began and these activities were later carried out around the country in order to fight the war taking Laos to independence in 1975. To memorize this crucial event, the Lao government built a crystal ball (*noauy keo*) right at the center of Xum-Nue district in 2008. The government thereby created a token to impress on its people to visualize that the ball always shines a light symbolizing freedom and opportunity for the people in the entire nation to see its way to development.

The government has classified the population of the province into nine ethnic groups: Lao, Tai, Hmong, Khmu, Pong, Zingmoun, Emien or Yao, Moi and Chin (Chinese) or Hor. In this province, Lao makes up the major ethnic group followed by Hmong and Tai accounting for 30%, 27%, and 25%, respectively. Tai ethnic group include Tai Daeng and Tai Dam (PLMA 2010). More detailed figures of each ethnic group in the province are in Table 12.

Like anywhere else in the country, the State has tried to re-organize the society by moving upland populations to organized areas in order to “provide services” and have some control. Compared to people of other ethnic groups, the Hmong ethnic groups, seems to be more affected by government resettlement program than other ethnic groups as traditionally the Hmong communities reside at higher altitudes. In Houaphan, Houakang was the first village that was officially moved from higher mountains in the forest to a lower place and the most recent resettled Hmong village is Long Ngeun

which just was resettled in 2003, about 27 years later than the resettlement of Houakang (Table 13). Organized by the government, many newly resettled villages have a mixture of ethnic groups: Hmong–Emien, Hmong-Kmuu, and Hmong-Lao, for instance.

**Table 12. Demographic figures of ethnic groups in Houaphan province (2010)**

No	Ethnic Groups		Population		Percentage (%)
	Lao	English	Total	Female	
1.	ລາວ	Lao	82.488	41.097	30
2.	ໄທ	Tai	69.137	33.756	25
3.	ມົ້ງ	Hmong	75.564	37.929	27
4.	ກຶມມຸ	Khmu	28.909	14.568	10
5.	ຝ່ອງ	Pong	9.618	4.849	4
6.	ຊິງມູນ	Xing Moon	8.471	3.699	3
7.	ອີມຽນ	Emien	1.737	872	1
8.	ມ້ອຍ	Moi	722	364	0
9.	ຈີນ	Chinese	77	32	0
			<b>276.723</b>	<b>137.166</b>	<b>100</b>

(Source: Houaphan 2012<sub>(a)</sub>)

Unlike Hmong, a Tai Daeng village like Sopbao is a place where more than six generations ave resided which means that it was possibly established in the 18<sup>th</sup> century. Some other Tai Daeng villages experienced resettlement but often within a short distance from their original area. People from other ethnic groups like Lao have also moved to a new place but this often happens through family relationship and this is not organized by the government. In general, the settlement history makes Tai Daeng as well as Lao think that they are the original settlers in the foot of the hills or valleys where their villages currently are located.

Based on *Annual Statistics on Poverty and Development Report 2012*, Houaphan has the highest poverty rate in the country. More than 500 villages out of 720 in eight districts

in this province are categorized as poor accounting for about 45% or more than 20.000 poor families (Vientiane Times: 30 July 2012). This province is at the bottom of the list of having villages with medical supplies, 375 villages are inaccessible by road or are only accessible in part of the year, 80 villages with no access to clean water, and 14 villages lacking schools (Vientiane Times: 31 July 2012).

**Table 13. Name, ethnic composition, resettlement and access condition of the studied villages.**

District/ Villages	Ethnic Groups	Establishment (Year)	Distance* (km)	Road Condition**
<b>Sopbao</b>				
1. Long Ngeun	Hmong	2003	21	DR
2. Phiengxay	Tai Daeng + Lao	1973	4	DR
3. Sopbao	Tai Daeng	1500s	-	PR
<b>Viengxay</b>				
4. Hormphan	Hmong+Emien	1997	24	DR
5. Meaung Lied	Tai Daeng	1700s	13	PR
6. Meuad***	Tai Daeng	1949	12	PR+DR
7. Napho***	Tai Daeng	1800s	18	PR+DR
8. Phouxai	Hmong	1988	-	PR+DR
9. Pok***	Tai Daeng	1600s	32	PR+DR
10. Meaung Pure	Tai Daeng +Lao	-	28	PR+DR
<b>Xum-Nue</b>				
11. Houakang	Hmong	1976	10	PR
12. Kangkaek	Hmong	1990	6	PR+DR
13. Sivilay	Hmong+Kmuu	1997	8	DR

\*Distance from district center to villages, \*\* DR (dirt road) and PR (paved road)  
 \*\*\* Accessible only during dry season

(Source: Interview of this research)

Villages are different in size in terms of population. As Table 14 shows, there are more than 1.700 villagers living in Sopbao village while only around 200 people are found in Meuad village. Amongst the visited villages, six of them are categorized as poor. The poverty is classified by regional local government using the Prime Minister’s Decree on the Poverty Classification and Development Standards 2012-2015 that says: a village is poor if it:

- 1) has more than 50% of poor families;
- 2) does not have a primary school or if school children have to walk more than one hour to the nearest school;
- 3) does not have medical box or pharmacy, does not have a clinic or it takes more than two hours to walk to the nearest clinic or hospital;
- 4) has no access road to the village or there is an access road to the village but the accessibility is possible only in the dry season (PM Decree 2012, Article 5).

**Table 14. Population of villagers by ethnic groups.**

Villages	Ethnic group and population				
	Emien	Hmong	Kmuu	Lao	Tai Daeng
Hormphan	123	198			
Meaung Pure <sup>37</sup>				-	-
Phienxay				64	134
Sivilay		281	46		

(Source: Interview of this research)

## 1.2. The landscape

According to existing statistics, the province land area covers approximately 16.500 square kilometers. About 37% of the total land area is suitable for forestry and agricultural development and 18% of this land area is suitable for agricultural production of various kinds (PAFO 2010: 2). Only 17, 5% of the land suitable for agriculture is currently being used and 5% of it is not used due to a lack of budget to

<sup>37</sup> There are Tai Daeng and Lao in Meaung Pure village but there is no differentiation of the ethnic group in the village population statistic and therefore the information is not available.

invest in irrigation (PAFO 2010:2) Based on the statistics, it is not clear on how the land area classified for forestry is under use.

Agriculture is the predominant livelihood in this mountainous province and this predominance continues to be important. Agriculture primarily consists of shifting cultivation where a new area is cleared each year in a rotation of say, ten years, the debris burnt and rice or corn sown. The following year this area lies fallow and an old fallow is brought into cultivation again. In addition to shifting cultivation that is rainfed there is irrigated paddy in the valleys. Most of the families that live in rural villages engage in agriculture growing crops and raising livestock for local consumption and for sale (SCAC 2012: 1).

Agricultural products are important for food security and socio-economic development of Houaphan. According to the *Province Agricultural and Forestry Work Report and Planning (2009-2010)*, traditional sticky rice is the single most important crop and it is cultivated seasonally both in lowlands and uplands. During the said period the province used an area of 28.400 hectares for irrigated paddy land and rain-fed upland to grow rice for an average harvest of 4 tons per hectare (PAFO 2010:4). In the upland, rain-fed rice is produced in the area of 15.558 hectares, of which 6.223 hectares was classified by the government as permanent agriculture upland area (neua tee hai kong tee) and 9.335 hectares was rotational land (neua tee hai moun vien) (PAFO 2010: 4).

If the total harvest of rice is divided by the number of population, the province would have a rice shortage for a few months, according to the national rice consumption rate of 350 kilograms of unpolished rice per person per year (PAFO 2010: 1). However, other agricultural crops, animal products and NTFPs help reduce the problem of rice insufficiency as they provide cash to purchase rice.

In Houaphan independent farmers and small holders grow agricultural crops such as maize, starchy roots such as sweet potatoes and taros, sesame, vegetables, and soybeans. The harvested quantity of these agricultural crops was recorded to be around 200.000 tons between 2009 and 2010. Mainly, the crops are for household consumption for people and livestock such as pigs and poultry. Fish from rivers are equally important

for most families in Houaphan. It is estimated that the economic value of meat and fish produced in this province in the said period is more than US\$ 67.223 including US\$ 400.000 earned from exporting some products to different provinces (PAFO 2010:4). The income gained from selling farm produce makes it possible for rural families to send their children to school.



Photo 16. Upland areas that local villagers communally use for rotational rain-fed rice production or shifting cultivation

An addition to rice, farmers grow many other crops mainly sweet corns. However, it is not indicated if these crops were grown on the same piece of rice field or if the official figures (as shown above that 28.400 hectares of land in the upland and lowland were used to cultivate rice in Houaphan in one year period, between 2009 and 2010) included fallow land in the upland.

According to the official statistics, agricultural land per person is lowest in Houaphan province. In 2011, there was only 0, 20 hectares per person recorded, compared with the national average of 0, 36 hectares per person (PAFO 2011). This may be caused by the fact that the only statistics on the land used in a given year, not all the fallow land that will influence how much land is put into a communal tenure title is recorded. Because of this, it is important to understand communal land tenure system in this province after legal land management is introduced.

In the province, there is only one private cattle farm of 100 cows. Mostly, farmers raise their animals naturally on village land. The cattle are free roaming in the uplands on the harvested paddy fields in the foot of the hills but many villages currently attempt to organize grazing areas. Details of land area used to cultivate agricultural crops, quantity of harvest per hectares, and number of animals in a one year period (2009-2010) are shown in the Table 15.

**Table 15. Population and poverty statistics of visited villages**

District/Village Name	Population		Families		Poverty Status
	Total	Women	Total	Poor	
<b>Sopbao</b>					
1. Long Ngeun	368	191	47	10	-
2. Phiengxay	298	147	63	10	
3. Sopbao	1.174	555	242	2	Poor
<b>Viengxay</b>					
4. Hormphan	340	186	44	15	-
5. Meaung Lied	370	168	82	20	-
6. Meudad	206	101	36	15	Poor
7. Napho	352	170	63	21	Poor
8. Phouxai	629	316	93	5	-
9. Pok	584	279	96	16	Poor
10. Meaung Pure	385	181	84	6	-
<b>Xum-Nue</b>					
11. Houakang	1069	584	138	11	-
12. Kangkaek	427	165	50	39	Poor
13. Sivilay	327	131	54	50	Poor

(Source: Houaphan 2012:7)

Aside from the cultivated agricultural crops, NTFPs are essential for both subsistence and cash income of most rural communities. NTFPs including bamboo shoots, stems or shoots, tubers, leaves, seeds, and flowers are main source of food prepared for daily meals in most rural families. Many of these wild products are also brought to local markets to sell to people in town. It was estimated in 2010 that the entire province earned more than US\$ 700.000 from selling natural forest resources including timber and NTFPs mainly rattan and bamboo (PAFO 2010). *Assessment of the values of Non-Timber Forest Products (NTFP) in Lao PDR (2010)* shows that value of household consumption or non-cash income is estimated to be \$489. Actual values of NTFP exports are found to be many times higher than the reported values thus cash income from selling NTFPs is estimated to be worth on average \$204 per rural household per year. *“This is a huge benefit to rural families, providing a key coping strategy for the poor, which would seem difficult and costly to replace with any alternatives”* (Foppes 2010: 2).

It can be concluded that people in Houaphan province are still highly dependent on land and natural resources to make their living. Therefore, their rights to land and forest are of high importance and it is important for the government to recognize this officially and provide security of tenure. However, all agricultural land in the uplands that families use for rice and other agricultural crop production has not yet been titled with communal or private land title.

### **1.3. Legal status and traditional use of communal land tenure**

As specified above the land that is cultivated by the communities is held as the common property of the community. Currently there are two systems which come from two different origins of communal tenure in Houaphan province. One system is fully traditional customary and the other is induced tenure created under communist collectivization in the 1970s which seemingly still has survived in its ideology both among Lao and among the ethnic groups being carried over and embedded within some adapted customary internal rules of the ethnic groups concerned and this includes resettled Hmong. The two systems of communal tenure organized the way agricultural cultivation is conducted under rain-fed and irrigated conditions in lowland and upland. Land use history and the political circumstances have played an important part as the context of the current communal tenure rights to natural resources found in this



province. The collectives required farmers to pool the harvest and share labour but the communal tenure that operates today allow for individual claims within the common property, guided, though, by internal rules.

Local villages have traditionally used land in lowland to produce agricultural crops mainly rice since 1970s. People residing in the uphill in the forest have used this land for traditional agriculture of shifting cultivation. They have also collected NTFPs from the forest around their village and agricultural land. Because of this attachment, “forest land” is seen by villagers as communal land and the concept of private ownership has not arisen among these traditional communities. In Laos today with market penetration and government attempts to control all land the customary communal tenure is at risk of disintegration against villagers’ wish which is why the NGOs and concerned parliamentarians seek to find a way to codify communal tenure with an actual land registration.

While land in the uplands where agriculture and harvest of NTFPs take place is perceived as communal land by the villagers, the government today perceives that it is state property, “state land”. Thus we find two kinds of perceptions applying to the same pieces of land. These state land category overlays the communal land as the government legally has assigned itself full authority to manage the land at its political will. Overlay between traditional and legal power over the land makes up a configuration of rights. Communal land and state land are in reality different where the government because of remoteness cannot exercise full control over the land while villagers traditionally allocate themselves rights to use it. An example is where villagers expand the agricultural area into so-called state forest in order to grow rice and this takes possession over the land as part of its common property.

Traditional agricultural methods that involve clearance of forest is seen by the state as forest degradation despite the land being cleared is secondary forest and the fallows will grow back into forest again. Consequently, uphill people, most of whom are Hmong, have been resettled into the lower land areas where land, often not attractive land and very different from the traditional land of the Hmong, is officially allocated for them to

do agriculture. Despite these attempts by the government, traditional communal tenure in the uplands has not yet disappeared.

Regarding communal land tenure in the lowland valleys, the history for the period before the revolution may be that some villagers may have claimed larger pieces of lowland while many had claims on little land or were landless and often back in history they were “poor”, according to the Deputy Head of Houaphan LMA. Many “traditional” land right-holders or claimants moved to other places within the country or abroad during the period of national liberation<sup>38</sup>. This was followed by collectivization agriculture policy. Practicing this policy, the abandoned lowland and the state land were put to rice production under collectives where paddy rice was cultivated in a collective manner (*na sa ha korn*). The practice of collectivization created a government institution which sometimes co-incided with traditional customary tenure arrangements (PLMA 2011<sub>(a)</sub>).

Looking at the practice of collectivized agriculture from the interpellation aspect<sup>39</sup>, it can be seen that the state used its power to convert the land of people living within the state administrative domain to become communist collective land for collective production (not collective ownership) to serve its political will. Holding traditional land right, the people thought that prior to collectivization the land was private land but it was not yet legally recognized. When taken away, these thought that they lost their property and they did not want to participate in the collectivization process and moved to live in new places.

As already mentioned in the section on *Two Modes of Agricultural Production and Government on Eradication of Shifting Cultivation*, the practice of collectivized agriculture was not successful as decision making rested with the state. Despite of the failure, some collective actions and communal tenure have continued where they become institutionalized and embedded within customary communal tenure. After collectivization paddy lowland was not returned to its pre-revolution owners but was

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<sup>38</sup> The previous land owners who abandoned their land were then called “*chao kong din kout*”

<sup>39</sup> Interpellation aspect is already explained under the Chapter on *Theoretical Framework*

allocated to villages under the condition that “no one in the village or community owns the land”, according to Lakhone Vongsi, Vice-president of LFNC in Houaphan province (Vongsi 2011). Within the village, this irrigated land has periodically since then been communal and shared to families or households within the village for agriculture cultivation and the production have been carried out in a private mode and any labor exchange happened voluntarily. Cultivators are free to enjoy whatever harvest they gain from the annually partitioned communal paddy land (Anon 2011). The property is common property partitioned periodically, each year, every three years, five years or longer period depending on the agreement of all the resource appropriators<sup>40</sup> in that community. We shall see that the partitioning of communal land happens in various ways dependent on areas, communities and ethnic groups. In some villages, the village headman allots the land each year, every three years or five years and in others villagers keep their share of the common property land privately for a longer time making it into a permanent claim but still part of a common property as it is not privately titled.

#### **1.4. Legal forest and land management**

The use of agricultural land as a common property is linked closely to the legal administrative institutions on the regional and local level. To understand the linkage, this section brings two main areas into discussion. First, it is the official administration that aims to administrate and organize the use and the economic distribution of land, to defend state-interests and impose a legal framework which results in possible opposition between official and traditional rights. Second, it is the informal leadership that defends traditional land use rights and land use patterns. Where possible, relations between official and traditional administration are discussed.

In 2011, the government carried out Land and Forest Allocation activities in Houaphan province and as a result types of land and forest were officially categorized and different households in the uplands were allocated one to three hectares for permanent cultivation in order to stop shifting cultivation. Province land was divided in two main categories. The first one is ‘Land for Preservation’ which had three sub-categories: Protection Land, Conservation Land and Watershed Land. They cover an area of

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40 Ostrom’s terms used to refer to the process of withdrawing resource units from a communal resource system (Ostrom 1990: 30).

1.614.000 hectares accounting for 93, 53% of total land area. Land for Use is another category. It consists of 111.630 hectares or 6, 47% of total land area and was sub-categorized into Agricultural Land, Production Land and Construction Land (Houaphan LMA 2011). Detail figures are shown in Table 16.

Legal categorization of land types meant that land boundaries were drawn for districts to control and makes communities do agriculture only within the allocated areas. It can be seen in the Table 16 that Viengxay district has a total administrative land area of 152.720 hectares, in which 6.280 hectares are designated as agricultural land including Paddy Land (1.640 hectares), Short-term and Long-term Crop Land (1.300 hectares), Fruit Garden (530 hectares), Grassland (760 hectares), and Tree Plantation Area (2.050 hectares). The rest is land for Conservation (139.620 hectares) and Residence Land and Others (6.820 hectares) (HP LMA 2011) and communal land can be found from within some of these officially categorized land types.

**Table 16. Province land by land categories and sub-categories as a result of the land and forest allocation (2011)**

<b>No</b>	<b>Land Categories</b>	<b>Area/Ha</b>	<b>Percentage (%)</b>
Land categorized for the purpose of preservation			
1.	Protection Forest Land	1.172.000	67.92
2.	Conservation Forest Land	430.000	24.92
3.	Watershed Area	12.000	0.70
	Sub-total:	1.614.000	93,53
Land categorized for use			
1. <i>Agricultural Land</i>			
1.1.	Paddy Lowland	12.000	0.70
1.2.	Short-term and Medium-term Crop Production Land	6.700	0.39
1.3.	Fruit Garden	5.300	0.31
1.4.	Grazing Land	8.300	0.48
2. <i>Production Land</i>			
2.1.	Land for Tree Plantation	19.000	1.10
3.	<i>Construction Land and Others</i>	60.330	3.50
	Sub-total:	111.630	6,47
	Total:	1.725.630	100

(Source: HP LMA 2011)

**Table 17. District land by categories and sub-categories as a result of the land and forest allocation (2011).**

District Codes*	Land for Conservation (ha)			Land for Use (ha)						Total (ha)
	Protection Forest Land	Conservation Forest Land	Watershed Area	Agricultural Land					Residence Land and Others	
				Paddy Land	Short and Long Term Crop Land	Fruit Garden	Grassland	Tree Plantation Area		
AD	42.190	24.390	1.750	990	340	480	640	950	7.880	79.610
XK	89.410	-	60	720	250	160	2.550	1.150	6.870	101.170
HM	193.170	21.620	2.620	840	920	140	510	1.160	8.890	229.870
SB	94.150	-	-	340	210	1.030	550	1.710	6.230	104.220
XN	217.380	30.360	2.270	1.940	1.200	710	1.200	1.440	9.340	265.840
XT	308.290	56.480	-	1.820	950	140	920	1.340	7.570	377.510
VT	100.260	284.680	5.300	3.710	1.530	2.110	1.170	9.200	6.730	414.690
VX	127.150	12.470	-	1.640	1.300	530	760	2.050	6.820	152.720
Total:	1.172.000	430.000	12.000	12.000	6.700	5.300	8.300	19.000	60.330	1.725.630

\* AD (Ad), Xiengkhor (XK), Hoaumeaung (HM), Sop Bao (SB), Xum-Nue (XN), Xum-Tai (XT), Viengthong (VT), Viengxay (VX)

(Source: HP LMA 2011)

**Table 18. Types of land in visited villages in Viengxay district**

Villages	Land Types								
	Agricultural Land	Forest Land	Watershed Area	Industry Land	Communication Land	Cultural Land	National Defense and Security Land	Construction Land	Total Land Area inside the village boundary
1. Hormphan	85	32	5	0	5	0.114	0	3	129
2. Meaung Lied	131	1.105	11	1	12	194	0.976	69	1.523
3. Meuad	163	1.550	16	0	8	1.11	0	4	1.742
4. Napho	195	1.860	20	0	11	2	0	3	2.090
5. Phouxai	163	1.280	8	0	10	28	0	30	1.519
6. Pok	380	3.232	27	0	9	0	0	3	3.651
7. Mouang Pure	203	663	13	0	8	1	27	3	918.578

(Source: VLMA 2011 VLMA)

Government has worked with villagers to demarcate boundaries that villages were to agree upon. Within a district, each village has its territory with agricultural land and forest land stretching to the territory of the next. Inside each village boundary, there are many different categories of land and the size of them varies. Some can be big while others are small. This means that the land territory of each village is different in size and the difference does not necessarily correspond to the number of people living inside each demarcated territory. Inside this land territory, there exist various tenure arrangements including customary communal tenure that co-exists with the official land allocation by household.

In general, the government classifies eight land types inside village boundaries. These are Agricultural Land, Forest Land, Watershed Area, Industry Land, Communication Land, Cultural Land, National Defense Land, and Construction Land (VLMA 2011). In Houaphan, this legal land classification is incomplete so only statistics of visited villages in Viengxay district is available (Table 18). In some villages, the allocated land types can be less than eight due to natural characteristics. Within the “allocated Agricultural Land”, there are “Future Agricultural Land” and “Current Agricultural Land. Future Agricultural Land is allocated for villagers to expand the area for cultivating agricultural crops based on estimated growth of village population. Current Agricultural Land is the land being used by villagers as paddy rice land in the lowland, rice land in the upland, fruit garden, tree plantation area and animal grazing area, for example. Allocating current agricultural land for villages means that the government recognizes their rights to land which is being used for crop production (namely rice) however their future rights to the resources still rely upon the government’s decision and it is possible that traditional rights to land and forest resources is ignored because the allocation is done on an individual basis and how it interfaces with communal tenure is not included.

In most villages, communal land tenure is not discussed and recorded during legal land management activities. For example, in the Village Land Use and Management Plan approved by the District Governor, No 334/DG, dated 13 July 2012, paddy land in the lowland of Pok village is 74.17 hectares (Viengxay 2012: 1) but without an indication of existing land tenure, whether it should be registered as communal land, state land, or private land.

Long before legal boundaries were marked, farmers have been using the land inside their traditional village boundary for agricultural purposes under customary communal practice and they hold that parts of this land including forest land inside the territory are communal land. This means that, inside a village land territory, communal tenure is held particularly in officially declared ‘Village Use Forest’ and in Agricultural Land that is privately allocated as well as in agricultural land held under communal tenure. In this case, the government drew



boundary around pieces of land under comunal tenure for a village as a whole to practice agricultural production. Accordingly, the village allocated the land to individual households to grow agricultural crops and they view that the land is not land of an individual it is the land of the village as a whole. It means that there is still comunal tenure, however, villagers are not always conscious about this impact of government classification because their legal rights to the resources are influenced, not clearly defined and they continue their traditional communal tenure.

Government officers are aware of the practice of customary communal tenure. Thus, communal tenure was brought into the discussion during the Land Use Planning (LUP) Coordination Workshop held in Xum-Nue district in October 2012. Local Natural Resource and Environment (NRE) officers of the MONRE acknowledged that the implementation of government land demarcation activities (Micro LUP program) had involved little consultation with villagers. This means that the customary use of land and natural resources was not well understood. This is aligned to a perception by government that villagers have a lack of understanding of government policies and laws on land and forest. This is linked to a lack of understanding between government and local farmers as farmers are never sufficiently informed in appropriate ways that cater also to illiterate villagers. This has occurred because of poor communication network and top-down approach. The area assigned for agricultural production under LUPLA is insufficient for the number of households in the village and they have to go back to shifting cultivation outside the officially allocated area where communal tenure is practiced in order to secure their rice supply. This raises a concern about secure access to communal agricultural land and forest land for the livelihood of local farmers as they will not be issued legal land document if they cannot manage their land in accordance with the law and this excludes traditional communal rights. Below said by a Tai Daeng village headman during a workshop as a demand from villagers for the government to recognise their legal rights to fallow land in the upland on which they are dependent their life for:

*"Our biggest concern is to secure access to our agricultural land and forest land. We lose our source of living if we lose access to such resource. I mean we will not have*

*enough land to produce enough food for our family if the government does not allow us to continue using the land where we used to grow rice many years ago" (Houaphan Province 2012<sub>(c)</sub>: 41).*

There are physical and cultural boundaries of land and forest resources between villages. Physically, villagers mainly use features like rivers, residential areas, big trees and mountain tops to indicate boundaries. Cultural boundary is invisible but it can be felt and understood by people living within it. These people participate in making decision on who should or should not be allowed to have rights to withdraw the resources and based on what conditions.

Given that there was a lack of consultancy with villagers on, legal and customary land and that village boundaries were lineated with inconsistency, legal boundaries are not in line with traditional former ones. It is estimated that 30% of total delineated village boundaries in the province is incorrect. This is about village boundaries but it has to do with communal tenure of agricultural system in a way that there is a change in availability of natural resources. Land previously inside a boundary of one village is now in the other side of the boundary (Houaphan 2012<sub>(b)</sub>: 7-21). Similarly, part of the village communal land in some areas in the upland (which lied fallows) is taken as state land. What happens to comunal land under PLUP or LUPLA includes that communal land was not recognised and it became state land, land of other village or individual private land. This means traditional rights to land are ignored. Also, there is a reduction of available land for agriculture which affects food security of villagers.

According to the Province Agricultural and Forestry Development Plan 2010-2015, each individual person in the province should have 350 kilograms of (un-husked) rice for consumption per year and people should gradually produce for markets and earn money when they have enough produce for their own consumption. To achieve that plan, the province follows a national development project that aims to increase production and marketing by establishing agricultural production groups such as rice production groups, animal production groups, fruit production groups, and handicraft production groups. They are expected to pool together their potentials to utilize land in a more productive way and produce agricultural crops for markets in order to generate income (PAFO 2010: 7).

However, these groups so far functional groups lumped by name of activity but no actual collaboration occurs and they would need support in terms of legal rights to land. This includes collective (a village, a group of people and a group of women, for instance) right to own a piece of land and natural resources, technical agricultural knowledge, and (secure) access to market.

In the LUPLA Land Allocation Program, Houaphan province planned to use the Participatory Land Use Planning (PLUP) methodology consisting of steps that require consultation with villagers. This process includes field measurement of individual plots and allocation of individual land use certificates to households. Agricultural zones that are managed under a rotational cultivation system of shifting cultivation include fallows. Recognition of this in PLUP can be used as a strategy by villagers for where feasible areas for communal land titling can be found in order to prevent potential land grabbing from outsiders later of land that is not registered. However, an agreement is required at the central level of the government to authorize the issuance of communal land titles. Government needs more information on the practice of communal land title and its value in terms of securing tenure rights of villagers (Houaphan 2012<sup>(b)</sup>: 9-29) and it is important for the government at the policy making level to understand the use and arrangement of land that already exists in the communal tenure system.

To achieve food security and security of tenure requires that land tenure for communities is strengthened and local people particularly the poor have legal rights to communal land and natural resources. There are rules in customary communal tenure that allow the poor to have equal rights to common resources and there are cases that the poor have been given more rights. As already mentioned by Schlager and Ostrom (1992), the rights can be articulated as rights of access, withdrawal, management, exclusion, and alienation. Villagers traditionally have these rights in the communal tenure system which allows many poor to help themselves by growing food; participate in collective activities that they can make their voice heard, have access to agricultural technical information and have access to credit; strengthen their capacity to manage local common resources; and make decisions while taking into consideration the future. In many places in Houaphan, codification of

customary communal tenure is influenced by the legal aspect so it can be understood to be induced institutional development.

Recent PLUP activities have involved various government line agencies based at the province and district levels, development projects<sup>41</sup> and villagers such as village headmen. District governors and representatives from regional NA have been also involved in the activities where they could hear important land issues raised by villagers. Many different actors are involved in legal land management activities which shows that it is important to respond to land right issues through working approaches that potentially bring the most benefit to all and this will be good for Laos as a country.

This present research therefore can provide an important contribution to the land management process by bringing existing traditional land tenure aspect in the case of Houaphan province into discussion including its brief history.

### **1.5. Interrelations between official administrations and informal institutions in the use of common property**

Like anywhere else in the country, there is nested hierarchy institution in Houaphan with different mandates ranging from province to village. The local administration covers three levels: province, district and village. Each administrative level is assigned power to protect the rights and benefits of the state and the people in accordance with the constitution, laws, and socio-economic development plans. Since Houaphan province is a place where communal land system exists, it is important to understand the legal function of the hierarchic administrative system and how it includes or articulates with the informal institutions for managing common property within this hierarchy.

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<sup>41</sup> The projects are including the Bamboo Sector Development Project (GRET/SNV), the Northern Upland Integrated Rural Development Project (GIZ/NU-IRDP), the project on Lowering Emissions in Asia's Forests (LEAF/SNV), the project on Climate Protection through Avoided Deforestation (CliPAD-GIZ/KfW/WCS), the research project on Impacts of REDD (iREDD-IRD/NUoL-FoF), the Agricultural Land Allocation Programme (by PAFO) and the Micro-Land Use Planning Programme (by MONRE) (Huaphan Province 2012: 5)

The central government established the Province and District Land Management Authorities (P&DLMA) in 2007. Based at village level, Village Land Units (VLUs) have subsequently been set up with assigned responsibility as the representatives of P&DLMAs and higher government level. Legally, the province endorses the right to undertake allocation of the resource system to the village and the DAFO, belong to another ministry, endorses village rules created by villagers. The government at higher level has more power on use of state land than lower government levels but it does not necessarily mean that the power is limited at lower level because land can be managed in layers and political and power structure also prevail.

For example, the government at higher level has power on identifying ways for allocation and size of communal land such as paddy lowland and land in the upland according to the NLMA 564 instruction but it has only used this a couple of times so far. In contrast, communities have a culture that is powerful by local custom to allocate rights inside the communal land in accordance with location and size. The traditional power respectfully practices a collective action within a set of cultural characteristics that changes management from state to communal and private through management of an agricultural production process in which rules are created and enforced by villagers within this setting. This could run against the political of the government but so far this has not happened.

Many regional local governmental representatives in fact perceive that paddy lowland and rice land in the upland in Houaphan is managed as communal tenure by villagers. This perception covers Tai Daeng as well as Hmong. At the same time, the regional officials are aware that villagers do not have legal rights to their land because it is not titled. Currently, official government-sponsored land and forest activities are introduced at village level. In this process, many governmental experts try to bring social perspectives or safeguards into technical aspects to ensure that the activities are not carried out in a way that disregards traditional values which may be challenging in the case of land rights because customary rights of communities need to be recognized by central government level when dealing with land and forest.

The nested hierarchy at community level pertains to institutions that are formally and informally structured. The institutions can have an influence on how land and forest are managed through village rules. These internal rules for management of village common property is enforced at village level, within a village and vis a vis its neighbors. In some villages, the rules have been recognised by the village cluster or district level (district governor).

A village is under the supervision of the district. In general, a village has official representatives such as 1) Party's Secretary Committee (head of the party, deputy head of the party and party members); 2) Village Headman Committees (Village Headman/Village Chief<sup>42</sup> and Deputy Village Headman /Deputy Village Chief<sup>43</sup>); 3) Village Administrative Units (include Police Unit, Security Unit, Forest Unit, Land Unit, Tax Unit, and mass organizations: Youth Union, Lao Front for National Construction, Trade Union, Lao Women Union); and 4) Village Development Units (Head of Village Development Unit and each unit includes around nine to ten individual families selected according to location of their houses). Village Production Groups (e. g. weaving group, corn production group, handicraft production group) are set up in some villages but they are currently not legal entities so they are considered as informal institutions. Both formal and informal institutions are constituted of families (male and female head of families) and socio-cultural groups (ethnic groups, family clans, informal leaders, etc.), for example, a clan leader (informal leader) works as a village headman (formal leader) and they are important to the communal tenure

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<sup>42</sup> The village headman is the chief executive of the village administration. He represents the village and is responsible to the district administration and all villagers, in the implementation of his/her role, authority and duties (Law on Local Administrative of the Lao PDR, No 3/NA, 21 October 2003, Article 53).

<sup>43</sup> The deputy village headman is to assist the village headman, and is in charge of some functions assigned by the village headman. In the case when the village headman is unable to implement her/his duties for any reason, the deputy village headman takes over (Law on Local Administrative of the Lao PDR, No 3/NA, 21 October 2003, Article 53).

rights because they are involved with others in the village in the use and management of communal property.

Traditionally the customary hierarchical order of Hmong villages is restricted to elder brothers, fathers, and clan leaders. In a village, there can be many clans<sup>44</sup> and each clan has its leader who often gains high level of trust and respect from its members. These traditional clan leaders have acquired their positions from their outstanding talent, knowledge, ability and honesty. They are seen by most villagers to be ready to sacrifice personal interests for common interests.

A Hmong clan leader gets his position when villagers trust and respect him and he loses it when most clan members see that he acts in a culturally inappropriate way. To say this in another word is if he is seen by villagers to be biased towards a certain person or a group, irresponsible, and to do things for benefit of certain individuals. In this case, his position is taken by another person who can be any one from within a clan in the village and who villagers have observed for many years to have a suitable leadership character and almost everyone knows and accepts.

In regards to the clan leader, a middle aged Hmong villager (male) said:

*“Every clan family in our village has a clan leader. Often he is not young when he gains his leadership position. He knows that he is a leader when clan members trust and respect his leadership ability by consulting with him when they need help and rely on him in making a decision on important things”.*<sup>45</sup>

Another Hmong villager (male) who is about 40 years old added:

*“Within our clan, there is always someone who stands out for others and who is able to tackle different issues that occur in our community. He does things in order to bring benefit for all rather than for a certain group of people or for an individual. In our culture, we have rules and laws and clan leaders are the most respectful in enforcing*

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<sup>44</sup> According to the Village Headman in a Hmong village (2012), there are eight clans in his village and they are locally called *ha, va, ya, chang, mure, her, tor and xong*.

<sup>45</sup> Research Interview (V8 VX), villager, Viengxay district, Houaphan province, Laos, 6 February 2011.

*them in a way that most people from within our clan and from other clans are aware and accept.*<sup>46</sup>

In general, Hmong leaders are successful because they take lead in social-cultural development activities. With the position and better socio-economic advantage, they have wider social connection network and this give them better ability to view the world that is changing and to change their attitude and practice accordingly.

*“Often, a clan leader is a more successful person than others within his clan in the village because he takes the lead in searching for a way to improve his family financial condition as an addition to works he delicates for the common good of the village and his success motivates other families in the village to follow.”*<sup>47</sup>

Today most Hmong villages are officially resettled in lower land areas where the government can easily approach them. Not all, but many Hmong customary informal leaders are assigned a new position as village headman by the government. They take general leadership in village development issues including use and management of land and forest resources. This can be said that the state interpellates independent subjects (villagers) from informal leaders to formal leaders and make them to participate in the government development project. In this process, the state creates a condition for the people to follow<sup>48</sup>. To be concrete, there are government rules imposed for villagers to follow to select their village leaders.

*“A village headman acquires the position through votes from any clan members in the village who are 18 years of age and older. The village nominates representatives from different clan families for villagers to vote. The nominees are seen as people with: ability to take formal leadership roles in implementing development activities, intention to bring better social and economic change to the village, no crimes, ability to make people to live together with solidarity, and good (socio-cultural and economic) model. Though the dominants come from different clans we know very well who has the most outstanding leadership ability and we are happy with the result of*

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<sup>46</sup> Research Interview (V8 VX), villager, Viengxay district, Houaphan province, Laos, 6 February 2011.

<sup>47</sup> Research Interview (V6 VX), villager, Viengxay district, Houaphan province, Laos, 6 February 2011.

<sup>48</sup> Thomas Hojrup (2003), State, Culture and Life-Modes: The Foundations of Life-Mode Analysis Hardcover – September 1.



*our votes. Sometimes the government selects the village headman for us and this happen when we cannot select our own leader”.*<sup>49</sup>

There is a formal Hmong village leadership position that derived from his personal intention to help people in his community to live their life in a better condition. Through selection, the headman of the village can stay in his position for four continuous administrative sessions, a session being of three years. During an interview with such person, he revealed that he used to work for the Lao government as a teacher for about 20 years. During this time, he developed his Lao language skills and gained some understanding on country development policies including on the use and management of land and forest resources. While working outside the village, he thought that many families of other ethnic groups especially Lao, compared to Hmong, live in better houses, drive cars, and have a means to support their children to study and have jobs that allow them to further improve their living condition. Visiting his home village in early 1980s, the Hmong person saw that villagers had no access to electricity, no school for children, no tap water, and they lived on what they produced in the land and harvested from the forest. Seeing this, he decided to quit his teaching career and moved to the village. Shortly after his return, he was selected to be the village headman. A Hmong villager explained why he selected him as a village headman:

*“I voted him as our village headman because I saw that he has leadership skills and has played an important role in bringing some changes to the village. For example, he has Lao language skills. As a representative of our village, he attended official meetings where he presented problems and needs of villagers to the government and asked for support. As a result, we have school for our children, water supply and accessible road. He also brought information from the district to our village and this helped us to understand our legal rights to land and forest resources. He furthermore communicates with outsiders and introduces our agricultural products to sell in market for money.”*<sup>50</sup>

*The mentioned Hmong village headman said:*

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<sup>49</sup> Research Interview (V10 XN), villager, Houakang village, Xum-Nue district, Houaphan province, Laos, 21 October 2012.

<sup>50</sup> Research Interview (V1 SB), villager, Sopbao district, Houaphan province, Laos, 25 October 2012

*“Hmong leaders have to always be good models for others. I supported my son to study until he finished a Three-Year Teacher Training College. He is now employed by the government to work as a teacher in our village. He uses his free time to work on land to produce food and keeps his salary for other things like motorbike, tractor, and education for his children. This motivates many families in the village to send their children to schools and colleges and some of them become government employees after they finished their study”.<sup>51</sup>*

In Tai Daeng communities, most villagers agree that their headman has rights of access to good communal paddy land plots among the plots in the common property to cultivate rice and this is the prerogative of village headman that is accepted in the internal rules for the sharing of the common property. It is to pay compensation for his time spent for the village development activities including attending meetings organized by the government or different villages, being a representative of all villagers to communicate with outsiders including neighboring villages, government and business in regards to many development possibilities as well as to deal with challenges like conflicts over use of resources like land and NTFPs.

Similar to Hmong, working as a village headman in Tai Daeng village is an advantage for his family when he participates in economic development activities brought to the village by outsiders. For example, one Tai Daeng village headman said:

*“A private business came to our village to propose villagers to grow corn to sell to them. Villagers agreed to do this under the condition that we bought corn seeds from the business, grew them in our land and the company bought the harvest which was when we had to pay for the seeds. The company visited the village occasionally to see the progress of corn production. They could not spend a lot of time in our village so they left some money with me to buy corn from villagers and later they came to the village with a truck to collect the corn I bought and stored in my house. As a return, I was trained on how to select the product that the company needed and I was paid a small amount of money for my work.”<sup>52</sup>*

It can be seen from what was presented by the village headman that he played a role in cooperating with business people in a way that allows villagers to use communal land in

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<sup>51</sup> Research Interview (V1 SB), Vice-village headman, Sopbao district, Houaphan province, Laos, 25 October 2011.

<sup>52</sup> Research Interview (V7 VX), village headman, Viengxay district, Houaphan province, Laos 21 October 2011,

the upland to produce cash crop (corn). This product is sold to the company and villagers earn money without giving away their land. Villagers would continue to financially benefit from the communal land if their traditional rights legally recognized and they have secure access to market and the role of the middleman is carried out with concern for fairness and equity.

In my field work, however, I found out that the position of village headman is not attractive to all. Some village headmen expressed that they work very hard for the village that they lost time and energy which they should spend on working for the benefit of their own family. Carrying out the administrative roles, these village headmen mentioned that they have to be responsible for how villagers behave in relation to the use of land and forest resources. It affects their motivation to participate in government development activities especially when they cannot see the benefit from their work and this also has an impact on villagers' participation in the activities.

Relatively, a local social expert from LFNC viewed that there are three levels of participation which are active, moderate, and passive participation of the village headman in official development activities carried out at the village level by the government<sup>53</sup>. These levels of participation, as shown in Table 19, affect the government's ability to carry out its development policies in practice in a proper way, for example, carrying out LUPLA in a way that overlooks use and management of land and natural resource under customary communal tenure system.

*“Implement salary incentives for Village Chiefs and deputies; increase these incentives as appropriate to social and living conditions of the locality as well as the actual responsibility and tasks of Village Chiefs. In addition to incentives for Village Chiefs and deputies, study to provide incentives to other personnel involved in village administration to motivate ownership in duty fulfillment. Continue to consider the status to be given to Village Chiefs, who are the heads of lowest local administrations to be embedded in laws” (Lao PRP 1012: 4.3 & 4.4).*

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<sup>53</sup> Research Interview (LFNC 1 P), Houaphan province, Laos, 11 October 2013.

**Table 19. Level of participation of village headmen in government development activities held at the village level.**

<b>Level of Participation</b>	<b>Perception of the local social governmental staff (LFNC) on village headmen as causes</b>
1. Active	Clearly foresee that participating in village development activities carried out by the government will bring benefit to them in the future.
2. Moderate	Think that participating in village development activities carried out by the government will bring benefit to the village, but are not sure if the benefit will really fall into their hand in the long run.
3. Passive	Have very limited ability to see if participating in the village development activities carried out by the government will bring them benefit in the future

(Source: Research Interview)

Both formal and informal village institutions involve in the socio-economic and environmental development process. Under general directive leadership of the village secretary committees, the village headman generally takes lead in creating a village development plan and this is carried out in a way that everyone in the village participates. However the plan is approved by the district before the village headman can take a lead according to his or her role and responsibility. Some informal leaders have to enforce the legal law as an addition to their existing traditional law when they are assigned village formal leadership position.

Holding formal and informal leadership roles the village headman wears two hats. One hat functions formally and another functions informally. While most village headmen seen in Tai Daeng villages are adults and elders, young people who hold a certain formal educational level are elected to be the village headmen in many Hmong villages. This does

not mean that informal leaders are less important in terms of playing a village leadership role including in the use and management of land and natural resources because elderly people most of whom are informal leaders are consultants to the young village headmen.

Hmong are often seen by the government as the primary agents of forest destruction as a result of their practice of shifting cultivation or slash-and-burn agriculture. This is challenging for the new Hmong leaders to make decisions on where to stand from legal or customary or both customary and legal point of view but a village leader may well put himself in villagers' shoes because he lives in the culture and is involved with villagers in practicing the same agricultural land use. Therefore, the village headman sees shifting cultivation as a crucial part of their life. Despite of this, the village headman has to work as a bridge between government and villagers to bring official messages from higher level to the village, to coordinate the implementation of state regulations, to monitor local behaviour and to report to higher administrative levels.

Being the village headman, he can be blamed for not being responsible in his official assignment if he turns a blind eye to controlling or even stopping the practice of the "destructive" agricultural method. The village headman can be punished by higher level authorities if violating state rule (Lestrelin 2011: 317). This makes life difficult for the village headman. As farmers, their well-being is dependent on rights to land and forests which they can use for agricultural crops, collecting NTFPs, and animal grazing.

Hmong village members are aware of the function of village headman's two hats as they cannot be sure which of the hats, informality or formality is being worn at different occasions. Villagers cannot find any other way than clearance of "prohibited" forest for shifting cultivation even though the forest is in fact fallow land from earlier cultivation and thus secondary forest. Once the land is cleared, an expansion into new area is required because the rotation of highland rice cultivation is not always situated in the earlier fallows for many years. By definition, this is pioneering shifting cultivation and the "cleared land" becomes part of the comunal tenure and under Internal Rules for land sharing agreed

among individual families in a village. In this circumstance, shifting cultivators are aware of the village headman's hat that functions formally and they keep stay a distance from the village by going deep into the forest where forest rangers rarely reach and where the village headman 'cannot see them'. The distance supports village headman to keep a blind eye on the forest clearance while keeping relationship with villagers and the government officials at the same time.

The village's communal land is located on land classified as state forest. In an area where the community is officially allocated a land area for cultivation but which is not sufficient for families to practice rotational agriculture expands the cultivated area into the state forest and add this to the village communal land that eventually may turns fallow. The village headman knows this situation but will not take action if the family cannot find land in another place. If the expansion of agricultural land into the state forest occurs in a large area it will worry the village headman due to his formal responsibility and it may even affect the neighboring village's land.

The communal land management system requires coordination and communication among villagers in a village. Usually a village meeting is held in order to hear from villagers their problems concerning the current use of land. In this setting, the village headman and village committees ascertain their understanding of the issues. If the issue is expansion of shifting cultivation land the village leaders will first inform the meeting about the situation and potential impacts predicted based on their knowledge of the government's land and forest policies. Villagers are then asked to avoid the impact that village leaders are aware of through minimizing the pressure on the state forest. The village headman will not be able to suggest to the government that the particular communal land that is derived from an expansion of agricultural land into state forest area should be legally recognized.

Looking at the village headman from the environmental protection point of view, working as village informal leader as well as government representative at the same time is challenging and controlling the clearance of forest successfully is difficult unless "slash-and-burn" agriculture is replaced by better livelihood options. Possibly the challenge is due

to an inadequate understanding of the logic of shifting cultivation and factors influencing farmers' decision (Angelsen 1995). This is about recognizing customary communal rights of villages to CPR.

It is found from this field research that most customary right holders to land are quite aware of the political policy of government in terms of land management but the awareness is often tacit if it is seen to reduce social-economic improvement opportunities. Tacit awareness of official land management strategies creates an underlying resistance that many ethnic villages including Hmong intentionally clear land classified as state forest, for instance, to grow agricultural crops and this creates different thinking towards them.

Some governmental staffs view that villagers lack ability to understand government policies on land and forest resources while many others perceive that they understand the policies well but they simply ignore them to use land the way they wish. Many government representatives follow the political will of the Party that clearance of forest is forbidden. This set of thinking has an impact on ability of the government at higher level to recognize the rotational farming system inside the communal land.

Because of the hierarchy of power, higher government officers in Vientiane capital can ignore the communal land management of Hmong and Tai Daeng and give private land title for the paddy land in the lowland and upland to individual families in the village but it is important that the government see from villagers' perspective their communal tenure.

## **2. Communal land and rice production**

### **2.1. The villages' statutes and internal rules on communal property management**

As presented by Ostrom, there are 8 principles for successful CPR. The principle number two indicates the match between resource characteristics and institutional set up for application of internal rules. This section presents customary internal rules in comparison to the government rules of resource niche appropriation.

It is found from this field research various modalities of communal tenure in visited Hmong and Tai Daeng villages. Some modalities are customary and some are left over of the collectivisation of agricultural land in the communist period of 1970s and 1980s.

After its failure, collectivised agricultural paddy rice land is given to villages to use and manage under a condition that no one owns the land privately. Villagers created, used, and developed rules on withdrawal of common resources. These rules are oral rules but they have been known to all villagers. Changes of the rules do occur especially when they are seen by villagers to serve their daily living better. Often these changes are made through an agreement by the majority of villagers from within the community as well as their neighboring villages which have similar rules and these rules are enforceable quite successfully at the village level.

In some areas, villagers in one village may use land and natural resources inside the territory of another village with or without permission and this may be accepted if benefits of the resource use can be made mutually beneficial and if the quantity of the resource used is fairly balanced. A reaction is required when people in one village benefits from the resources in another village in a way that makes the nearby village feel that it loses its resources especially where such resources become scarce for different.

Internal rules are not proposed to the government for endorsement. The government knows the existence and level of effective enforcement of the rules and tries to make an influence on them and this is mixed with the legal rule.

During the implementation of PLUP activity at the village, villagers have to present the rules, for example on use and manage of paddy land to the PLUP team. During this process, the rules are recorded by the team member. They are included paddy rice land of village is communal land and it must be shared among families in the villages to use for agricultural production purpose and agricultural land area in the upland is communal land of the village and no private claim over the land is allowed, and NTFP in forests must be



harvested in a sustainable way. The rules that do not follow with the Forest and Land Laws of the Lao government are adjusted (by concerned district authorities including DAFO and DONRE) before sending to the district governor as an attachment with the Land and Forest management Plan for endorsement, the steps of which is presented below. This means that the government endorses rules on use and management of land and forest but only if they follow legality and it can be said that Internal Rules are currently not proposed to the government for endorsement and they are for villagers to use in their village and their neighbors.

The steps of endorsement of the rules by district includes:

- Step 1. Village headman, village party members (committees) discuss and write down the rule;
- Step 2. A village meeting is organized to announce and discuss the rule with villagers. If government is not involved and if the village wants a formal agreement on rules that everyone knows the rules can put under an Agreement of the Village Headman on Village Rules and the agreement is witnessed by village police. In some villages, representative of a family put a finger print in the rule book to witness the rule. This rule is enforceable at community level;
- Step 3. Propose the rule to DAFO through village cluster as a set of Village Rules on Use and Management of Land and Forest, for instance;
- Step 4. With participation of villagers, DAFO conducts a survey on the proposed land to see whether the rule on using and managing the land/forest fits with legal land/forest policy of the Lao government;
- Step 5. Neighboring villages sign the rule (this step is sometimes included in an Agreement of the Village Headman on Village Rules and the agreement is enforceable not only within a villages but neighboring villages that agree with the agreement );
- Step 6. DAFO agrees/signs the agreement; and
- Step 7. Propose the agreement to the district governor's to witness.

During PLUP, village Land and Forest Management Committee is set up by the government and this committee is assigned official roles and responsibilities especially to ensure rules on use and management of natural resources in the village are followed. Since Internal Rules are included in the legal rules it is possible that resource characteristics and committee set up will not match with how internal rules are applied. This is because the laws and rules of the government may not be applicable in specific cases particularly in communal tenure in Hoauphan. Also, the persons who are involved in the endorsement process may not fully understand the Internal Rules. As this writing carries on, examples of Internal Rules on sharing communal paddy land are later included.

With an endorsement from the district government, a village makes its legal rules known by villagers within the village and neighboring villages through announcement. An example is that the village headman often sends out a notice on the village rules to other villages. The announcement on the village rule is an on-going process and it often happens through (annual) village meetings. In this case, the village does not use the government budget and at the same time the government at the district level acknowledges the enforcement of the rules especially when conflicts arise and they cannot be solved at the village level.

However, there is a layer of rules in a village. They are of different origin and CPR rules may or may not interact with other rules. The “internal rules” on appropriation or withdrawal of the resources are not for government endorsement. Only Statutes which set up the governance structure of the community land management and which may specify decision making and selection of a land committee are rules that can be presented to the government as described above.

A right to resource is per definition fixed as an ‘enforceable right’ meaning the right is socially sanctioned. The arena for enforcement of such rights is normally the village itself, but if the rules are broken by outsiders the enforcement of rules may need to involve outsiders, who could be the police representing a separate and higher arena of power. Regarding this, it is always a question of where and at what level in the hierarchy of rights those particular rights are endorsed (Personal Communication: 8 November 2012) and an example of this is presented in the section: *Conflict and Conflict Resolutions*.

Outsiders can easily ignore the cultural or “invisible” village rules that are not endorsed by the government if the village land is not registered as a communal tenure with one title. This creates a situation where villagers would have needed to have statutes that turned the community into an association that was given communal title and that the title was recognized by the outsiders. At present villagers are dependent on the government to recognize their traditional rights to the resource and these rights can easily be disregarded if land is given as concession, for example, to plantation business by the government.

Village internal rules in most visited villages involve the collective use, sharing and management of land and natural resources available in the communal tenure system. In the rules, villagers highlight that all households in the village are resource members, who have rights to the resource. These rights include the rights to access, withdraw, manage and alienate resource units available within communal resource system. These internal rules are the means for villagers to manage with equity their resources.

## **2.2. Determination of villagers as rightholders**

Outsiders moving into the villages, often through marriage, gained rights to the common property. However, due to a gradual new situation of road access, the population has increased in certain locations due to in-migration as well as resettlement. This is in fact an issue with newcomers that some of them, as found from the study area, did not have rights of access to the communal paddy land.

The section below analyses how rights in resources are determined by villages, who has rights, rights in what resource niches and how such rights can be enforced locally most often through fines. The resources in questions pertain to paddy land in the lowlands and rain-fed land in the uplands for rice or corn production. The analysis presents how villagers have created their own rules to manage their existing customary land as common property. To have shared rights in common property is a group right and any such group, which makes up a village, has members whose membership is based on a number of criteria determined locally. Membership rules are based on residence and availability of resource

which not only allow for rights in land use but also deal with what a right-holder can do with his or her rights vis a vis an outsider that potentially may want to buy or rent a share of the land.

The rules that determine common property group membership are less complex when rights to communal paddy lowland are in focus. The nature of the resource itself is the explanation. For example, paddy land is a permanent resource unit which remains fixed through time being under permanent cultivation. This is in contrast to uplands where the withdrawal pattern is different because cropping and following are rotating each year. Cultivated crops such as rice is there representing a private claim by the one who grows it. Fallow land in the land is part of the communal tenure land as it is an indispensable part of the agricultural system of rotational fallow/shifting cultivation.

Rules on use of land and natural resources are not something new for the villages. Villagers have created, changed and used their own oral rules for generations and these rules change according to changes in resource characteristics and change in number of population, if for some reason others move into the village with village agreement. This means that villages practice communal tenure in a traditional way under traditional rules that allow newcomers who are resettled in their village in a way that everyone in the village accepts and this often relates to marriage. Most of these rules are not often in a written form. They are oral and are enforceable at the village level and they are known by the neighboring villages as well because the immediate enforcement of rules would normally take place against possible encroachment by neighboring villages. Presently, some villages especially those with strong governance capacity<sup>54</sup> have started writing the rules in village rule book and proposed it to the district to get endorsement. Villagers create rules in order to safeguard their rights because the land pressure is increasing and it is no longer enough that only the neighboring villages know of the rules and rights.

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<sup>54</sup> Village leaders have a certain formal educational background, Lao language skills, some understanding of legal rules and laws on land and forests and opportunities to communicate with outsiders including government, business and others.

Proposing to the government to accept village rules reflects the reality that community people are trying to exercise their rights, in this case, to land and forest resources. The government's response to their proposed rules has an impact on the availability of the resources. This is also a condition for the resource-based community people to participate in the country development process in terms of official use and management of land and forest resources and it is an important aspect of interpellation.

In the determination of village CPR group membership, only permanently resident villagers, often those who first settled in the village and their direct family members are given rights to the village's CPR resources comprising of paddy land, cultivated and fallow land in the upland and forest land.

Villagers do know about the Article 9 of the Lao Nationality Law, No. 05/NA, dated 17 May 2004 that Lao nationality is acquired from birth, naturalization, and re-acquisition of Lao nationality (NA 2004) and that in this respect any Lao citizen can become a permanent resident in a village. However, the village does not allow any new comer to have the same right even though coming to live in the village. This means the criteria for membership and rights are more than just residing in the village. The villages have set up certain conditions for the new comers because a permanent resident of the village can be allowed rights to village communal land including paddy lowlands and land in the uplands while non-village residents normally are excluded.

Depending on their entrance to the village, new comers may have and not have rights to CPR. Villagers who move into the village by marriage and through government sponsored resettlement program are given the rights. Marriage is culturally recognized by communities. Persons moving in the village after getting married are considered formal newcomers. They are given the right to be permanent villagers and also rights to common property including communal paddy lowland even if it is limited.

Some villages allow new comers through government resettlement program. As a consequence, many families, often Hmong moved into villages that are located in the foot of

the hills. Despite of this, the village that has limited communal paddy land informs the government about the limitation and requests that the new villagers shall not be given rights to use communal paddy land that is controlled by the group of original families in the village. This exclusion can be temporary but the duration is not certain and this uncertainty depends on availability of the land and change of village rules. The criterion of exclusion from communal land includes non-original villagers, new-married persons who move into the village after land is already shared, new comers with other means of living, and new comers but culturally and socially behave in a way that original villagers do not accept.

In Thai Daeng village, the exclusion from the common paddy lowland include people who become village members through marriage after the village finished distributing the land in a new circle but this is temporary as they have to wait until the next circle of the land distribution to have access to the land.

There are villages that allow official resettlement to happen under the condition that they may possibly share what may be called “village future agriculture land”, which is the land the government officially allocates for the village to cater to the increased population but most often this delineated land is already in use by the villages. In some areas, the district government (DAFO) restricts an expansion of agricultural land in the upland into forest by working with villagers to allocate certain land areas in the upland for the village to use for cultivating agricultural crops. Often the allocated land is, as said, the land areas that have already been used and shared among the families for rice production in a rotation manner managed under the communal land system. After the allocation, the communal system continues but in a way that limits a number of plots per family and make rotational period shortened. This means that legal allocation of land affects customary communal tenure, in this case, in a way that communal land available for partition is reduced and in some villages not sufficient. New comers are therefore not eligible to use this land especially if the villages do not have future land for agriculture. In this situation, the village proposes to the government to allocate more “upland” or “state land” for new families to use to produce food or the new comers use the state land without permission and without village’s control.

Each group of new comers has different conditions to meet to be included among communal resource users. Some individual outsiders like families whose members work for the government or run small business, or they are farmers who want to move into the village and they send request to village headmen. The village approves the proposal if the individuals do not have been sentenced by any court to imprisonment and the individuals will not disturb common property or communal land, meaning they do not get rights to common land but they can stay in the village as they think that any Lao citizen has the right to live in the land of the country. On this condition, they must give evidence to show that they have professions and qualifications and a stable economic status to support their family. In other words, they can resettle in the village and use some of the village construction land to build houses to live if they are employed by the government or private, if they are business owners or traders who receive regular income from their business activities or salary from their employers. Being farmers, they have to show the village that they have agricultural land to where they can go back to use it during cultivation season to produce food mainly rice for their families so that they do not encroach on the village common property. Often these farming families already have rights to land in a nearby village.

Another condition a village uses to assess a request by business, government employee and farming families is an injunction to follow village rules which come in a layer. The rules are of different origin and may not necessarily interact with CPR rules. The newcomers that want to become permanent residents are requested by the village to stay without rights to village communal agricultural land but they have rights to natural forest resources or non-timber forest products available in the forests. They have these rights because the village does not feel like they have power to control the forest resources as common property of the village and that the forest is state property.

Some Hmong families follow their patrilineal kinship lines and move to the village without asking for permission. This makes existing residents think that they should not be given right to communal land but this perception can change according to time, to how land is used, and arranged by the existing village. Also, a change in number of permanent village

residents has an influence on the way the village membership is determined and thus their rights to village communal land. This means that availability of land is increased when the number of villagers reduces; in this case, the villages allow new comers/villagers to use the common land.

When new comers have been present in the village at least three continuous years and if in this period the new comers have been seen by the permanent residents not only to integrate in social and cultural aspects but also participate in activities of the protection and development the new comers are accepted as permanent residents. However, they still have to wait to receive rights to common resource or communal land, especially paddy land. In this case, the village prioritizes new comers who come into the village formally: for these formal newcomers their rights to village land are prioritized against the same rights for new comers who are viewed as informal villagers.

There are cases in Tai Daeng villages where the original villagers with rights to the communal paddy land left the village to live in a different place for some years in search of better living conditions. However, not all of them met their goals so they came back to their original village and claimed their original rights to the village communal land. Culturally, the villagers consider the whole village of original inhabitants as one big family so they accept that the returned villagers re-gain their original rights.

According to the village headman of this Tai Daeng village:

*“I went to Vientiane Capital and visited some families who were our village members but moved there to seek for better life. However, I saw that they lived in a very poor condition: crowded and dirty place, poor houses and many of them did not have jobs so they had very little to eat because they had to buy food from the market. No money, no food. In our village, we find fish in the river, NTFPs in the forest and we produce rice on our own land. We do not have money but we have plenty for our family to eat. Seeing the situation of families who moved to the city, I must help them when they came back to the village and villagers think as what I do. We think as if we are in their situation and we give help”.<sup>55</sup>*

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<sup>55</sup> Research Interview (V6 VX), village headman, Viengxay district, Houaphan province, Laos, 21 October 2011.



Some village residents with rights in the CPR of paddy chose not to execute or use their rights to communal paddy land when they see that the land to be shared with them is too small in comparison to the amount of land they need to produce enough food for their families. They see that spending time on the small paddy land will reduce time available for them in the upland fields which are far from the village and far from the small paddy rice plots. Another explanation for not executing rights to communal paddy land is that villagers who already have rights to communal paddy land should not, according to the village rules, claim as large a share of upland CPR as those who do not have rights to communal paddy land. This land is shared among the rest of the village in the communal tenure situation.

It can be seen that village rules on determination of CPR group membership are flexible but nevertheless ultimately aimed at protecting against overuse of the communal resources. It is noted that some rules that are used in one village may not be used in another village. This is because the resource characteristics differ and the modalities for rules consequently are also different which will be introduced in the next part.

### **2.3. Arrangement of tenure in communal paddy land in the lowlands**

The prevailing characteristic of Houaphan province is the mountainous one. Any paddy rice land is located at the foot of mountains or in narrow mountain valleys, often where the land is fertile and near streams or small rivers. These natural resources, including the water are permanent resources under permanent use. A village is located inside what it considers its own village territory and this is also where the land that it controls is found. The paddy fields are located in different sites within a village territory but the largest areas of fields are along streams and usually not far from the village residential land area.

Irrigated paddy rice land in both Hmong and Tai Daeng communities is not titled. It is managed as communal tenure paddy land (*na louam*) which has been set up by the government for the purpose of collectivized agriculture back in the revolutionary times.

After the failure of the government-sponsored collectivization, villages have been given rights to use the land as their own common property that is partitioned. Thus no one owns privately any plot, except the plot that is newly and privately extended, within the CPR. This communal characteristic of the irrigated paddy land is applied in most villages. Yet, some particularly Hmong do keep individual plots singled out and view as land of families with permanent claims within the common property. They use the word “family/clan land” or (*AV ntawm pab pawg*)<sup>56</sup> to refer to the paddy land that a particular (Hmong) family/clan claims. This is still common property because it excludes outsiders including new Hmong who come into the village.

Paddy land is used for irrigated rice cultivation and it is practiced through rain-fed irrigation and traditional irrigation with water from the small river or stream. Within this communal tenure system, private claims on paddy land (*na tee*) are, as explained above, found. Normally, such land with private claims is rain-fed because it is further away from the main river in the valley. In some areas, private claimed paddy land plots, which is not the case of the Hmong private permanent claims mentioned above, are very small and found inside the communal paddy land fields. Some families of both Hmong and Tai Daeng use their family labor to extend the paddy land area. In this case, families that have labor force to expand paddy land plot extending from within the communal land fields gain benefit from their investment as they have more land to cultivate and thus have more crops. This shows that the Tai Daeng does have permanent claims on paddy land plots and these plots are privately invested or extended from within the common property.

A middle aged Tai Daeng villager explained how paddy land plots are privately extended excluded from the common property:

*“The village allows villagers to create new paddy land plot in the area where it is empty land and no one claims but there is no large area of land into which it is possible to expand paddy land plots in our village, just a very small area here and there. Last*

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<sup>56</sup> The Hmong terms: family/clan land” or (*AV ntawm pab pawg*) read as *a der pa mai* or ອ້າດີປ່າໄປ in Lao.

*year, my son and I expanded a very small paddy land plot (na tee) next to the river. We spent many days digging the soil by using shovels.”<sup>57</sup>*

The expansion of paddy lowland plots from CPR system is an advantage to the family who expanded the area and the village development status. Concerning this, however, families with less socio-economic opportunity (lack family labor and money) feel that the village common property is taken but they cannot raise an argument because this opportunity is open to all families in the village. Poor families will also expand paddy land area if they have investment capital like labor and money.

The emerging private claims of the paddy land plots extending from inside communal land fields are therefore used by the same families that prepared the extensions and the claims are accepted by communities where they reside. The privately extended paddy land is not physically separated from village CPR or communal paddy land being extensions.

#### **2.4. Terminology that Tai Daeng and Hmong used to describe communal paddy land**

Words/phrases Hmong and Tai Daeng use to describe communal paddy rice land are various and some of them are different and this difference stem from land use background and also legal influence.

The various terms show that villagers perceive their tenure of land as composed of different sets of rights which would not match the legal terms of the government. Tai Daeng villagers explained their words/terms used to describe communal paddy land as shown in the Table 20.

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<sup>57</sup> Research Interview (V9 VX), Viengxay district, Houaphan province, Laos, 209 October 2011.

**Table 20. Various words/phrases visited Hmong and Tai Daeng use to describe communal paddy rice land**

No	Words/Phrases (English)	Words Used (Lao)	Meanings	Indicated as CPR of		
				V*	ST**	NI***
1.	Village's communal paddy land	ດິນນາລວມຂອງບ້ານ (din na luom kong ban)	Communal land of a village but type of land (for example: garden, rice field or fish pond) is not specified.	x		
2.	Communal paddy land	ດິນນາລວມ (din na luom)	Communal paddy land but land without indicating whether it is State ownership or village or family claim.			x
3.	Communal land	ດິນສ່ວນລວມ (din suan luom)	Communal land indicating neither type of land (for example: garden, rice field or fish pond) nor state ownership or village or family claim is not specified.			x
4.	Collected paddy land	ນາຮີບ (na hib)	Paddy land that the government collected from individual families and it is now shared by paddy land right holders. This collected paddy land can be understood as state land (6) but villagers point out that collected paddy land is the land claimed as private property by individuals and there is no history of individual claim over the state land.			x
5.	Collectivized paddy land	ດິນນາສະຫະກອນ (din na sa ha kone)	Land previously used for collectivized agricultural production.			x
6.	State land	ດິນລັດ (din lat)	Land that no one in the village can claim for private ownership.		x	

\*Village, State, and \*\*Not Indicated

(Source: Research interview)

The terminology is used in paddy lowland systems in the mountain valleys where the communities as a whole or as a particular clan use the paddy fields for agricultural crop production in a communal way. Located inside the village territory, this land is perceived by villagers as “communal land of their village”. Since this land is not titled, some villagers use the word “communal paddy land” because they are aware of legal function (meaning they say it legally right) if they refer to the land as their village land. In many areas, villagers use communal paddy land area to create permanent fish ponds, do seasonal garden and raise cattle when the field is crop free, for instance. The fish pond is not communal. It is a privatized claim in the CPR to create and the fish or management of the fish is not shared. In this case, the word “paddy” is dropped from the term as the land is not used for growing paddy rice so the term used becomes “communal land”.

All Tai Daeng villages understand that the communal paddy land in the lowlands that they are currently using for agricultural crop production is the land that the government in the days of the revolution expropriated from individual rice families who claimed it as private property. This land is therefore called “expropriated or collected paddy land. As said, it became “collectivized paddy land” when the land was used under the government control to impose its policy of collectivization of agriculture.

In the villages where communal paddy is customary land tenure, most village headmen and representatives from the Tai Daeng village land administrative unit know that they must explain what they do to government officers in a language that government officers can understand or “legal language”. Thus, instead of using the term “village communal land”, villagers use the phrase “state land” to refer to the communal paddy land and such phrase reflects that they do not feel that they have legal ownership to the land. They call it state land as it is not titled and registered and much of the village territory would be considered state land by the government irrespective of how it is used. To title communal land in the future it is important to learn from villagers the existed types of tenures and differentiate whether they are state, private, or communal. Either in the lowlands or uplands, lands that are claimed by a whole village, a group of ethnic people or a clan as communal property

should be clearly indicated in the official documents. Village's communal land tenure map should be created and used as reference when issuing communal land titles.

Customary communal paddy land tenure in most Tai Daeng villages has become embedded in existing prevailing government-instituted structure at the local level so legal awareness of government terminology occasionally disturbs the traditional perceptions of communal tenure of paddy land but this does not change the true feeling that the land is their land and the land means life to them.

Hmong strongly respect the practice of their clan system which plays a powerful role in how the land is viewed within their community. Some common property systems among the ethnic Hmong manifest themselves as system of group rights where the right-holding group is not the whole village but the patrilineal clan. Rights of particular clans are often related to the clan being descendants of the 'first founder of domain' way back in time. Thus, "family/clan land" is used by Hmong to describe local paddy land of the clan. It is therefore not private land but land held in common by a family/clan. Like Tai Daeng, a visited Hmong village is seen with whole village rights in CPR systems but in some villages Hmong do not have communal paddy tenure except at clan level.

## **2.5. Sharing communal paddy land (*din na louam*) of Tai Daeng**

Communal tenure constitutes a specific group right. The group membership must be known and defined. It is found in Houaphan that the group is either the village and/or the clan which may have separate clan claims within the overall common property. Key principles for community-based ownership and management of land require that the right holding membership is as clear as the rights to resources. For the above categories of communal paddy land the analysis will run along the following questions: which criteria determine membership in the group (being either village or clan) that has exclusive rights in communal land? How and based on what physical land characteristics is the land shared internally? Based on what family labor availability is the communal land shared?

In the case study, paddy land extended from existing CPR is small and is often privately claimed. This is accepted by villagers because the land is within the institutional arrangement for communal tenure that matches the characteristics of the physical resources such as size of land and seasonality of products.

At the village level, there are traditional rules about rights in paddy land and upland for agricultural crop production and rights in natural resources including bamboos in the forest. A right to communal paddy land is periodically enforceable among Hmong and Tai Daeng where this resource is shared. Some Hmong villages do not share communal paddy land periodically but the land is shared within the family clan. In this case, a right to paddy land is a permanent enforceable claim. The claim for paddy land of both ethnic groups, however, is enforceable at the village level and not by the government as this claim is not yet legally recognized.

The rules for sharing the communal paddy land are more systematic than that of the sharing of land in the upland valleys. The different ethnic groups such as Hmong and Tai Daeng have different practices that originate from their kinship system. And even within one ethnic group, such as the Hmong, the way the communal land is shared is not the same in all villages. It depends on the size of the area and the history of the land and whether there are any private claims within the commons. Still, the partitioning of communal land claims within the Hmong ethnic group in different communities is not the same.

In Tai Daeng communities, it is the village that acts as a governance entity that manages village paddy land. Villages consider that the first settler or founder of domain in the land and his direct descendants are original or permanent village members and traditionally, they are eligible to share, use and manage village communal paddy land (Tannenbaum and Kammerer 2003: 373).

Distributing land annually from the CPR is the first step in the rice production in the lowlands and this process begins from village meetings and end with agricultural work in

the fields and harvest of crops. Managed under village leader or village headman, communal land in Tai Daeng communities is allocated to each family or household within the village. Meetings are organized by a village committee and villagers are invited to participate in making decision on land sharing.

Rules on communal paddy land sharing within specific ethnic groups or villages may vary but they most often reflect the labor availability of the family. Village authority has an influence on the partition of the land but the village headman makes final decision taking into consideration available land and labor and consensus of villagers on the share as a result of village meetings and every one, excepts the informal newcomers, gets land.

The paddy land as a common property is thus periodically partitioned by individual claims that are valid only for a growing season or a certain number of growing seasons. Internal rules on partitioning land may allot more land to some than others. Some families or members in the village may be initially excluded from the right to share. This pertains to formal new members and old families that left the village but returned after the land is already allocated among households. The partitioning of a common property both by temporary claims to cultivated fields and by more permanent claims to particular resource niches such as extended rice paddy land by individual labor is in accordance with characteristics of most common property resource management in Asia (Personal Communication: 11 May 2013).

Sharing common property like paddy land among families within a Tai Daeng village is based on different characteristics mainly permanent residence in the village; descendants from original settlers; estimated rice harvest needs for consumption purposes; family labor and age; family size; being a person (a human being); land fertility, land size (large and small); and land allocation specially takes into account socio-economic characteristics such as poverty.

Being a village's permanent resident is an atomist important criterion. The total communal paddy land area is partitioned periodically and plots are vested in individual families that



currently reside in the village. Each family is vested with land according to, among others, the estimated quantity of future harvest that would meet the needs of the family for livelihood. In this case, residing permanent families may share their allocated paddy land plots the village share with new family members that came in through marriage.

The amount of rice harvested in irrigated rice paddies is monitored through time by villagers. Every year, each family estimates the quantity of rice harvested from the paddy land plot that they cultivated. Because of new annual allocations a family that cultivates a certain plot this year will cultivate another paddy land plot next year or next period. Through cultivating these plots they know what each plot can produce. Some families exchange labor to complete harvest activities in a short time and this exchange allow general information on how much rice the family has got. Most families in the village normally communicate and compare the quantity of harvest from the land that was cultivated by different families in a different year and they know of the change in the productivity. This knowledge is brought into discussion when they are in a village meeting on sharing communal land. Though not an exact figure, the quantity of harvest is accepted and used as land distribution criterion for the assessment of the fertility of the land. For example, it is assumed that 300 kilograms of unhusked rice is sufficient for one person over a 12 months period so a family of six members is allotted a plot of land that produces 1.800 kilograms of rice annually. This figure is a result of 6 (person) times 300 (kilograms of unmilled rice). In some areas, volume of rice is calculated in baskets, 20 of which are enough for consumption need of one person per year and the distribution is based on this estimation.

Through experience and observation, villagers are experts in knowing how much labor is required to complete rice growing activities in a certain plot together with how much it produces. They also observe rice consumption needs of people of different age. Land is therefore distributed according to the available labor force in the family and this third criterion is directly associated with the second criterion.

The village uses household availability of labor (producer) is linked to age (Table 21). The land distribution formula means that the total estimated quantity of harvest expected is at the time of start of cultivation divided by the number of labor. However, there are family members that are not qualified as labors and they are children under five years old and non-workable old people who cannot do the same work as adults so they are allocated less land as in (Table 22).

**Table 21. Criteria of a person as a producer (Tai Daeng household)**

No	Age (years)	No of persons	No of consumers & producers	Distribution Percentage (%)
1.	Males and females of 13 and older	1	1	100
2.	Workable male and female elders	1	1	100
3.	Village headman	1	<1	100*

<more than, \*300 kilograms of rice is equivalent to 100%.

(Source: Research Interview)

**Table 22. Criteria of a person as a consumer (Tai Daeng household)**

No	Age (years)	No of persons	No of consumers	Distribution Percentage (%)
1	Children of up to 5	3	1	100*
2	Children from 5 to 12	2	1	100
3	Non-workcapable male and female elders	1	1	75

\*300 kilograms of rice is equivalent to 100%

(Source: Research Interview)

A Tai Daeng village considers a family of 12-13 persons a big family against small family of four or fewer people. Based on the village estimation of the present number of family members, the number of person in the big family is subtracted by two while the valuation of the small family is added by two in order to reach a result that caters to the producers/consumers. This means that any family with 12-13 people counts for 10 labor

(producers and consumers) family and the family with four members is calculated by the village rules as having six producers/consumers and this is the fourth criterion.

The fifth criterion is that villagers in a Tai Daeng village consider that any one person, no matter how young (a three month baby) or old (a 100 year old woman), is a human being. Because of this, every village resident has the right to share communal paddy land equally.

Tai Daeng also uses the quality of the land area as a land sharing rule. In a village, the fields are located in different areas which mean that they are not the same in terms of fertility located far away from the village while some others are just next to their residential area. Because of this, villagers use the quality of the location of different land areas as a bias for sharing paddy land to allow families to change: 1) from cultivating land that is further away from water to cultivating land located near a water source, or 2) from cultivating less fertile land to cultivating a more fertile land plot; or 3) from cultivating the land that is farther from residential land to cultivating the land that is located in a shorter distance from the village. These application of such rules of change rotates when the land is redistributed annually and all communal paddy land right holders share benefits from access to water, fertility of the soil and time spent on traveling from home to rice fields and vice versa.

Sharing communal paddy land based on the location of the land area does not only link to the fertility of the land, it also links to family labor socio-economic characteristic such as labor as mentioned above besides also poverty which plays a role for land allocation. The concern for the poor can be seen as an articulation of village social capital and coherence. A village of Tai Daeng, for example, uses the terms “small land area” (*din na noi*) and “large land area” (*din na lai*) as a way to define ways to support the poorest families to cultivate rice. The “small land area” refers to a piece of fertile land which is small in size with low risk of drought or flooding. It is also less labor demanding. “Large land areas” are less fertile and more risky due to insufficient water. In a village, poor families often lack labor which is one reason of poverty in the rural uplands and they may be allocated fertile land plots, for example, “small land area” and big families with labors are provided less fertile plots to cultivate. This distribution of land based on the characteristics of small and large

land areas and their inherent fertility is sometimes seen as unfair by big families and may lead to conflicts so this criterion is not often applied. One such conflict will be described in the section on *Conflict and Conflict Resolution*.

Naturally, communal paddy land plots are often scattered. In some villages there are many communal paddy land fields which are of different in size and located in different habitats. While the Internal Rules normally apply a village may not always be able to share with families the land of exact size calculated based on the Internal Rules but this is often acceptable by villagers.

In general, the communal paddy land areas in a Tai Daeng village are small in size due to the limited flat level land s it will not be enough for food production for a village. Sometimes if a family is allocated a very small paddy area they find that it is not worth to invest their labor in to cultivate as the harvest will not be enough for their family's consumption need compared to the alternative of hiring additional labor to cultivate upland rain-fed swidden fields. In this situation, some families volunteer to be excluded from the right to access the communal paddy land in the valleys. However, they can claim back their right in paddy land in the valleys in a later distribution circle if they wish.

The sharing of communal irrigated paddy land in a Tai Daeng village combines two criteria: the number of families being present in the village and the number of villagers. Applying this, the total number of hectares of communal irrigated paddy land is divided in to two parts of visually equal size. One part is divided by the number of families irrespective of the number of family members and their age. The second part is divided by number villagers. According to the village headman:

*“There are 93 households and 367 people in our village and we have 80 ha of communal paddy rice land which we share periodically. The sharing rules change almost every year and these changes were based on villagers’ proposal and agreement. This year we follow this land sharing formula:*

*80 ha ÷ 2 parts\* = 40 ha*

*40 ha (of part 1) ÷ 93 families = 0,4 ha/family*

*40 ha (of part 2) ÷ 367 villagers = 0,1 ha/ villager*

*This means that a family with six family members is shared one hectare of paddy rice land and this is a result of 0,6 ha (6 family members × 0,1 ha) + 0,4 ha (1 family × 0,4 ha).” (Personal Communication: 12 November 2013)*

A Tai Daeng village headman said:

*“Previously, families shared communal paddy land based on the number of producer labor in the family irrespective of its size and irrespective of how many consumers in the family. But they came to view this land sharing practice unfair. Many families have many elders and small children who are consumers and cannot contribute labor.*

*This family with a lack of labor was given small area of land but they had to make equal contribution to the village development activities such as share labour, food, money or other materials to, for example, make fence and fix village irrigation channel or support village meeting. Meanwhile, families with many labors also have elders and small children who cannot contribute labor thought that they were not given enough land because they had more family members to feed.*

*We looked for solution through village meeting where villagers proposed their ideas and agreed that communal paddy land from now on is shared according to not only producer (labor) but also present number of family (consumer), meaning we combined two land sharing models when sharing paddy rice land.*

*Villagers see this combined rule for sharing as a way to make sure that families that lack labor in relation to its number of consumers and big families have access to land in an equitable way and at the same time ensure their contribution to village development in an equitable manner.”<sup>58</sup>*

During field work it was noted that the political-economy context of customary communal tenure is important. There are thus special management issues that impact on the internal rules of land distribution of Tai Daeng. These management issues clearly show how customary communal tenure has become embedded in existing prevailing government-instituted structure at the local level. The management arrangements and the Ostrom rules for collective choice arrangement pertain to concern two groups of people who jointly agree on how the common property is shared.

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<sup>58</sup> Research Interview (V7. VX), Vice-village Headman, Viengxay District, Houaphan province, Laos, 21 October 2011.

The first group consists of those who are perceived by villagers to help village to connect with outsiders in relation to the administration and general development of the village and villagers agree to give them reward. Being responsible for administrative work, the village chief or village headman has to receive guests in the village. The guests include government officials of different levels, and representatives from NGOs and others. When land allocation takes place, the village headman is given priority to select the area he or she prefers, which often consists of the most fertile paddy plots or the plots that are conveniently connected to water. The members of the village administrative committee may also benefit in the land distribution but they receive less extra contribution than what the village chief does.

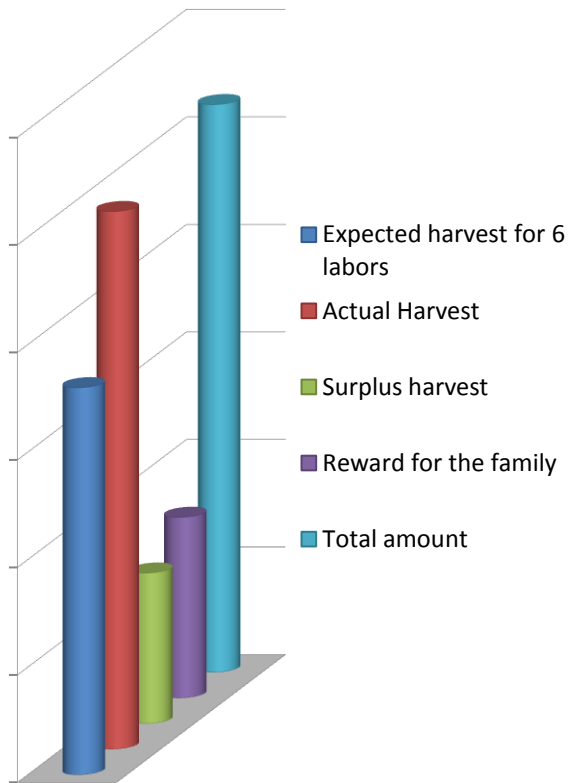


Photo 17. A family of Tai Daeng village invested in this fish pond by using their labor to dig the soil. It is located near a river within the village communal paddy land field and is privately claimed by building fence around it and villagers accept this claim.

The special condition of land allotment applied to the second group accrues to families that have expanded the paddy land area. At the outset, the common property has known boundaries within which allocation takes place, but adjacent areas may be developed creating new resource niches by individually investing expansion of the paddy land. In most villages, the expanded paddy is permanently claimed as private land but the internal rules of a Tai Daeng village considers the expansion as a contribution to the development of communal property and it allows for a five year claim on that particular area within the common property. In such case, the family cultivates the new opened land for five years before it is automatically registered as village paddy land subject sharing. After the fifth year the new land is part of the common pool that is subject to annual re-allocation, the family that has invested labor in the expansion of the land is given the right to share the same paddy land, if they wish.

Additional to the group endorsement of special claims mentioned above families that have expanded the paddy area adjacent to/integrated with village communal land are benefiting from enhancing the productivity of the land if the new land provides a harvest that exceeds the expected harvest per hectare of land. Each labor in the family that expands new cultivated area does not lose right to share village communal paddy land. They keep all rice they produce from the expanded land and is also rewarded 20% of their exceed harvest by the village. For example, family X has 6 labors. According the village land distribution rule, they are allocated 1.800 kilograms (6 labors times 300 kilograms) plus land for dependents. If the family actually harvested 2.500 kilograms of rice per year from the land they expanded, meaning their production is 700 kilograms more than the expected harvest of rice by one labor. The village subtracts 1.800 kilograms (expected harvest for 6 labors) from 2.500 kilograms (actual harvest) and the result of this subtraction is 700 kilograms (harvest exceeding expectation).

**Chart 2: Conditions of rice land distribution in a Tai “Daeng village applied to the family X with six labors (producers and consumers).**



After some years, the new land area becomes subject to general distribution and the family X of 6 labor (plus ratio for dependents) receives land that is distributed according to normal size area of land expected to produce (1.800 kilograms) plus 840 kilograms (number of labor times 140 kilograms). That is 20% reward for each labor. The calculation for 140 kilograms is 700 kilograms times 20% divided by 100. Totally, family X is distributed land expected to produce 2.640 kilograms of rice (Chart 2). This additional benefit out of the partitioned common property is calculated by adding the result of the normal allocation to the expected harvest. This special division is effective within one annual allocation circle.

Despite the reward, a motivation to expand land areas to include newly developed communal paddy land plots picks up slowly. Families are reluctant to invest their own labor to expand new paddy land that soon will be counted as village common property where everyone can share the benefit. Because every family by collective choice arrangements have rights to be involved in generating new rules for an investment in the productivity of the resource they can express their perception on the rules and the rules may be changed based on agreement of the villagers. In this case, newly opened paddy land plots are privately claimed and this claim is permanent and it is supported by the government that allows any family who has expanded paddy land by using their own capital (labor and money) after 1986 to claim the land as their family land, private land.



## **2.6. Circle of annual sharing communal paddy land of Tai Daeng**

The cycle of allocating rights within the common property varies according to location, natural endowment, size of CPR, composition of families in the village, and pressure from outside. Each system is influenced by formal and informal management systems that combine existing sources of mandates and authority including the overlaid government structure. One system comprises the customary cultural practices, which in Houaphan are combined with the (state-sponsored) induced management structures represented by the village headman that is the representative of the State as well as the villagers. In some Tai Daeng villages, paddy lowland distribution is made each year. In others the schedule of distribution is closely linked to the administrative duration of the office of the village headman which can be between three to five years or more. The latter mode with overlaid government system raises problems, not only when the headman's term comes to an end but it also becomes a problem of transparent distribution and it influences the modality of what Ostrom calls the conditions of "collective choice". The duration of the circle of the paddy land distribution has now become longer than before.

Sharing land means that the land availability becomes smaller when the number of people/family in the village increases. This creates a situation for villagers to worry about their food security in the long term. Regarding this, I could observe in one Tai Daeng village that the distribution of communal lowland paddy land changed from joint allocation to permanent claims. In this case, the village land is distributed to eligible families in the village permanently but they still hold the land as communal land. This means the CPR is partitioned and will not be redistributed except if he leaves the village and the criterion of residence in the village as basis for a right no longer applies. This means that the land is not allowed for sale (outsiders are not let in) and the land must be reverted to the common pool.

Like Hmong, Tai Daeng do have family clans<sup>59</sup> but this social institution does not have an important influence on the mode of land allocation. Because it is not important, the governmental system is overlaid more heavily in the customary tenure system of this ethnic group.

Tai Daeng do not give the right to non-village members to access the village communal land and it cannot be sold or transferred even within a village. Without rights to CPR, these non-village members seek to privatize part of the common property based on own investment of family labor in productivity enhancement and this occurs more often in the upland than in the lowland but the land is not full privatized as no title is issued by the government. If the land right holder as an individual or a family no longer meets communal land distribution conditions or if they volunteer to be excluded from the village common land, the right to land can be transferred to another person or family who qualifies as a group member in the community with holding a right to the communal land. Transferring the right as an individual labor can be made within a family within a communal land sharing period but if a whole family wishes to transfer rights in communal property it has to transfer its right to the village, not to an individual or individual family.

According to the collective choice rules (and other Ostrom rules) being a village member is the criterion for having the right to cultivate the village communal land. In Tai Daeng villages where communal paddy land is distributed in a set circle of time some villagers are excluded from having land rights but this exclusion is temporary. Meanwhile, they can receive the right of someone in the village who no longer meet the land distribution conditions or who volunteer to be included from the collective of right-holders.

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<sup>59</sup> In a Tai Daeng village, the village headman said that there are five clans (*chao vee*, *chao leaung*, *chao lor*, *chao ka*, and *chao hien*). Most of the clan represents animal. For example, *chao lor* means a family clan of bird that is locally called "*nok tuung lor*" and it is a taboo for this clan/family member to eat a certain kind of animal. Similarly, people from *chao vee* are prohibited to eat a kind of bird that name "*vee*". Also, they do not use manual fan because it is "*vee*" in Lao.

Below is found information gained from an interview with a middle-aged Tai Daeng woman who is the head of the village's Lao Woman Union (LWU):

*“The process of sharing communal paddy land in the lowland (na) in our village begins from a meeting and ends with field work. Usually, our village holds the meeting twice. Initially, the village party members and representatives of village administrative units share statistics on paddy rice land area, its historical capacity to produce, number of people currently present in the family, for example. They then figure out the size of the land area to be distributed in relation village land sharing conditions or rules. The calculation is based on the presented information and this meeting normally takes between 2 to 5 days depending on how well it goes.*

*After a consensus on the land distribution in our village has been made by the village administrative committee a meeting for the whole village is organized to inform villagers about the result. Everyone in the meeting is allowed to make proposals and inquiries about the distribution. Village committees are responsible to make clarification at the meeting and this meeting is completed only after most villagers agree on the distribution. Villagers set the date to work in the field before district is informed and invited. ”<sup>60</sup>*

Finally, appointed district staff from the District Agriculture and Forestry Office (DAFO), representatives of village administrative units and families who from neighboring villages share paddy lowland boundaries participate in the actual field activities to witness the measurement and to make agreement so that everyone is clear about the land they will soon cultivate. This clearly shows that the government is involved as an informal endorsing entity in the communal land sharing of Tai Daeng villages.

## **2.7. Sharing of communal paddy land of Hmong**

When comparing the Tai Daeng to the Hmong ethnic group it is observed that Hmong communities define their collective choice rules differently because of an impact from outside. All visited Hmong villages were affected by the government sponsored resettlement program. The first resettled families in the villages, for example, were given rights to use existing communal paddy land fields by the government to cultivate rice after

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<sup>60</sup> Research Interview (V5 VX), head of village LWU, Viengxay district, Houaphan province, Laos, 20 October 2012.

moving down from the mountain tops or hills. The word “existing” is used because a Lao village existed there before Hmong moved in. After the end of the collectivized agriculture, the government allowed the Lao village to use the paddy rice land for agricultural production purpose under a condition that no one owns the land privately. The Lao villagers agreed to follow the government’s condition and under the condition that no one claims the land as private land, it was periodically shared among families in the village.

*“We did not want to move away from our previous village to this village because we were familiar with places where we grew rice, where we collected fish, where we harvested NTFPs, and where our houses stood. We especially love our paddy rice land because it produced good crop. We had to move to make way for Hmong because it was what the government wanted. Because the paddy rice land was so important to use we proposed to the government that only the resettled Hmong would use the paddy rice land.”* (Personal Communication: 10 January 2013)

This resettled Hmong village is only one out of the three visited Hmong villages that shares communal paddy land periodically but this is not the case in the two other villages where the paddy land was allocated to the very first resettled families and was not shared with other families of different clans that later moved in. This means, in villages I visited, only one Hmong communal tenure village is found.

In the case of Hmong, the family/clan system is important when allocating rights in communal paddy land sharing. Besides, particular clans in Hmong villages do not share paddy land except for the same clan (they may cultivate the land together and share the harvest). In Hmong communities the clan leaders, not the village, are the ones who make decision on sharing the land with agreement of the family or clan members.

Most Hmong communities gained rights to paddy lowland as part of government sponsored resettlement program. Once a Hmong family cultivated a piece of paddy land as the very first they continue to have a claim on that land and it is not redistributed to others. These families have established a customary ownership right over their parcel of land through the clan system. Though the first paddy lowland cultivator wins traditional

ownership over the land, it is later distributed to their clan members including new married couples or new residents to the village but only of the same family/clan.

In the Hmong village that partitioned the claims in the CPR permanently to a family/clan can give part of the family clan-based communal paddy land to their children when they start their own families or get married but still live in the same village. Despite being a patrilineal, this traditional reproduction of new generation is changing.

In Tai Daeng villages, it is the village that makes decision on sharing communal paddy land with villagers who are direct descendants of communal paddy land right holder and who start their own families but this is different in Hmong villages. A vice-village headman in a Hmong village where a family shares paddy land with their daughter said:

*“In our culture, we share family property with male children. Often the eldest son looks after parents especially when they become old and cannot work to support themselves. When the eldest son gets married he is given more property than others. However, not everything is now the same as it used to be. Some parents consider that males and females are both our children and daughters should also have rights to family property including land. This change is influenced by education and how we see from other ethnic groups do. Our children (sons and daughters) agree with the change”.*<sup>61</sup>

According to the vice-village headman, there are three children in his family, two boys and a girl. His eldest son went to a college in Vientiane and did not return to the village after he completed his study. He lives in the city, works for the government, and he likes his job. He also bought a small piece of land there where he said he would construct his own house and live permanently. His younger son and daughter live in the village and they will be shared family property including paddy land.

Traditionally, Hmong cannot marry a person from the same clan. A woman moves out from her clan to her husband’s family and becomes their new clan member and this affects land sharing system of Hmong:

*“Last year, my daughter married a man from different clan living in this village. The new couple live in their small own house. The family of my son-in-law allows them to*

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<sup>61</sup> Research Interview (V8. VX), Vice-village Headman, Viengxay District, Houaphan province, Laos, 6 February 2011.

*use some of their paddy land to grow rice. I also allow them to cultivate part of my paddy land as I want to make sure that my daughter has a means to live her life so that her husband does not look down upon her if she does not have any property, and she does not feel like I am, as a father, biased toward sons in terms of sharing family property.”<sup>62</sup>*

A question can be raised here in regard to how husband and wife will divide the land inherited from their families if they divorce. Will it be possible that Hmong deal with this new traditional phenomenon by applying state law? In relation to this, a Hmong village headman said, “in our current village we integrate legal knowledge into our traditional practices” In another Hmong village where land is communal land in the clan the village headman who is about 70 years old revealed:

*“In our resettled village, we still organize a marriage ceremony for new couples in our own way but we write down if the bride or bridegroom carries with them property like land. If they divorce, each of them has the right to take back what they brought with them prior to their marriage. Also, they must hold a marriage certificate, which is something my generation never had but now we must follow the law.”<sup>63</sup>*

Regarding the property of a married couple, it is stated in the Article 28 of the Family Law of the Lao PDR, No 07/SPA (People’s Supreme Assembly), dated 29 November 1990 that a husband/wife is the owner of the property gained prior to their marriage and he/she therefore has rights to it (Family Law 1990, Article 28). If this rule is applied, a married Hmong woman has the right to the land-based communal paddy land provided by her family prior to her marriage.

Communal paddy land managed as common property at clan level is well organized within a village but it is questionable if the paddy land can be recognized by the State as land of the clan. An example is a Hmong village (Phouxai) that was resettled towards town and was allocated paddy rice land (20 hectares) by the government in 1988 when there were 42 families meanwhile there were 24 families more in 2000. This year, villagers agreed to permanently share the allocated paddy land among the 66 families equally: 20 ha times 66

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<sup>62</sup> Research Interview (V8. VX), villager, Viengxay District, Houaphan province, Laos, 6 February 2011.

<sup>63</sup> Research Interview (V2. SB), villager, Sopbao district, Houaphan province, Laos, 25 October 2011.

families and equals about 300 sq metres. A year later, the number of families in the village stood at 105 some of which are direct descendants of the paddy land rice holders and they are shared the paddy rice land by their families. In 2013, the families that are excluded from the right to use the paddy land cultivated rice on around 60 ha of land in the hills/upland.

It may raise an issue with impact on the communal paddy lowland system in the province because it could come possible that clans or families in a Tai Daeng village will also claim village's communal paddy land as family land. But if the government recognizes the Hmong system and rejects the claim of Tai Daeng, this ethnic group may think that the government is favouring Hmong. The Tai Daeng (possibly as well as other ethnic groups who are currently hold communal rights to paddy land in the lowlands) will not be satisfied with this decision and this may create a difficult situation for the government to have full participation of the Tai Daeng in its development activities. It means here that Hmong is privatizing customary communal paddy land.

*"I could not remember exactly the year but it was more than 30 years ago when four families including my family moved to this village. My father told me that he accidentally came this way and observed that there were paddy land plots that looked to him were abandoned and there was a residential land area but without any villager. A year later, my father came to this place again and this time with his friends. They were sure that it was an empty village. We moved in and used the paddy land plots. More families later joint us and the paddy land was shared periodically. No villager is allowed to own the land privately or the land belongs to only our four families who came first to this village. However, if original villagers (people who stayed here before our arrival) appeared with evidence to show that the paddy land is their land we are, as present villagers, may be all excluded from having the rights to the land."*<sup>64</sup>

In contrast to the clan based management of communal land we also find lowland communal tenure in some Hmong communities where they partition paddy land at village level and this is organized by the village. The village uses the size of the paddy land area as a criterion of the amount due to each in sharing land among families of different clans in the village. In this case, a Hmong family must shift the plots of land annually to distribute

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<sup>64</sup> Research Interview (V6. VX), villager, Viengxay district, Houaphan province, 21Oct 2011.

the benefit from the fertility characteristics of the land fairly. This means that land size and fertility is a rule that impacts on the land partition criterion.

In the partitioning, land size of each share allocated and cultivated by a Hmong family is not changed as there are specific permanent plots that are allocated each year. This means that under Hmong collective choice rules one family can exchange their land with another without taking into account the importance of number of family members, family consumption needs, and availability of family labor force or family size. Thus it is different from the paddy land sharing conditions of Tai Daeng which is previously described.

Sharing communal paddy land in the lowlands among families of different clans in a Hmong village is a condition a Lao villager proposed before they moved from their original village to give Hmong a resettlement space and continued to use their village communal paddy land to cultivate rice. A resettled Hmong village headman in this village said:

*“We moved from our original village in the hills to this village in 1990. Originally, it was a Lao village that moved to a new place very near to the central town. We were told by the government that the Lao villagers used the paddy land communally which means that no one owns and families were partitioned the land periodically. It is a condition for us to continue using their paddy land without claiming it as private family land. If we do not follow the rule, though it is not written in paper, Lao families who previously used this land may come back to their original village and claim for the land as their land. We therefore have to share the paddy land among families in our village and a sharing period is 5 or 6 years.”<sup>65</sup>*

Like anywhere else in the province, the Lao village used and managed their paddy rice land under the communal tenure system after the end of the collectivized agriculture of the Lao government. The mentioned Lao village learnt from their experience that keeping the communal tenure is a way to keep (poor and better off) families together as a community that what the paddy land can produce is shared. Maintaining this communal tenure means that outsiders are excluded and as the land is not taken by outsider new generation villagers

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<sup>65</sup> Research Interview (V11. XN), Village Headman, Xum\_Nue district, Houaphan province, 9 November 2011



will also share. In an conversation with an elderly man from the said Lao village, he explained:

*“Our previous village is just some kilometers away from our present village. We agreed to leave our paddy rice land to Hmong because we understood that they had a difficult life in the hills that they depended for their livelihood on high land rice and NTFPs, walked many hours to market to sell their agricultural and forest products in local markets and to use healthcare service when someone got seriously ill. Also, there was no school for their children in the village in the hill. It is important that they would not clear the state forest to grow rice. When the Hmong moved to our former village, they promised to follow our intention that the paddy rice land in the village is use and manage in a communal way-families in the village share the land periodically. Our intention includes that there must not be private claim from the newly resettled Hmong over the communal paddy rice land because if we did it before they arrived they would not have a chance to use it.”*(Personal Communication: 10 January 2013).

Taken into account that often paddy land to Hmong in some villages is the property of the first cultivators who use the land and this land is part of the common property of a particular clan, Hmong manage communal paddy land with both privatized and communal claims in the system.

## **2.8. Sharing of land in the uplands**

During my field work interview, a middle-aged Tai Daeng woman told me:

*“Land in the upland (din hai) is the property of older generation that is given to their children. We inherit our land from our parents, our parents inherited it from our grandparents and our grandparents inherited it from our great grandparents, and our great grandparents inherited it from their parents. Land gives us most of the things we need and we don’t know how to live our life without it. Because we love our children we will give them the land we inherited from our parents so that they can live on it when we pass away.”<sup>66</sup>*

Communal land in the uplands derived from a traditional way of living life of uphill people. As described by Andersen (2011: 2) in the section on *Theoretical Framework* of this research as “traditionally customary communal tenure” but this system is being influenced more and more by legal land and forest management policies of the Lao government.

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<sup>66</sup> Research Interview (V9 VX), Villager, Viengxay district, Houaphan province, Laos, 18 October 2012



Photo 18. Rural farming families share land partitioned into plots in the uplands to grow annual rice.

Like communal paddy lowland, farmers in Houaphan do not have title for land in the uplands but they have, as said before, traditionally been using these land areas to produce food to feed their families for many generations making which means that villagers hold that the land is the property of their village as a whole. From a legal perspective, the agricultural land in the upland is the State's land.

It is mentioned in the section of the presentation on *Two Modes of Agriculture and Government Policy on Eradication of Shifting Cultivation* that shifting cultivation is seen by the government of Laos as a destruction of forest. Consequently, the government has limited an expansion of agricultural land in the upland and resettled many upland villages in new places farther away from forests.

Traditionally villagers in both Tai Daeng and Hmong communities share land in the upland for rice production communally. Unlike, communal paddy rice land that is shared by using rules for allocation based on producer/consumer ratio, upland farmers of both Hmong and Tai Daeng decide with their families on what upland area to cultivate. This decision is made every year or depending on the production circle which could be after two or three years. Other families in the village may involve in the decision made on land selection but often they just use to inform each other their selected plots in order to avoid repetition. Sometimes families select the plots located next to each other as they believe that cultivating a land plot separate from others is risky to losing rice crop to wild animals like birds.

*As an addition to the paddy land, most families use at least one land plot in the uplands to grow rice. The size of the plot associates with the family's ability to cultivate. For example, the biggest family in our village has 8 working labors and they grow upland rice on the largest plot, about 1 hectare.”<sup>67</sup>*

In both Hmong and Tai Daeng communities where families expand agricultural area into forest especially where it is not allowed, villagers may not provide exact information on the land they are cultivating as they are aware of legal consequences. This could mean that certain statistics on cultivated land in the upland gained from families in the village might not be exactly accurate. Without taking it into consideration, this could lead to a reduction of agricultural land area when legal land management activities are taken place.

Lowland farmers cannot decide privately on the land area they want to cultivate because the land is communal land and it is shared according to the village's land distribution rule. Similarly, the village that is officially allocated certain area of land in the upland for rice production shares this terrain with families according to agreement of village as a whole and this is a rule. Sharing land in this case works like a Hmong village headman explained “we had a meeting with villagers and agreed that the village uses a formula that a total

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<sup>67</sup> Research Interview (V9. VX), Village headman, Viengxay district, Houaphan province, Laos, 18 October 2012.

square meter of officially allocated land area in the upland for the whole village to use for agriculture is divided by a total number of village residents.”<sup>68</sup>

Where an expansion of paddy land in the lowlands and other sources of livelihood is available, upland area for rice cultivation may stabilize if not decrease. However, alternative source of living is highly related to agricultural production and it is questionable if the clearance of a new forest area is reduced because many other agricultural products like corn and trees aside from rice area produced not only for family consumption but also for source of cash.

## **2.9. Sharing responsibility**

Villagers ensure productivity of their rice by allocating themselves rights to withdraw from the common property resources to support the agricultural production process in a way that matches the characteristic of the nature. They do this by organizing themselves as groups.

This following section focuses on the groups of: fence makers (Hmong and Tai Daeng), paddy land appropriators or users (Tai Daeng), and irrigation/water appropriators (Tai Daeng). I focus on Tai Daeng because it was found that this ethnic group has longer history and thus experience in managing the traditional irrigation system that evolved over time and it is worth studying. Arrangements of sharing responsibility derive from a collective action that villagers work together to ensure their productivity and they are important parts of the agricultural crop production process not only in the upland but also in the lowland.

Traditionally, villagers let their animals graze seasonally in the harvested communal paddy land fields and in the forests. Sometimes villagers lose their animals that graze in the forest so being in the lowland area, animals are safer as the field is always not too far from the

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<sup>68</sup> Research Interview (V4), Village Headman, Viengxay district, Houaphan province, Laos, 29 October 2011.

village and villagers can easily keep an eye on them. Sometimes animals bring destruction if they enter a field with growing crops. In this case, all owners of offering cattle have to pay for the loss of crops at an estimated cost agreed by two parties. The potential cost of damage is associated with how well villagers' cattle grazing or rice crop area is organized and protected. Village administrators are included in the negotiation if the two parties could not reach an agreement. The compensation can bring problems to cattle owner if the loss is serious, for example, if their animals destroy the crop in a large area or large quantity of crops to be harvested affecting food security of the owners of both the cattle and the crops. Because of this, most villagers keep an eye on their cattle as well as on their rice fields.

Generally, cattle grazing area within a village is not always legally mapped and zoned but lowland and upland farmers define boundaries for cattle grazing areas seasonally and differently to avoid losses animals may create. The idea of creating fence comes from a common interest of villagers who share a common goal and they work to make fence correctively.

Both Hmong and Tai Daeng villagers withdraw mostly bamboo poles and trees which are communal property available in the forests from around where they live to create the fences. In some areas, villagers grow *namhong* which is a kind of local cactus and jethropas (*mak kao*) trees as fences and this is communal property.

Cattle are free to graze in the harvested rice fields in the lowlands of most Hmong and Tai Daeng villages where fences are created. Families that share communal paddy rice fields must create the fence. They use a rule that each village member is responsible for a task measured by the total length (meters) of the fence to make. A family unit knows how many meters of fence it has to build by adding up the number of meters of the fence that each member of its family holds.



Photo 19. Paddy rice fields in the lowland area of a Tai Daeng village where villagers worked together collectively to create fence around it to protect their rice crop from animals' invasion in the growing season when cattle are sent to graze in the forest

Presented next are two case studies from a Tai Daeng village and two Hmong villages. They show by which internal rules villagers organize their animals grazing areas collectively and but in a different fashion which is linked to different characteristics of the resource and common property that they manage. This is not only to show how the collective action is linked to the biological characteristics of the resources but also to show differences in culture of Hmong and Tai Daeng.

The first case is in a Tai Daeng village, villagers worked together collectively to organize a village's animal grazing area that covers around 100 hectares of land in the forest, known to the villagers as state forest, and this organization was later officially indicated in the official land use planning map as village's animal grazing area.



According to the interview with villagers, their buffalos and cows used to be freely graze but many of these animals destroyed their agricultural upland and lowland crops like rice, vegetable and fruit trees. In this case, a family as an owner of the animals had to pay for the loss and this created a difficult situation for them to handle especially when the loss was serious. It affected food security of both cattle and crop owners and this problem continued for many years.

As a way to solve the problem, the village headman proposed his initial idea<sup>69</sup> to villagers that they worked together to organize an animal grazing area. This thinking was presented to the village party members before bringing it into a discussion with other village leaders in a meeting during which a forest area inside the village territory was suggested by participants as a suitable grazing land area. It is located inside the forest covering hilly mountain slopes, small streams, woods and bamboo resources. After the village leaders' meeting, a group of villagers including representatives from village forest unit and land administrative unit were sent to see the proposed site to estimate size of the land area and length of the fence to make.

The information gained from the visit to the proposed grazing area was used to calculate potential cost for fencing. Meanwhile, the cost for making fence around the village's communal paddy rice land in the lowlands (around 60 hectares but they are not in one field) was estimated. Villagers compared the results and they found out that it would be cheaper to make fence around the cattle grazing area in the upland than to make fence around the paddy rice fields in the lowlands. In relation to this, the head of village LFNC explained:

*“Cheaper cost was due to characteristics of the nature. Because of hilly land, cattle cannot move everywhere so fence is needed in some areas, only where animals cannot make their ways to rice fields. Beside availability of raw materials like wood and*

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<sup>69</sup> I understood from my field work observation that the village headman is the one from a village who is given more opportunities than any others from within this community to explore to the development activities that happen in different places through participating in meetings organized by the government, NGOs and villages and this allows him to see various development issues and possibilities. This is positive to his ability to think of a way that works for his village which includes use and management of common property.

*bamboo poles in the forest, what we needed as an addition was our own labor to make fence. Meanwhile, fencing around the paddy fields in the lowland should leave no gaps for animals to get through. For materials, woods and bamboo poles would have to be transported from the forest to the paddy land areas and this required hard work due to distance. Even if paddy land in the lowland was fenced, our garden and rice plots in the upland may still not be safe from animal's destruction. Making fence around the rice land in the lowlands would therefore require even more labor and material as, aside from rice, many cultivated crops are grown in the upland areas and they need to be protected as well".<sup>70</sup>*

Later, a village meeting was organized. Representatives from each family or family heads were invited to participate to discuss about fencing. The meeting agreed to organize animal grazing area in the upland and any paddy land right holding family had to make contribution. Another informant in this Tai Daeng village mentioned:

*"In making fence, we did not need money but families were responsible to share labor in association with the sharing condition of communal paddy land in the lowland. As villagers agreed, the number of total lengths (m) of fence to make was divided by a number of the total quantity of harvested rice, which village estimated families would be able to harvest from their paddy land in the lowland."<sup>71</sup>*

In their daily life, villagers are voluntarily responsible for monitoring work to make sure that animals would not be able to leave the grazing land and destroy villagers' agricultural crops by visiting the fence they made regularly and they maintain it where they see necessary. As a result, the village is now an animal-free-area which means that animals in their village and from outside are not allowed. This is part of their village rule which is enforceable within the village through collective action that is everyone in the village agrees to follow.

Every year, neighboring village leaders are invited to join the village meetings to listen to their rules on animal free-zoned area. Also, a village headman's notice is sent to the neighbors to remind them of watching their animals so that they do not make harm to crop

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<sup>70</sup> Research Interview (V.5 VX), head of village's LFNC, Viengxay district, Houaphan province, 20 October 2011.

<sup>71</sup> Research Interview (V.5 VX), villager, Viengxay district, Houaphan province, 20 October 2011.



or owners of the animals will have to be responsible for any loss that their animals may create. This attempt to make the village rule enforceable in other villages is workable.

When PAFO and DAFO came to the Tai Daeng village to carry out land and forest management activities, villagers informed them about the grazing area that they collectively organized. The government officers agreed with villagers and, as a result, 100 hectares of grazing land was indicated in the Map of Use and Management of Land and Forest of the village. According to a DAFO staff,

*“We have to recognize the grazing area that the villagers organized. The fence helps community to ensure that they gain benefit from what they produce from their land because animals can not destroy their agricultural crops. This also means a way to reduce possible conflict between families in the village about the loss of crops due to animal harm. What is more important is that local development goal to support villagers to be able to produce more agricultural crops without clearing more forest area so they are able to feed themselves sufficiently and gradually bring their products to the market to sell.”<sup>72</sup>*

The rule on animal-free-area in the mentioned Tai Daeng village has an impact on a neighboring village of Hmong who could not let their animals graze freely. At the same time, they could not afford keeping an eye on their animals all the time especially when they were busy with rice production activities. As a consequent, Hmong in this village also established a fence around land area in the upland for their animals to graze.

The way Tai Daeng and Hmong organized their animal grazing land had some similarities and differences. There is a collective action on site selection, making fence, monitoring and maintaining the fence. In the Tai Daeng village, communal paddy land right holders had to create fence but this is not for Hmong. All Hmong families in the village (not only paddy land right holders but also those who are not shared the communal paddy land) have to make contribution (materials and labor) to create the fence. This Hmong village headman explained why all families in the village shared responsibility in making fence:

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<sup>72</sup> Research Interview (D2 VX), DAFO staff, Viengxay district, Houaphan province, Laos, 21 October 2012

*“Every family in our village produces at least one crop. Mostly it is rice but it can also be corn, vegetable, and fruit trees which need protection from animals’ harm. Also, nearly every household has cattle and they do not want them to destroy the agricultural crops of others as they will have to pay compensation for any loss their animals may make.”<sup>73</sup>*

While it is communal paddy land right holders in Tai Daeng village, in Hmong village it is the total Hmong families made responsible for the share of total length (meters) of the fence. Hmong villagers did not use only trees and bamboo pole they could find from within the village but also barbed wire and nails which they had to buy. The village helped poor families who lack ability to contribute money and labor to withdraw village natural resources to make fence. In this case, families with the highest number of workforce and cattle agree to provide more labor and materials, respectively. From a CPR perspective it is not only the sharing of labor to fence in but the rule of how many heads of cattle each family is allowed to put into the common grazing area? This Hmong village has an indirect rule that if a family has many cattle it contributes more labor and this is also for guarding the fence in order to avoid “free rider”<sup>74</sup> in Ostrom’s terminology. Unlike Hmong, Tai Daeng families that do not have cattle do not have to make fence.

In another Hmong village the communal land area in the upland is used rotationally as fallow area for animal grazing and rice production land. When the families were officially resettled from the hills in 1988, the village had 42 families in total and was allocated land at a different place in the upland for agricultural rice crop. The land was then divided into three areas (Figure 3). In 2009, the village started to use the three upland fields, in a rotational manner, as (1) animal grazing field and (2) rice production fields annually,

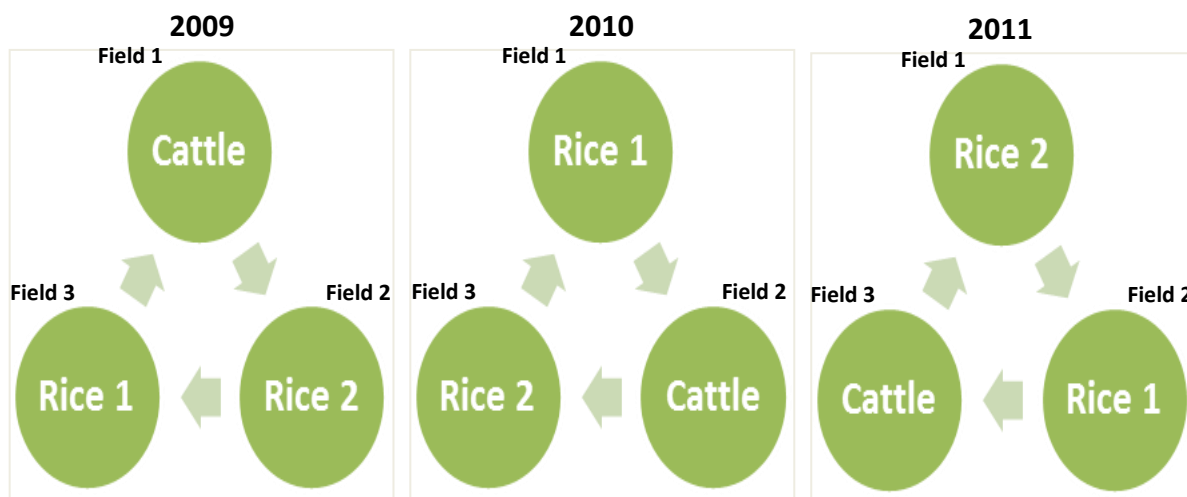
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<sup>73</sup> Research Interview (V. 10 XN), village headman, Xum-Nue district, Houaphan province, Laos, 21 October 2012.

<sup>74</sup> Ostrom uses “free rider” as a term for a person who benefits a lot from sending his cattle to the common grazing field but contributes less than he should. Thus a person with 50 cattle in the common grazing area is a “free rider” as he gains more benefits proportionately to others (Ostrom 1990).

meaning the field used as an animal grazing land in 2009 became rice fields in two subsequent periods, 2010 and 2011 and this rotation has continued.

**Figure 3. An illustration of making fence for rotational rice production and animal grazing land in Hmong village in a three year period, 2009, 2010 and 2011.**



Hmong villagers organized themselves into groups responsible for fencing. There were two groups of rice cultivators (Group 1 and Group 2). Animal owners formed another group which consists of rice producing group members as well as other villagers who do not cultivate rice in the organized fields but have animals and voluntarily join the group and they have to make fence. Within their groups, villagers make fence based on the following conditions:

**Animal Raising Group**

A total number of animal's owners was divided by a total number of the length (meter) of fence to be made around Field 1, cattle grazing field;

**Group 1 Rice Cultivators**

A total number of rice growing families based on their labor was divided by a total number of the length (meter) of the fence to be made around Field 2, rice field;

**Group 2 Rice Cultivators**

A total number of rice growing families based on their labors was divided by a total number of the length (meter) of the fence to be made around Field 3, rice field.

In this Hmong village, maintaining fence around the three land areas is also rotational. Every year when cattle move to a new grazing field, fence makers as a group move their area of responsibility. This means that meaning they are responsible to maintain the fence around the land where their animals are currently grazing. This arrangement also applies to the case of the rice growers groups, group one and group two.

Once the fence, whether it is around lowland or upland paddy rice fields or animal grazing area, is made, Hmong and Tai Daeng families are individually responsible for maintenance work that they fix the fence (the area of their responsibility) where necessary. Despite of being responsible for fencing as an individual task of families, making fence can be called a collective action because every family in the village does the same and this makes possible agricultural production that maintains communal tenure and protects benefit of all.

**Table 23. Communal paddy land fields and groups of paddy land users/appropriators in a Tai Daeng village in 2011**

No	Communal paddy land fields		Organised groups of paddy lowland users/appropriators
	Lao	Translation	
1.	ນາຫ້ວຍຫວາ	Na Houyva	Houyva Group
2.	ນາສາຍນ້ຳປອກ	Na Saynumpok	Saynumpok Group
3.	ນາຫ້ວຍພູງ	Na Houyphoong	Houyphoong Group
4.	ນາຫ້ວຍອຸ່ນ	Na Houyoun	Houyoun Group
5.	ນາເຕັງ	Na Teng	Teng Group
6.	ນາຄໍ້	Na Khor	Khor Group
7.	ນາຫວ້ຍຮຽງ	Na Houyheing	Houyheing Group

(Souce: Research Interview)

According to what is found in Houaphan it can be said that fence would not be successfully created: 1) if there is no leader; 2) if the villagers think it costly to do it; 3) if villagers cannot manage to claim animal grazing land area; and 4) if villagers do not have access to local resources as common property resource. These conditions are decisive for villagers to work collectively pooling their time and labor.

Aside from making fence, communal paddy land right holders in a Tai Daeng organize themselves as collective groups of to use and manage the land in a way that matches the natural characteristic of communal paddy land. For example, there are seven groups of paddy land appropriators in a Tai Daeng village where it has seven communal paddy rice fields (Table 23). Some other villages have a small number of land fields and thus the number of the group of land appropriators is organized accordingly.

Within their groups, Tai Daeng land users, who Ostrom refers to as resource appropriators, select their leader as head of the group. He is to take general leadership responsibility in agricultural production activities held in the paddy land fields including helping group members to access information on agriculture. The group leader is also responsible for solving conflicts that may arise within the group by proposing and communicating issues that cannot be solved within the group to/with other related groups as well as village authority, and taking leadership role to ensure that all group members gain the most benefit from their agricultural production.

Furthermore, irrigated rice farmers organize themselves as groups whose members are involved in the designs, construction and operation and in particular maintenance of headwork as well as canals. Like the case of fence, farmers use available local resources like stone or wood and earth to make weirs across a stream which diverts water during the rainy season into channels leading to nearby rice fields.

Water management naturally calls for collective action from farmers who have irrigated fields. Some traditional irrigation schemes serve more than one villages which means the collective action in this case stretches beyond the village boundaries.

Being irrigation group members, they have rights in the common water resource and can withdraw water for their paddy rice plots. Naturally, rivers can either include or exclude water users but this is not permanent because communal paddy land is shared as is the water. Within the community, this share allows families who are communal paddy land right holders and are irrigation group members to withdraw (use) the land and thus water. As the land is shared, not only families whose cultivated paddy land is near to the river can withdraw water but families whose cultivated paddy land is far away from the river can also use it. This way of sharing may not always due to scarcity of water reach everyone. If families cannot use water from the river for their paddy rice plots this year they can do it another year when they are redistributed new paddy land plots and may get land which receive water.

The communal paddy land appropriators discuss within their group in order to share responsibility for irrigation system so that they can feed water into their paddy plots. This system of collective action is different from fencing. The resource constituted by water stream is not limited to only one group of communal paddy land right holders. Where possible, other groups who cultivate paddy land fields near the same streams also withdraw the water to feed their rice fields. In this case, these group members work collectively with water appropriators as members of different groups.

Labor sharing is required to carry out traditional irrigation work. Only households that receive irrigation service are expected to contribute labor or material to carry out repair and annual routine maintenance of the weirs and canals. Every year when the rice season starts in April, families who have paddy fields in the village contribute one of their labor forces to clean the irrigation canal or the weir in order to ensure sufficient water flow to the paddy fields throughout the cultivating period. Villagers bring their personal tools; spade and knife, for example to use during their work. Existing resources namely wood,

bamboos, rocks and soil available within the CPR system inside the village boundary are important to the maintenance of the irrigation tunnel or weir.

Fixing the irrigation may be required in some years and village plans ahead to meet both labor and materials required. Usually labor is divided into groups and persons are appointed different responsibilities to make sure that work is completed on time. An example is that strong young men transport rocks from other areas to where a canal is to be fixed to stop water leakage and some others go into the forest for wood or bamboo poles. A village sometimes needs money to buy something they do not have in their village and every family who has benefit from the irrigation shares this responsibility and it often is a small amount.

Lowland farmers will use their own means which could be money or rice if they cannot find local resources to support their irrigation work. In most villages, families join risk management. They collect annual fee for using irrigation and this fee is kept by the village administration and is used when necessary for operation and maintenance (OM). According to a Tai Daeng village headman:

*“Our village used to collect small amount of money from communal lowland rice holding families and used it for irrigation work when needed but this was not a good way to do. Many villagers did not participate in cleaning the irrigation canal, for example. Their reason was that they had already contributed money, small money and far from enough to complete the required work.”<sup>75</sup>*

Non-attendance of labor can influence group work. Reasons for such absence are various and they are considered according to family situation. Generally, any labor absentee has to pay compensation which could be in form of money, materials or food. The compensated cost must be equal to local day labor pay rate which often ranks from 15.000 kips to 20.000 kips per day (2011). The family who cannot send labor to work because of sickness or a lack of labor may not be charged. The non-attendance of labor share may also occur from

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<sup>75</sup> Research Interview (V.3 SB), village headman, Sopbao district, Houaphan province, Laos, 26 October 2011.

irresponsibility of the individual who as a free rider will gain from the land distribution and how other villagers have contributed labor.

The word “sharing labor” pertains to traditional agricultural practices. Unlike large private paddy rice field where labor is paid by better off owners to complete cultivating tasks in order to gain economic surplus, communal paddy lowland rice farmers in the studied area exchange labor with families in the village for transplanting and harvesting rice in order to complete the activities in a short time. As the area of communal land that the family is shared in each particular year is based on available labor it is not beyond their ability to utilize the land when labor is correlated with its size and family command of labor.

What farmers gain as a return from sharing labor is a “share” in the benefits. Though it is the responsibility of the field holders to provide food to their co-laborers that come to support to complete an important activity the helpers always bring along with them some food to share during the meal. Doing this, a commitment is made in a way that distribution of labor shapes itself like a chain that pools together not only labor, but also solidarity and cultural belongings and moves along the way the communal land sharing system works.

#### **2.10. Cultivation of agricultural rice crops in paddy land in the lowlands (*hed na*)**

This section focuses on the practice of the Tai Daneg. Paddy rice production season lasts for 8 months from April to November as shown in the Table 23 but it can be shorter in some areas depending on the kinds of rice seeds that villagers use.

After the paddy land is allotted each year and fence is made, and irrigation canals are cleaned villagers are ready to start rice cultivation activities. Both Hmong and Tai Daeng ethnic groups carry out agricultural crop production on the allocated plots in the communal paddy lowland privately but sometimes they share their labor.

April is a busy month for paddy rice farming families in villages I visited in Houaphan. Most men make ready the production tools that upland rice farmers need such as knives, hoes and spades or shovels. These tools are not enough and lowland farmers need to have a



plough and rake and buffaloes to pull them. Buffaloes are brought back to village after having stayed in the forest since the end of the last harvest season, often in November.

These cattle are to be prepared to help farmers to plow the paddy rice plots so they are fed well to fit for work. In some villages, buffaloes are replaced by tractors<sup>76</sup> and families without this modern machinery are often seen as poor. They have to prepare a means to hire a tiller-tractor to plough their land. Being poor can also mean that the families have no (or little) money, cattle (buffalo), insufficient rice and labor as a means to hire a tractor to prepare their paddy land. This affects the ability of the poor to start the cultivation season.



Photo 20. Elderly Tai Daeng villagers sit around a fire to make them warm in a cold weather evening. They talk to each other about things including rice production in the village. A man is weaving fishing net and a woman is slicing bamboo for weaving a basket or for tying poles together when making fence.

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<sup>76</sup> In buying a tractor from private business in town, a family can pay for it after the rice harvest season and the payment can be made in cash or in kind. Any family that cannot afford paying for the tractor in one time can pay it in two or three times (often more than one year) and this depends on the agreement of the seller and buyer.

**Table 24. Annual rice production activities in the lowlands**

Activities	Months							
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
1. Checking rice seed	x							
2. Preparing tools and animals (buffaloes) or tractors	x							
3. Distributing land	x							
4. Making fence	x							
5. Cleaning and fixing irrigation canals and weirs	x							
6. Flooding water into paddy plots (3 times)		x		x	x			
7. Plowing the rice field		x						
8. Preparing nursery plots		x						
9. Soaking rice seeds		x						
10. Releasing fingerlings		x						
11. Leveling the rice field			x					
12. Transplanting rice plants/sowing rice seeds				x				
13. Releasing water from paddy plots				x	x		x	
14. Collecting fish				x		x		
15. Weeding					x	x		
16. Harvesting rice								x

(Source: Research Interview)

It is often men that are responsible for preparing agricultural land and tools while women check rice seeds. Some lowland cultivation activities are too labor demanding and expensive to be done individually. Not to mention allocating land plots, making fence to protect crops from animal invasion and fixing or maintaining the irrigation canals to ensure sufficient flow of water to the rice field. In this case, lowland farmer see working together as groups or a whole village as a better way and thus requires collective action which partly solves the problem of the family which lacks labor. They have to work more in order to compensate for the support they are given.





Photo 21. A farmer uses a tiller-tractor to prepare the soil for rice transplant.



Photo 22. Farmers select the nursery plot that is connected to water and other plots so that its quality is ensured and it is convenient to transport the seedlings to other plots when transplanting.

Farmers prepare and maintain the land they are allocated. In June, one of the flooded and plowed paddy plots is selected as a nursery of young rice seedlings for transplanting. It should be flat, fertile and easily linked to other plots in order to reduce demand for labor to distribute the seedlings for transplanting. This nursery bed is especially well prepared with natural fertilizer that is to cover the land surface with rice straw, grass, rice husk and animal dung. These natural fertilizing ingredients are mixed together with soil and water through plowing and leveling process.

In a Tai Daeng village, the selected seeds are soaked in water for three days and nights. Seeds become young plants within sixty hours after separating them from water. The young plants are then nursed in the specially prepared seed bed of every individual family. Normally, it takes more than a month, from May to June for the plants to grow enough to be transplanted.



Photo 23. To complete transplanting rice on the area of one hectare in a day requires approximately 30 people and farmers exchange family labor to carry out this activity in order to finish it in a short time.



Before transplanting in July, paddy plots are ploughed for the first time flooding grass and animal dung with the soil and water enriching the soil condition. It is an exciting time for most families because it is the month for transplanting rice. Rice fields are full of activities including removing the seedlings from the nursery plot and bundling them as to make it convenient to transport to different plots within their allocated rice field.

Instead of applying nursery and transplant technique, which is possible only in irrigated fields, Hmong in some villages sow the rice seeds in the irrigated fields like they do in the rain-fed upland fields. A 35 year old Hmong man said:

*“We are not good at growing rice on the land with water. Instead of transplant, we sow rice seeds. We know that we have lower yields than the harvest from transplant technique applied by Lao ethnic people but sowing reduces a demand for labor and time and it is also a solution for new lowland farmers like us.”<sup>77</sup>*

Though using tillers is quick and less labor demanding villagers recognize that tractors are more expensive and environmentally less beneficial than buffalos. On average, families in a Tai Daeng village spend round 500.000 kips – 1.000.000 kips (US\$ 60 - US\$ 120) per year to fix, maintain the tractors, and buy fuel so that they are ready to work on the farm. And to buy a tiller-tractor costs at least about three millions kips (US\$ 370). Sometimes a family with tractor makes income from this machine as said by a Tai Daeng villager:

*“I spent money on tractor but I gained some when other families paid me to plough their land or to transport their agriculturally cultivated crop from the field to the village. Also my family members do not have to carry all rice harvest home on their back.”<sup>78</sup>*

With buffaloes, the equipment is cheap. Farmers use local resources like wood to make yokes which may last for many years and they spend only about 50.000 kip (US\$ 6) or less or nothing in some years for their buffalo to work. While working in a Tai Daeng village, a villager said: “buffaloes’ dung is good for the soil while tractor tillers cause damage to small

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<sup>77</sup> Research Interview (V10. VX), villager, Xum-Nue district, Houaphan province, Laos, 09 November 2011.

<sup>78</sup> Research Interview (V5. VX), villager, Viengxay district, Houaphan province, Laos, 20 October 2011

living water resource in the water because fuel leaks into the plots while tractor is moving around during the land preparation process.”<sup>79</sup>

Whether using buffalos or tractors, labor force is mostly shared between Tai Daeng families to make sure that the transplant completes in a short time. Working together allows that everyone knows if there are more seedlings than needed. In this case, other families, especially those who are likely to face shortage of young rice plants can benefit. In some Hmong villages families with small paddy land area cultivate individually.

An additional activity when preparing the land and transplanting is the collection done by children of small fish, tadpoles, shrimp, and snails that are available in the paddy land plots. This source of food provides important protein and nutrients to the daily need of farmers. A person Tai Daeng villager said:

*“Before any tractor was brought to our village, it was not unusual for me to catch a hundred small frog (kiat) and big frogs (kop) in the paddies at night. With tractors, I can catch only enough for my family to eat and sometimes we have to decide whether to eat or to sell.”*<sup>80</sup>

When the plants start to fix their roots firm into the ground and water level is higher, families release fingerlings in their paddy plots, often the larger ones. Farmers believe that when using water buffalos to prepare land it is not harmful to fish so fingerlings are released in paddy plots before plowing the land with animals.

Fish is important to households especially during cultivation season so farmers have to make sure that their investment brings good benefit. They take care that their fish do not swim away to the paddy plots of the other by allowing no holes through the low embankments that divide the plots. Nets are used to stop fish from swimming away if holes for water flows between plots cannot be avoided.

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<sup>79</sup> <sup>79</sup> Research Interview (V5. VX), villager, Viengxay district, Houaphan province, Laos, 20 October 2011.

<sup>80</sup> Research Interview (V5 VX), villager, Viengxay district, Houaphan province, Laos, 09 November 2011.

With enough family labor force, men visit the paddy plots regularly. They make sure that water level is appropriate, no invasion of animals or no stealing of the fish that they have invested privately. They also get rid of the weeds in the plot.



Photo 24. With her many years of farming experience, an elderly Tai Daeng woman is taking care of her family's rice

During the rainy season, June to October, paddy rice field provides various source of supplementary food to farmers. Small edible water animals, insects and plants naturally grow in the paddy rice plots in the lowland and are free for everyone. Only villagers can perfectly name them all because they have seen and been collected them since their childhood. Availability of the variety of natural produces from paddy land varies from place to place and often one produce begins after the end of another. Around the harvest

time, many edible insects like grass hoppers are added to family menu. Collecting the natural produces from lowland plots has been important for many generations of people in the village as food. In comparison, small edible water animals and plants available in the paddy lowland plots seem to be more important to Tai Daeng than to Hmong families. This is probably because Hmong are “new” in the lowland area and they may be less familiar to some natural lowland resources as well.

From July to October, water is released from the paddy plot three times. It is to get rid of water animals including crabs that destroy the rice, to stop the re-growth of weeds that can prevent the development of the rice plants, to collect fish, and to make the ground dry for harvest purpose. During this period, elderly people also visit their rice fields located near the village.

Tai Daeng families that invested fingerlings in their paddy rice plots collect fish in July and September. In general, raising fish in large paddy land plots often brings more productive harvest than in smaller ones. In this case, the families that benefit from big paddy plots share some of the fish with others especially those who cultivate small land plots and have less fish. This is the cultural practice of Tai Daeng that they think sharing shows solidarity which is an important aspect of living together. Besides, families share fish with their relatives and friends by inviting them to a meal in the village. Invited people usually come to the gathering with some food and drinks. This social gathering allows some villagers to make connection with outsiders (friends or relatives) some of whom help them to invest in fingerlings when the next season arrives and both sides gain benefits. A villager said:

*“Last year, my cousin gave me 100.000 kips to buy fingerlings for my paddy rice plots. I could collect a lot of fish and I gave him more than 6 kilograms of the fish when it was collected in July. Additionally, he and his family members (wife and two teenage children) enjoyed eating fish with us. If he spent the amount of money he gave me on buying fish in the local market he would have only few kilograms and they may not be fresh.”<sup>81</sup>*

Aside from cooking for a meal, some of the fish collected from paddy plots is processed to keep for long through traditional techniques like drying in the sun (*pa heang*) or fermenting (*pa dek*). The fermented fish can be stored for many months or more than a year and it is often used as a cooking ingredient and is seen in most households' daily food menu. Some families which have more than enough fish for direct consumption sell it in local markets and earn some money. Because the fish now has a market value the practice of sharing fish with other families is gradually changing. Poor families or families that do not invest fingerlings in their paddy plots may no longer get fish.

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<sup>81</sup> Village Interview (V6 VX), Viengxay district, Houaphan province, Laos, 21 October 2011.



Village allows outsiders to collect fish in the rivers and wild plants from their paddy land for food. During the cultivated season, families raise fish in their rice plots and therefore outsiders are restricted to fish near the paddy rice plots. Traditionally, catching fish is considered men's work and villagers are aware that they have fishing skills that can be used to steal fish from the paddy rice plots so men are restricted to these areas. Collecting natural products from paddy land plots where fingerlings are invested is also restricted especially at night time when most villagers stay home.

Seasonally allowing ducks to feed in the paddy rice field in a certain time also brings about favorable growth to both components. Ducks are integrated into rice fields before the young rice plant is transparent and after its root goes firm to the ground. The rice paddy environment is a source of snails, insects and weeds which are pests for the rice crop but good feed for ducks. While the rice crop benefits from the biological control and manure that the ducks provide (MAF 2005: 10) these animals are fed with the grain farmers miss during the harvest.

The paddy rice crop is harvest in around November. According to the fertility level of the land, the harvest of paddy rice, according to interviewed villagers, ranges from about 2, 5 to 4 tons per hectares (without use of fertilizer). The harvest increases where villagers get technical support from DAFO.

Some villagers observe that rice quantity harvested from the land that uses water buffalo and tractors is slightly different. This is different from a Tai Daeng village where village headman said that the production that uses animal results in higher rice yield than the harvest of rice that uses tractors, 4 tons per hectares and 3, 5 tons per hectares, respectively.<sup>82</sup> This, however, is difficult to explain as the result of the harvest may link to other factors including soil fertility, weather condition, and work spent on the production produces.

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<sup>82</sup> Village Interview (V6 VX), Viengxay district, Houaphan province, Laos, 21 October 2011.

Villagers further observe that tractor tiller change gender workload. Traditionally, men plough with their buffalo, make bunds and prepare seedbeds and these activities take time leaving women do most of the transplanting rice, weeding, and harvesting, and post-harvest operations. With the modern pieces of technology, men finish their work quickly and have time to help women.

The above presentation confirms that it is necessary for farmers to have rights to many other resources including water, land, and forest products like wood and bamboos. As long as the utilization and management of these resources take place within communal tenure with associated collective action the outcome is sustainable in both socio-economic and environmental terms.

Photo 25. Hmong family members harvest their paddy rice they produced through sowing technique and, compared to transplant technique applied by Tai Daneg, their rice per square meter is not very dense.





Photo 26. Harvest paddy rice Tai Daneg produced through transplant technique



### **2.11. Seasonal rights to CPR within paddy land tenure**

Some Tai Daeng and Hmong villagers who do not have the right of access to paddy lowland during the rice cultivation have the seasonal rights to that fields lie fallow. The seasonal rights are allocated differently. After harvesting rice, any family within a village can produce in the same fields short-term crops such as mints, coriander, eggplant, chili, long bean, garlic, peanuts, spring onion or shallot, sweet corn, Chinese spinach, cabbage cucumber, and many more.



Photo 27. A Tai Daeng woman on the way back to the village after collecting some edible small water animals .from paddy land plots

There are some villages often Hmong that were newly resettled and do not have paddy land plots so they seek for land in nearby villages to grow seasonal crops. Under certain conditions, Hmong families who do not have or have unsuitable paddy lowland to cultivate



Photo 28. After rice is completely harvested, animals are free to graze in the paddy fields until new rice cultivation season begins

short-term crops can negotiate with Tai Daeng families who have it to rent it and their agreement is proposed to the village headman.

In the village that has road and market links some families temporarily give out their land to other families from a different village or from within the same village to cultivate short-term crops in form of “rent”. The conditions can vary depending on different characteristics, including social-economic and environmental harmony. In general, the crops must be harvested before the start of the new rice season and use of chemical fertilizer is not allowed. Paying rent is practiced in two ways. Firstly, it may be rent between two families from the same village. The paddy land right holders as owners and land borrower agree that the harvest will be shared. The share is not seen strictly set because it depends on the willing of the land borrower and the land owner and it particularly relates to actual harvested quantity. The share, however, plays a part in future decision to be made by the land right owner on lending out the land seasonally. It is also

important for the land borrower to consider whether it is worth to continue borrowing or renting it. Secondly, it can be a land use deal between families in the village and families outside the village but with an involvement of village administration. In this case, the land is animal free and the borrowers have to pay the village a set amount of land use fee as an addition to paying the rent to the communal land right holder who can negotiate the rent with the land borrower privately. Before the end of use, the surface of the land condition should be back to its condition prior to the start of the rent.

Within a more rural remote village, families often cultivate short-term crops in the communal paddy land plots without being subject to any conditions. They simply ask for permission to cultivate crops in the paddy lowland fallow of different owners without any compensation. Families also see the production of short-term crops on the fallow land as a process of adding fertilizer to the land which is an advantage for annual rice. Therefore, lowland area in this context is seasonally open to paddy lowland users within the village after harvest of rice but this right is not given to outsiders.

Cattle have seasonal rights to natural resources produced by communal land system in the lowland when it lies fallow. Buffalos and cows are free to graze in the paddy field. During this time, families that do the gardening in the paddy land areas have to take responsibility to protect their crop from destruction of animals. Usually, seasonal gardeners make fence around their garden area and they often do this collectively. Within the fence, the land is divided into plots and each plot is cultivated privately.

## **2.12. Shifting cultivation or rice production in the upland (*hed hai*)**

Agriculture in the uplands is rain-fed. There is limited terracing of the sloping land so only few irrigated terraces are found. These upland agricultural areas have ecological properties that are different from the lowland irrigated rice areas. While the irrigated land in the lowland can be cultivated every year, the agricultural uplands form part of a system of shifting cultivation.





Photo 29. A married couple of Hmong on the way to visit their rice field in the upland

Production activities in the uplands begin around March which is one month earlier than the season of paddy lowland rice and they end in November. The upland rice production activities are listed in Table 25. Like lowland farmers, upland cultivators prepare seeds, land and tools. Simple traditional tools such as knives, holes and spades or shovels are important and enough for them. Families also make sure that they have seeds of traditional rice, chilies and many other crops that grow in the swidden field. Most often, these crops are based on seeds that have been selectively kept since previous harvest and families gain seeds from each other by changing what they have with what they do not have.

**Table 25. Annual upland rice production activities**

Activities/Months	Mar	Apr	May	Jun	July	Aug	Nov
1. Examining rice seeds	x						
2. Preparing “traditional” tools	x						
3. Slashing and burning trees and bushes	x	x					
4. Fencing (if required)		x					
5. Growing rice and other food crops		x	x				
6. Weeding (2-3 times)				x	x	x	
7. Harvesting/threshing and transporting rice to village							X
8. Harvesting rice and other cultivated crops		x	x	x	x	x	

(Source: Research Interview)

As mentioned, shifting cultivation is a thorn in the eye of the government wishing to “eradicate” the mode of production. However, under balanced population to land ratio the mode of cultivation is ecologically stable. Governments fail to see that the rotating and fallow farming systems often, when not under pressure, represent an institutionalized resource management technology at a species, ecosystem and landscape level, ensuring ecological security and food security and providing a social safety net.

Hoaphan province after farmers have finished clearing their land, they normally start to plant their crops at the beginning of the rainy season. Villagers wait for rain and rice seeds are sown soon after some rain falls. Prior to rice, some other crops such as maize for eating would have been planted just after burning. Rain in May gives a sign to farmers to predict quantity and quality of their future harvest. Good rain is an indicator of good harvest of not only rice but also many secondary products on the same plot of land.





Photo 30. In the process of preparing land for rice production in the upland, families do not burn all the trees they cut down. The trees are used to make fence and are transported to the village and used as firewood



Photo 31. After land preparation completes, upland farmers grow/plant, corn, starchy roots, cucumber, chilies and many other crops as integration with rice in the upland rice fields

A variety of traditional crops and wild vegetables are grown in the same fields together with rice. Popular crops to plants are traditional taros, sesame, corn or maize, sweet potatoes, Sichuan pepper, ginger, chili, pumpkin, eggplant, guard cucumber, and cucumber. Naturally, there are various local vegetables including mushroom, ferns, saw tooth herb, Pennywort (*Centella asiatica*), and many more. These natural and cultivated produces are important supplementary food items for the family throughout the cultivation season. Many of these produces can also be found in local markets and they are well known to most households in town<sup>83</sup>.

Weeds grow in the rice and weeds are strong competitors with crops. Normally, upland cultivators deal with weeding at least twice before harvest season. It is necessary that the first weeding is done when the rice plants are still very young and this is often a month after planting so that the growth of rice plants is not interrupted. Another weeding is two months after the first time. Farmers know the characteristics of weed species in their plot so they may ignore some of them which are young and with less impact on their rice plants. The third weeding only focuses on those that really disturb the growing crops. Villagers believe that weeds grow less in the land that is newly opened and this is a reason why they clear new forest and leave the land fallow for many years before they return to grow rice.

The upland fields must also be protected. Invasion of animals like buffalos, cows or wild rodents cannot be avoided. Farmers have to monitor their rice plots frequently after planting rice and other crops. Fence can prevent the rice from invasion of cattle but birds and rats/rodents do not respect such fence and they can be a threat to rice before harvest. Scarecrows with bells move and ring by the wind are used to chase birds away. Visits by a huge procession of rats occurs once in many years when they bring along with them real destruction to the crops. It is hard to get rid of them in this situation and it is locally called “natural disaster” (*nuu kee*). “Rodents ruined rice and sweet corn of most families in our

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<sup>83</sup> I happenly had a conversation with a group of people from Vientiane capital who were in their duty trip to XumNue. While visiting local market, they bought many products that were naturally and agriculturally cultivated in the hills. When asked, they said that they felt safe eating these upland products believing that they are chemical free.



village in 2008 and many faced rice shortage”<sup>84</sup>. In this village, rats invaded rice fields of upland famers again in the start of rainy season in 2013. While local government has not



Photo 32. A Tai Daeng woman prepares chilies her family member collects from upland rice plot to dry for long term consumption

found any strategy to tackle with this issue farmers set traps and used nets on their land to keep the rodents out but this is a short-term solution (Vientiane Times: 6 September 2013).

In late 2011, both rice crop in the uplands and paddy land in the lowlands of two villages in Viengxay were invaded by unexpected groups of wild pigs. According to Tai Daeng villagers, they have been prohibited to hunt wild animals for many years. Their hunting tools (rifles or *puen kap*) were collected by the government and as a result the population of wild pigs increased and destroyed the agricultural crop in many fields in just a single night.

<sup>84</sup> Research Interview (V9. VX), Villager, Viengxay district, Houaphan province, 19 October 2012, Laos.



Photo 33. Villagers harvest some green rice to cook as *kao hang* and part of this rice is offer to house, forest and land spirits





Photo 34. Tai Daeng families keep rice harvest in rice huts that they built near to the village. These huts are made from bamboos and woods and just outside the residential area, between the village's fence and the fence around village's paddy land fields. Villagers believe that keeping rice separately from houses will give them enough time to save the rice if the village is accidentally on fire

Throughout the rice cultivation period, upland rice cultivators collect agriculturally cultivated crops such as cucumber, pumpkins, sesame, Sichuan peppers, chilies, taros, eggplants and melon. A visit to the rice field results in harvesting daily multiple supplementary produce including wild ones besides domestics. Some of them like chilies and pumpkins can be kept as long term food that can last until next harvest season. In most Tai Daeng villages, families selectively harvest some green rice to cook as *kao hang* (Picture

29 & 23) and part of this rice is used to offer to house, forest and land spirits to thank them for allowing productive cultivation season, according to Tai Daeng villagers' belief.

Upland rice production completes around November. Normally, villagers harvest between 2 tons and 2, 5 tons per hectare. All harvest is transported and stored in the rice huts near the village (photos 34-35).



Photo 35. After harvest, Hmong families prepare to transport their upland (rice) to their village

Mostly the rice is for family consumption. Like paddy lowland rice cultivators, upland rice families that have more rice than needed sell the surplus in order to earn some cash, but they make decision on when they should sell their rice. Some choose to wait to sell it when its price increases (from 2,500 to 3,000 kips per a kilo of unpolished rice) or during rice shortage period, usually a couple of months before new harvest season. Some families which do not have other sources of support cannot wait to have their produce sold until the

rice price is high. Many poor families sell part of their rice irrespective of having enough to eat for a whole year or not. It can be seen here that rice is an important indicator of the economic condition of households or families.

Most upland farmers of both Hmong and Tai Daeng recognize that they have followed the way of their ancestors who survived through cultivating agricultural crops and they are familiar with their way of practicing agriculture that they feel reluctant to change it. At the same time, new upland agricultural methods also with chemical inputs have not yet been introduced as an alternative to increasing production by expanding the fields into the forest.

Upland and lowland rice production is a critical part of community life in terms of subsistence. As the world is changing to a situation where money is also necessary as families can use it to improve their life condition through supporting children to education, building better houses, and approaching health care service villagers think that they must participate in activities that allow them to make money. This may not be a new thinking but it is now happening in a more focused manner and it creates impact on the nature in a more important level.

### **2.13. Claims in land in the lowlands and uplands as part of CPR**

We find communal tenure in upland and lowland. My field research reveals that there are variations in management regimes that are linked to the impact of the difference of biological characteristics of the resources. While the lowland irrigated paddy will not change its character through conversion to other uses because of the high value of rice production. Unlike the paddies, the upland resources can produce other products and changing the character of the benefit stream from upland rice to industrial crops. In this situation, an individual within the group may want to lay a permanent claim on a part of the land and the family can do that because the product derived from the common property has changed its biological character and associated monetary and subsistence value. Despite permanent claim, the land is still part of the communal system.





Photo 36. A family uses their own labor to expand paddy land plot inside the communal paddy rice field. This newly expanded land plot is claimed by the family as a private rice plot by creating fence around it and the land area is excluded from the communal property

This section presents how villagers being stakeholders in common property regimes claim withdrawal rights to resources from within communal lowland and upland system. There are two kinds of claims for land in the lowlands. One is made by a special group of outsiders (people who used to occupy the land in the lowland but were politically moved to new places) and by current villagers who are living in a local village. The outsiders made land claims to communal paddy land but they were rejected. Villagers make claims over land in the lowland and upland by using a production-oriented terminology that is recognized by the government such as exclude outsiders from having rights to land; create fence around the land; and grow long-term crop (including industrial trees) in the rice land.

Until recently, the previous land owners (*chao kong din kout*), whose land was claimed by the state and used for collectivized agriculture are still interested in re-capturing their land and have it recognized due to increasing land value. Available statistics show that in a one year period, between 2009 and 2010, Houaphan province officially received over 73 claims for land ownership from people currently residing in different districts, provinces and even



in foreign countries (PAFO 2011). As yet, communal land has not been registered legally and issued a title by the government and the land is shared among community members as a customary communal tenure of common property.

The circumstances of land claims have made it difficult for the concerned provincial organizations to manage the administration of land. Paddy land in the lowland has been used and managed by villages in a communal way for many 100 years ago so giving the land to the “previous land owners” as claimed could mean privatizing the communal land.

Foreseeing that privatization may affect the communal land system in the entire province the local government has had to critically consider on how the land should be managed. Meanwhile, appearance of the “previous land owner” also brought great concern to communal paddy lowland cultivators as individuals and communities but they are dependent on the decision of the government. Villagers do not have legal land documents for their communal paddy land and therefore they do not have bargaining power to protect the land on which they depend. On the other hand, the former land users also do not have title but they are powerful and may influence politicians. Unless current customary rights to the land of villagers are protected, they were at risk of losing the land to the land claimants who may have more influential power.

Gradually, local government authorities have organized various meetings in order to discuss possible solutions to the problem of different land claims. As said, the former land “owners” were not given the right to the land. Instead, Agreements and Decrees on managing communal paddy lowland were introduced. In the Article 1 of an Agreement of Province Governor, No 170/PG, dated 18 March 2003, selling, buying, claiming, and converting communal paddy land into any other land type without permission from the province was not recognized (PAFO 2011<sup>(1)</sup>). This means that the province is trying to keep communal tenure system.

In the Ministerial Instructions on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling, No. 564/NLMA, VCC, 6 August 2007, land of those who abandoned the area to go to foreign countries or elsewhere in the country becomes state

land (NLMA 2007: 15). Following this Ministerial Instruction, there is an Agreement of the Province No 43, dated 18 May 2011 on *Prohibiting Claims on Communal Land Allocated for Household to Produce Agricultural Crops*. Article 2 states that individuals from within and from foreign country cannot claim back the paddy lowland that was converted into communal land. Article 3 of the Agreement adds that anyone who still claims communal paddy lowland for private land will be reported to responsible authorities and to inform the land claimant about the instruction as an initial step of prevention. Any further claim for the land made by the same person will be considered as an action against the Agreement (PAFO 2011). The proposals of land claimants to the “abandoned land” were finally rejected by the government. The communal tenure in this case is a mixture of a result of customary communal tenure and an induced institution which is a left over from communist collectivization.

Rejecting the claim to land held as common property by present day villagers by “previous land owners” reflects an understanding of the local government (Personal Communication: 11 October 2011). It is also a government’s development strategy to make local people feel that they are protected from losing their land or common property. At the same time, the government protect benefits of majority of its people as a way to gain trust from them and the trust, based on Elinor Ostrom, creates a possibility that people will participate in the development process that can bring better results to all (Gund Institute 2011).

Present Hmong and Tai Daeng villagers use two strategies related to legality and custom to claim for the rights to use land. Legally, communal property of both Hmong and Tai Daeng are not allowed for sale or purchase. There are, however, transactions of the land, in this case, newly opened rice plots and fish ponds which emerged in the communal fields, take place differently and different terminology is applied.

Instead of “buying” or “selling”, villagers use the word “give” or “exchange” which means offers the right to land to a new person within a village through voluntary will of the former right holder in order to gain a return, usually in form of cash and this is accepted informally or formally. In the informal case, the two parties “buyer” and “seller” agree to

exchange the property without any signed documents. The “buyer” is allowed to cultivate the land after the agreement is made which is when the money or other form of material is paid not in order to buy but to compensate for the labor previously invested in developing the land. In the case of formal exchange, the village headman is involved to witness the intention to change the land use right of both parties. In witness whereof, a small amount of fee is paid to the village headman and signature of village headman as well as of the “buyer” and “seller” is evidence. Here, the transference of right to common property is recognized at the village level.



Photo 37. Villagers grow perennial crop (long-term trees) in their upland rice plot as a way to claim for private ownership of the communal land in the upland

Many communities who rely on land in the upland for shifting cultivation to support their livelihood come to realize that forest land is state land and their access to the land for rice production is limited. This new physical figure indicates land categories that the customary rights to the land of communities are limited. And the new configuration of rights that may emerge may be difficult for communities to adapt to.

Traditional way of crop cultivation in the upland is currently influenced by an increased tension between social-cultural and national law that makes it more important for local farmers to secure their land claims (Angelsen 1995). For traditional upland rice production, farmers practicing shifting cultivation leave the land fallow until it regenerates its fertility but population pressure and land scarcity have cut down the years that land can lie fallow. In many villages, the government's legal limitation on expanding cultivated area into forest limits families to have three upland rice plots which are used for a three year cultivation rotation. This means that two plots are left without crops while the third plot is under cultivation. Fallow becomes shorter especially where there is population pressure and an introduction of economic opportunity as villagers use more land to produce rice and other cash crops mainly corn to feed to markets and earn some money.

Government's resettlement program plays a part in the population pressure because many upland communities were resettled in a lower land area where suitable land for agriculture is limited. The official resettlement program also fails to provide development facilities. The problem of the limited land increases when producing agricultural crops mens cash crops. This makes villagers think that their rights to land must be secure or they lose their source income unless an alternative is offered.

Many families especially Hmong try to appropriate empty land plots claiming their rights to the land as land of their families especially when the land becomes scarce and its economic value increases. Anyone feels at risk losing their rights to someone else if they do not put permanent claim in the land.

There are recognized priority claims within the CPR of the upland. The first ever to have cultivated particular areas in this system of shifting cultivation may have special claims on the land and these claims are internally recognized in the annual allocation. This recognition of 'history' is a characteristic and a left over from the previous first founder of domain culture characteristic of SE. Asia. Today there is officially no more pioneering shifting cultivation as the forest is seen to be protected by law, and the system of upland shifting cultivation has gained the characteristics of rotational farming with no opening of new land, only old fallows.

Usually, the recognized first cultivators by ancestry to the land have customarily gained authority to control it. Families may not choose to exercise the authority if it is beyond their capacity to cultivate the land. A vast abundance of land is also a case of not exercising the authority over the land because more land is available for cultivators to select to conduct rice cultivation and this is often the case of villages that are less influenced by outsiders due to its remoteness and difficult accessibility.

Where villages are close in contact with outsiders and where uplands have become a scare resource families feel reluctant to make the village common property of uplands open for exploitation by others if they leave their plots unattended being aware that permanent ownership could fall in someone's hands in the future. In this case, families try to invest in the land they cultivate by planting perennial crops and in this way they put a more permanent claim on land within the common property of the village as this land will no longer return to the common pool and this is supported by the village, meaning it is a partitioned CPR.

Most villages of Hmong allow village residents to plant long-term trees in their rice land in the upland but they do not allow families from outside to have permanent claim in communal land. However, outsiders (often people from different villages or from town) can rent plot an annual crop and thus temporary have a claim to a resource niche in the communal land. An example is in a Hmong village where the vice-village headman said:

*“Land in the upland is common property of our village. It is shared among families so that they can use it for agricultural crop production. These families can grow both short-term and long-term crops such as rice, corn, cassava and trees on the communal land. They can cultivate the same pieces of land as many seasons as they wish but they do not have the right to claim for private land titles.”<sup>85</sup>*

While the land is common property, the crops produced on this land are not. They are (private) property of individual families who invest their own labor and capital to grow them. Therefore, the village allows families to sell the crops to anyone including outsiders

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<sup>85</sup> Research Interview (V8. VX), Deputy Village headman, Viengxay district, Houaphan province, Laos, 6 February 2011.

but under a condition that the land is returned to the village as soon as the harvest of the crops completes.

Planted trees are recognized by the people from within a community as property of individual families who grow them. These families may not directly use the tree but they have a hope that they can make money from selling the tree to outsiders (businesses or companies) when they are mature enough to earn good price. In this case, upland families introduce characteristics of the self-employed life-mode. However, the land they used to grow trees is currently not yet legally recognized by the government as either their private land or the village communal land so there is a question: who are legal owners of the trees especially if the government claims the land villagers view as communal land as state land?

At the present, the local government encourages villagers to grow long-term trees as part of its strategy to support the national policy on forest restoration. In this case, villagers should grow trees only in the area the government allocated (one hectare per family) as tree plantation area. After three years old when trees potentially survive, the planted trees can be registered and taxed. As a reward for the tree growers who respond positively to the government development policy, they will be given a one year tax-free which means that tax collection starts when the trees are 5 years old despite of the fact that villagers are unsure about income as they currently do not know who will buy their trees. The government also allows villagers to request for more land in the village to expand the plantation area. According to a district forester:

*“Families that are successful in growing long-term trees can propose to the village to expand plantation area. The village then proposes this to the district (DOF). The staffs from this organization go to the village to do a survey. With reasonable proposal and availability of land suitable for tree plantation, more land is allocated to families to grow trees and they will be considered as their private property. The land can be titled. Registered tree and land (with title) can be used to borrow money from the bank loan and it can be sold.”<sup>86</sup>*

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<sup>86</sup> Research Interview (D5 DAFO), forester, Sopbao district, Houaphan province, Laos, 25 Oct 2011.

Growing industrial trees in the upland rice plots is a way to claim the land which influences CPR as communal land is claimed as private land. Though it is still small land area, this means the introduction of commercial agriculture. This new market has evolved from subsistence agriculture which is influenced by the government policy on forest recover. In this case, the government produces seedlings and sells them to villagers. Sometimes the government gets financial support from international NGOs to produce seedlings which are given to community as a support in form of fund or loan. Also, villagers can buy young plants from private companies.

In Sopbao district, local government permitted a private company to operate tree nursery business and this business operation has been since 1996 tax free. Conditions for this are that the company sell nursed trees to local villagers in affordable price and the government are given the young trees for free when it needs to carry out tree plantation activity during special celebrations including Children's Day.

As the introduction of FDI, villagers know what types of trees that are needed in the current market and they grow it on their land. Furthermore, local climatic and geographical natural characteristics allow some types of trees grow well in local areas. Often, these trees are available in the forest in a village land territory and villagers domesticate them (and make fence around the area of domesticated trees) and this domestication sometimes allows claims over communal land in the upland but there is still questionable whether it should be legally private or communal.

Growing industrial trees does influence CPR as tree growers need private title for the land but this does not mean that registration of communal land title is not needed. Many communities would want an actual registration of communal land on some areas in the upland and in the lowland.

The investment in trees means that families have long-term vision to earn money from selling the trees they planted to national or international companies. However, it is unclear to them whether the land with planted trees will be titled, and will the government recognize the land as private land which means that the common land is privatized or will

the government recognize the land as common property. It is under how much time do trees need to grow before cutting and are there another use NTFPs. Also, villagers do not know if they have the right to protect the land on which natural trees are domesticated from taking away will be paid compensation if the government claims the land as state land with the planted trees as state land?

According to interviews with local government staff at the district level, the village will be given land title for the land they planted trees. This can be done through official land registration system through systematic approach or upon request and based on situation the title can be in the name of village or individual family.

Though the government supports communities to plant trees, it has not clarified if upland farmers who plant long-term trees in their upland rice fields will have these trees legally recognized as their private property because the rice land where they stand is neither titled nor an area the government allocated for them to grow trees. This legal concern is important for villagers' rights to the trees vis a vis the configuration of communal land rights and the trees they planted.

Currently, Reducing Emission from Deforestation and Degradation (REDD) or Reducing Emissions from Deforestation and Forest Degradation for Conserving Forest Carbon Stocks, Sustainable Forest Management and Enhancement of Forest Carbon Stocks (REDD+) are initiatives launched in the Lao PDR as the government recognizes the importance of the climate change mitigation and would like to participate with other nations to protect against climate change. Aims of the projects include creating benefits and incentives for rural communities in the management of forest resources and sharing benefit from REDD+ sale of saved CO<sub>2</sub> beneficial to communities (Vongvisouk 2010). But this will take many years before this may happen. Without secure tenure, however, there is a risk that local communities may lose their lands and resources protected as a carbon reservoir especially when REDD increases land values through making carbon a new market commodity. This means that rights of land and forest-dependent communities must be legally recognized so that the carbon credit payment would not in large part be made to government ministries



according to Tom Griffiths (2007), but local people are given fair share (Sirivath n. d: 1-5). In relation to this, Andersen writes:

*“REDD programs should recognize and respect statutory as well as customary rights to land in the requirement for FPIC. However, in order for FPIC to have real validity, communities must have a legally binding option not to consent. This binding framework will probably not emerge anywhere, which is why the World Bank uses the term ‘consultation’ rather than ‘consent’. Still, even the requirement for appropriate consultation based on prior information will only be possible when the legal status of the community has been established and the nature of rights determined in national legislation. This may entail a renewed quest for communal tenure that is now entering an incremental and special sphere where its relation to the outside world is market based and its internal rules must deal with money and the market as well as the means of protecting/restoring forest and land in which they have a collective sta” (Andersen 2011: 39).*

Questions of benefit sharing in REDD is related to common property tenure arrangements as it is not clear if communal land in the uplands will be titled as village’s communal land and if villagers who planted trees on traditional land in the upland land will have legal right to benefit from increased carbon storage in the stock. Therefore it can be said that rights to tree resources villagers produced in the land are still open unless individual or communal right to land is legally recognized.

The individual claims within a partitioned common property are sometimes reinforced by an erection of fences around such claims. The crops planted change the inherent natural characteristic of the resource. Previously being shifting cultivation land it could be shared each year among families. With cultivation of fruit trees or industrial trees on the land these pieces of land within the common pool is gradually excluded from common pool resources and become privatized or the CPR becomes partitioned. However, all the land is still inside the village common property as no outsider is meant to gain access to this land.



Photo 38. A family creates fence around their upland rice plot (*hai*) where they grow corn and many other crops in integration with rice which is the main crop and they call it a garden (*souan*). This is because the government promotes reduction of upland rice area. Calling the area as a garden makes the government agree

Due to the government policy on eradicating some form of shifting cultivation and promotion of garden, upland farmers in most Hmong and Tai Daeng communities use the word “garden” (*souan*) instead of “upland rice plot” (*hai*) to claim the rights to common property. Originally, “*souan*” is often small and near to paddy land field (*na*) and residential village where agricultural crops like vegetable, traditional corn and fruit trees are grown while a swidden or “*hai*” means the upland plot where rice is produced. Villagers still use the term when they talk among themselves but the terminology is switched to “*souan*” while communicating officially with outsiders mainly government officers. In this situation, villagers create an understanding for the government that upland rice is not cultivated in the state forest.

Some families use upland areas that have been left fallow for more than 10 years to grow long-term plants or industrial trees and this converted land becomes known as “garden”.

Where it is possible to access, the government (DAFO) works with villagers to do a survey and, if seen appropriate, allocate the garden area (where long-term trees are planted) to individual families and they are given temporary land use certificate. Families pay tax (land use fee) according to the actual size of the garden land they hold and this land is communal property of the village or state land becomes private land.

Where the government wants to put eradication of shifting cultivation policy into practice it involves resettling villages (often Hmong living in upland relying on slash-and-burn cultivation) onto lower land areas. This resettlement can be seen as a strategy for the government to reclaim the land in the original Hmong villages. In resettled villages, Hmong are allocated new farmland and forest area but often it is limited forcing many resettled families to go back to their old village to continue using their land for agricultural purpose. In this case, official and traditional claim for the land coincide.

An example related to an overlay between traditional claim and official claim over the land can be identified in a Hmong village (Phou Ngeun) where about 6 generations of Hmong villagers relied on land (perceived by outsiders as state forest land) in the upland to grow agricultural crops mainly rice to support their livelihood. In 2003, the government resettled families in this Hmong village in a new place named Long Ngeun.

Long Ngeun is located about 13 kilometers away from its previous settlement area. This officially resettled village is near to two existing villages of different ethnic groups: Kone Si (Tai Daeng) and Meaung Long (Lao). As a provision from the resettlement program, Long Ngeun village is allocated new land that includes land area in the foot of the hills where it is possible for villagers to grow rice but this possibility relies on irrigation system being built. The government also allocated approximately 50 hectares of agricultural land area in the upland for the whole village to produce rice. Part of this land is taken from the land of the two neighboring villages. In order to use the land in a rotational manner, DAFO worked with villagers to divide the newly allocated land in the upland into two portions of 24 hectares and 26 hectares. Long Ngeun villagers view the land the government allocated for them as common property of their village and it is shared by the village among families to use for agricultural crop production.

Through practice, however, villagers learn that they are allocated insufficient agricultural land to use to produce enough food for their families and this issue becomes more important especially when village population increases. Yet, land in their new village is not as suitable as land in their previous village for some crops. For example, Hmong villagers mentioned that a kind of vegetable like spinach or Chinese mustard (*pak kard kew*) grew very well on the land in their original village and consuming the spinach is part of their eating culture but this vegetable did not grow well on the land in their new village. In this circumstance, many families go back to their previous village to use land to cultivate rice and other crops including corn and spinach to supplement their food need according to their preference.

In rotation with rice, corn is cultivated in the upland area in their old village where land is suitable for families in Long Ngeun to perform a mixture of cropping by preparing a certain area of corn field with the other crop of Chinese mustard. They harvest corn traditionally by not cutting down the corn stalks to keep moisture of soil to a suitable level for the growth of spinach. This vegetable is not only an important food source for most households in the village it is also a source of their income which is easily seen in local markets. It is to say here that villagers unofficially re-claim the land in their old village while holding their right to land in their new village. Villagers have to travel the distance each time they go back to the old village so sometimes they stay there for longer period and some school aged children stay with their parents.

Another land claim related to the governmental resettlement program is in Hormphan village. In 1997, about 40 families of this Hmong village were officially resettled in a new place which is about 24 kilometers towards Xum-Nue capital. The new village is located along Road No 6 (B) stretching some 80 kilometers to a Vietnamese border (*dan na meo*) and two Tai Daeng villages (Meaung Pure and Poong) are its new neighbors but old villages.

Similar to the resettlement situation of Hmong in Long Ngeun village and its new neighbors, part of the land of existing Tai Daeng villages was divided by the government for

Hormphan to use for agricultural purpose. Approximately, each family (regardless number of family members) received 0, 5 hectares of land in the upland to grow rice. This village was also allocated four hectares of communal paddy lowland area but villagers said that the allocated land (both in the lowland and upland) is far less than what they actually need in terms of meeting their daily food need particularly rice. Like the case of Long Ngeun, limited agricultural land in a new village forced (27) families to go back to their previous village to use land in their old village for growing crops and raise animals. While using land in their old village, families claim for ownership right over the land in their new village by not letting other families to use it. Not to mention about land in the lowland, these families use the land in the upland every year or grow trees in their rice fields. This is to make sure that they do not lose land in their new village because they are unsure about their right to land they are using in their previous settlement area.

It is to say that implementation of the official resettlement program in Houaphan creates limite on the land area for (both resettled and existing) villagers to use to grow agricultural crops. An addition to this, the government fails to follow the promise given to the village before resettlement took place. A Hmong village headman said:

*“Before moving to this village in 2003, we were promised a big irrigation system with the length of canal of about 17 kilometers. We were told by the government officials that the construction would complete in 2006. Water would flood a large area of land in the lowland and we would be able to produce irrigated rice after we were provided training on how to cultivate irrigated rice by DAFO.”<sup>87</sup>*

According to the village headman continued that only 10 kilometers of the canal was built in 2011 and the construction stopped. The land area in the lowland where the government dreams to see new rice field is still a useless space for the newly resettled villagers because there is no water and villagers do not have enough money to invest in the land so no agricultural crops are produced on the land. “It is a pity that the land is there but we have

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<sup>87</sup> Research Interview (V1 SB), Village Headman, Sopbao district, Houaphan province, Laos, 25 October 2011.

insufficient land to cultivate crops that we have to go back to the land in our previous village.”<sup>88</sup>

Resettled families go back to the land in their old village not only to produce rice but they also propose to the government to provide a solution to the problem of land shortage in their new village. Until this condition is met, villagers may not participate in the government development project and they will continue using their old fields to grow food for their families. If the interpellation theory<sup>89</sup> is applied, it is clear that the government is facing a difficulty in interpellating its people because these people have their own needs which are not being met by the state.

An addition to the claim for land in the upland is what I found in a Tai Daeng village where *Jatrophas* (*mak kao*) grows naturally in the upland areas in the sites where villagers cultivate rice and corn. After these agriculturally cultivated crops are harvested, *mak kao* trees grow up and families nurture them. Domestication of this natural product began two years ago (2010) because villagers in this Tai Daeng village learnt that they could make some money from selling the seeds to Vietnamese traders. “Last year (2011) I cultivated rice on a land plot in the hill and *mark kao* naturally grew. The trees were beautiful. I domesticated them so instead of rice field, I have *mark kao* garden this year.”<sup>90</sup> It is internationally introduced that bio fuel can be made out of the planted *Jatropha* but it is uncertain for farmers if using land to plant the tree instead of food such as rice will result in food shortage.

Vietnamese come to the village to buy seeds of *Jetrophas* from villagers and transport it to their country. This money opportunity creates an idea for villagers to claim the land where *Jetrophas* trees grow.

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<sup>88</sup> Research Interview (V1 SB), villager, Sopbao district, Houaphan province, Laos, 25 October 2011.

<sup>89</sup> Højrup, T., 2003, *State, Culture and Life-Modes: The Foundation of Life-Mode Analysis*

<sup>90</sup> Research Interview (V6 VX), Village Headman, Viengxay district, Houaphan province, 21 October 2011.

*"We saw mak kao seeds when we cleared land in the upland to grow crops, rice and corn. Later, the seeds became trees and they grew big by the time we harvest rice and corn. We take care of mak kao trees by getting rid of weeds. We collected the seeds of mak kao to sell to Vietnamese. Many rice land plots in our village are now full of mak kao and families claim the land area as well as the naturally grown trees as their family property. This means that other families are not allowed to use the land or harvest mak kao seeds. Everyone in our village knows about this."<sup>91</sup>*

The case of *mak kao* shows that natural characteristic of local environment allows a certain type of trees to grow well and these trees produce seeds that have monetary value because they are needed in the market. An opportunity to make money is there when availability of natural product and market demand come together. In this situation, villagers claim for the resource. This claim changes communal property (land and *Jetrophas* trees) into family private property and the claim is recognized by the villagers within the community but it is not yet known if the government will also recognize such claim and this needs the government at the policy making level to make decision.

Regarding a belief that communal land title can protect villagers from losing their source of living (land and natural resources) to outsiders, it can be an option that upland area where *mak kao* naturally grow is kept as communal property of the village and families are given clearly defined rights to the land and to its produce (*mak kao*) in a way that they will benefit from them in a long run. This includes how they should share the income from selling the product to business namely Vietnamese. Maybe, it is also possible to create *mak kao* production group that group members pool together the product and sell it in the market in an organized way.

We have seen that customary laws provide legitimacy to and enforcement of common property claims in the communities. The level of enforcement may be the village chief or village general assembly of all villages. Religious laws or other normative principles may also provide a basis for claiming rights. The characteristics of the Tai Daeng and Hmong are that they are dependent on the resource for a major portion of their livelihood, that the

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<sup>91</sup> Research Interview (V6 VX), Viengxay district, Houaphan province, Laos, 21 October 2011.

users trust each other and relate to one another with reciprocity. The users so far are able to determine access and harvesting rules without external authorities interfering. The basis for collective action is still intact. Thus, a question to be raised is the need to examine if common property governance is conducive to sustainable management of natural resources and if the common property governance arrangements, when endorsed by the government, can be embedded within a nested hierarchy of institutions where the state plays a major facilitating role or if villagers want private title to land.

### **3. An analysis of communal property resources (CPR)**

Below is an analysis of what is found in Houaphan based on Ostrom's eight principles for successful CPR.



**Table 26. A comparison of Communal (rice) Land in Houaphan to Ostrom's eight principles for successful CPR.**

	Ostrom's 8 Principles for a CPR situation <sup>92</sup>	Communal (Rice) Land	
		Lower land area ( <i>na</i> )	Upper land/hills ( <i>hai/souan</i> )
1.	<i>The CPR has clearly-defined boundaries</i>	Defined by villagers in village meeting where all villagers participate in the process on land sharing rule. Plots are allocated.	Components or plots of the common property as vested claims by individual families in agreement with other families holding parcels within the same common property
2.	<i>There is congruence between the resource environment and its governance structure or rules</i>	The resource niches utilized by individual right holders show characteristics in terms of size, productivity, seasonality that are being matched by the institutional set up and characteristics of the member household right holders, for example, rules on rights of allocation based on the producer/consumer ratio.	Families talk to each other about selection of area to cultivate, production cycle, and fallow period. Internal rules about fencing, tree planting, and irrigation canals.
3.	<i>Decisions are made through collective-choice arrangements that allow most resource appropriators to participate.</i>	All villagers, men and women participate in the village meeting to make decision on how to share the land and afterwards, for example, collectively organize communal	Collective choice arrangements underpin the allocation of upland fields among the right holders in the community and use of NTFPs, fencing, and grazing.

<sup>92</sup> Source: Ostrom 2008: 90, originally 1990

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	grazing area and fencing. Collective choice arrangements also pertain to fines if someone breaks the rules.	
4.	<i>Rules are enforced through effective monitoring by monitors who are part of or accountable to the appropriators.</i>	Common pool resource users are living within the common resource system and they can see what happens within the environment easily. They report what they see to each other and the rules on fines based on the collective choice arrangements are applied. Families' rice plots are next to each other in a particular area inside a collective fence in the upland/hills and each person effectively monitors compliance with rules (one family member visits the area and reports or acts against what he/she thinks will likely be harmful to crop) bringing benefit to all.
5.	<i>Violations are punished with graduated sanctions.</i>	Rule breakers are punished through either rule enforcement or social norms
6.	<i>Conflicts and issues are addressed with low-cost and easy-to-access conflict resolution mechanisms.</i>	Traditional conflict resolution mechanism exists in each village and there are informal leaders who are accessible by all villagers without any payment is required.
7.	<i>Higher-level authorities recognize the right of the resource appropriators to self-govern.</i>	Villagers collectively organized land area for their cattle to graze. This land is the state forest land area but the district government accepted the change and indicated the garzing land area in the official map it created for the village forest and land use planning.
8.	<i>In the case of larger common-pool resources: rules are</i>	Enforcement of rules that villgers collectively developed mostly takes place at the

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*organized and enforced through multiple layers of nested enterprises.*

village level, within families in a village and between villages. The rule enforcement also happens at the district and higher level and this involvement in the hierarchical layers relates to who applies the rules, why and at which level the rules are created, acknowledged or endorsed.

An example of enforcement of rule at village level is that if a family which fires a swidden also burns the fields of other families by mistake, it must communicate with the affected families to ask for apology and negotiate how much it has to pay as compensation for the loss of the cultivated products. Village level enforcement of rule can be pointed at sharing land that all comunal land rights holders have to follow the criterion they created together. Enforcement of rules takes place at village level. It occurs at the district or higher level only when outsiders enter the village to use land or natural forest resources without permission and this issue cannot be solved at the village level.

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#### 4. Non-timber forest products (NTFPs)



Photo 39. Traditional water wheels collectively made by villagers from local resources mainly bamboos and small woods that villagers withdraw from within CPR system inside their village territory  
Source: <http://www.visit-viengxay.com>

Upland communities use forest products or so-called Non Timber Forest Products (NTFP) in their day to day life, often each day wild edibles are brought home for food. The NTFPs are available in a CPR system within a village land boundary but legal rights of villagers to the resources are, at the present, not clearly defined. Constituting a resource niche in the communal land some products are plentiful such as mushrooms and no rules apply to their collection while other products such as resin may be scarce and some households may exercise individual rights within the communal land to certain say 10 trees to tap resin from them. A partitioning of the common property with respect to certain resource niches with products that are scarce may benefit some families more than others with rights dependent on history.



Bamboo shoots are another NTFP which in Houaphan can be found all year round in contrast to many other places in S.E. Asia.

Most resource-based communities have long ago allocated themselves rights to bamboo produce. Such rights have played a great role in providing for local survival for generations. One bamboo variety that cannot be found in this village in a particular season can be found in another village. Villagers in some areas find it easier to enter their neighbor's land to harvest the bamboo shoots because they are located in an area near to their village. This research deals with bamboo because it is a common property and will later describe communal tenure of Sangthong as a comparison. This natural characteristic is another reason for the share of the resource.



Photo 40. It is normal to see bamboo tools in the kitchens of rural households. Villagers produced these kitchen tools by using their traditional knowledge and raw bamboo resources available around them

Many communities allow their neighbors to harvest edible bamboo shoots and bamboo poles in their land mainly for domestic use. For them, sharing is a kind of solidarity as well as an exchange and the harvest of bamboo resources has occurred without or with little control but it did not raise people's concern over its sustainability because its availability is enough for communities to meet their domestic consumption needs. The bamboo shoots of many species are edible. They can be found all year-round (Table 27) and are popular in both fresh and preserved food.

**Table 27. A list of bamboo shoots by local name in Houaphan province**

No	Name of bamboo shoots		Available/harvest time (month)											
	Lao	English	January	February	March	April	May	June	July	August	September	October	November	December
1.	ໝໍ່ເຮັຍ	<i>noh hiar</i>					x	x	x					
2.	ໝໍ່ກ້ວນ	<i>noh kuan</i>					x	x	x					
3.	ໝໍ່ຫົກ	<i>noh hok</i>					x	x	x	x	x	x		
4.	ໝໍ່ຫົກຫວານ	<i>noh hok van</i>					x	x	x	x				
5.	ໝໍ່ຊາງ	<i>noh xang</i>							x	x	x	x		
6.	ໝໍ່ຂົມຫວານ	<i>noh kom van</i>	x	x	x	x							x	x
7.	ໝໍ່ຂົມ	<i>noh kom</i>	x	x	x	x	x	x					x	x
8.	ໝໍ່ແຫຼ້	<i>noh lair</i>	x	x	x	x	x	x					x	x
9.	ໝໍ່ໄລ່	<i>noh lai</i>							x	x				
10.	ໝໍ່ຈ້າ	<i>noh cha</i>			x	x	x							
11.	ໝໍ່ຈ້າກຳ	<i>noh cha kum</i>				x	x	x						
12.	ໝໍ່ລຸນ	<i>noh loun</i>				x	x	x						
13.	ໝໍ່ດອຍດິນ	<i>noh doi</i>							x	x	x	x		
14.	ໝໍ່ດອຍຜາ	<i>noh doi pha</i>								x	x	x	x	x
15.	ໝໍ່ຮ່າງ	<i>noh harng</i>					x	x	x	x	x	x	x	x
16.	ໝໍ່ບົງ	<i>noh bong</i>					x	x	x	x				
17.	ໝໍ່ບໍ່	<i>noh bor</i>				x	x	x	x	x				

(Source: Research Interview)

Recently, a substantial improvement in roads has linked the exploitation of local bamboo resource to the regional, national and international markets. This link changes local perception and behavior towards these local resources. The government allows international business mainly Vietnamese to come into the country to invest in processing raw bamboo shoots into long-term food, bamboo poles into chop sticks, paper, and

toothpicks, for instance. There are also businesses that transform raw bamboos into handicrafts and they buy raw bamboo resources from local villagers.



Photo 41. A private foreign company (Vietnamese) in Hoauphan buys raw bamboo material from local villagers. These bamboos are processed before exporting to another country to make finished products including chopsticks, toothpicks and paper. Some of these finished products are sold in Laos

Arrivals of outsiders or strangers to the village in search for social-economic improvement opportunities are frequent. Coming to the village with cash and vehicle means that traders are ready to buy bamboo products and to transport them to the markets. Local traders also transport raw bamboo shoots to the capital city, Vientiane where there are more people, more selling and buying activities.

The photos 42 and 43 show that Tai Daeng women traditionally process bamboo shoots (*noh hok*) into dried bamboo and sell them to the Vietnamese traders who often visit their village. A middle age Tai Daeng woman said:





Photo 42. A Tai Daeng woman is processing edible bamboo shoots (boiling and then slicing them into long and thin pieces) she collected from forest near their village

Photo 43. After boiling and making the bamboos into small pieces, they are dried under the sun and dry bamboos are sold to Vietnamese traders who often come (on their motorbikes) to the village





*“My (female) friends and I go to the bamboo forest very near to our village in the early morning (6:00) to harvest bamboo shoot (noh hok). We spend about two hours on walking, collecting the bamboos and cleaning them. When we come home, we boil the bamboo shoots for about 20 minutes and slice them into long tinny pieces before drying them under the sun. Vietnamese traders (men) come to our village on their motorcycles to buy the dried bamboo from us at around 20.000 kip (US\$ 24) per kilogram.”<sup>93</sup>*

The amount of money gained from a kilo of dried bamboo may be small compared to time and labor used to convert the raw bamboo into commodity but this is often carried out as an activity additional to rice production and there are not many choices for villagers to do to make money so the so-called opportunity costs are few. For them, the quantity of harvest equals the amount of money they will be paid and the economic offer pushes a pressure on the harvest of the resource. Gradually, sharing bamboo resources for domestic use without economic interference once as a kind of solidarity between communities has changed its context. People in a village where availability of bamboo resources inside their territory is not great enough to meet their needs enter the resource area of their neighbors to collect bamboo shoots not only for household use but also for income. This means larger amount of the bamboo resource is taken away and villagers have conflicts.

Competing to gain benefit from the resource is problematic when the number of resource users increases in a quick pace. Resource-based communities take an opportunity to grab whatever benefit they can make from the resource system in their village or they lose it to outsiders. An example is the production of bitter bamboo shoot (*noh khom*), a kind of bamboo written in Table 26. The season of this bitter bamboo shoots starts from November (when it is less available but its taste is sweet and most local people need it) and ends in June (when it is more available but its taste becomes bitter and most local people need it less). It is sold at the highest price at the beginning of the season. November is when many families finish harvesting their rice and they have time for different activities. Because of the high price and available time, many families put their labor in harvesting the resource

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<sup>93</sup> Research Interview (V9 VX), villager, Viengxay district, Houaphan province, Laos, 18 October 2012.

for income. “We sell a bunch of *noh khom* (between 4-5 shoots) at 20.000 kips or US\$ 24 at the beginning of the season. The price is lower as there are more bamboo shoots and we finally are paid only at about 5.000 kips or US\$ 0.8 or less per bunch of the same or even more number of the shoots.”<sup>94</sup>

Some villages do not have *noh khom* in their village land boundary and villagers enter the boundary of other villages in order to harvest the bamboo shoots to eat and sell. This kind of harvest often occurs in a way that reduces the resource available for the people living inside the land boundary where the resource is based. Noticing the change, villagers think that they need to conserve the resource for the benefit of their own, their communities and their future generation and many villages attempt to control a free share of resources with their neighbors through creating a set of rules that include the harvest of bamboo resources to exclude others from harvesting them. Often the exclusion is applied when the harvest is not for family consumption but for economic purpose. For effectiveness of the rule, they communicate with their neighbors to inform them about their rules and the rule breaker is first warned at least twice before charging a fine and the enforcement of this rule is more effective when it is recognized by local government.

Without using any money from the government, most people in the bamboo-based communities cooperatively protect their resource by monitoring and reporting the action against the rule to the village. They are not hired to keep an eye on the offender but they do such job while they are working in the forest or in their agricultural fields as a Tai Daeng village headman said:

*“There are around 100 families and 600 people in our village. Every day, at least 1 or 2 members of each family enter the forest (to collect NTFPs such as bamboos and vegetables, to hunt small animals like birds and rats, and to work in their rice fields) and we know if strangers come into our land and harvest the forest resources.”*<sup>95</sup>

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<sup>94</sup> Research Interview (V10. VX), villager, Viengxay district, Houaphan province, 21 October 2012, Laos.

<sup>95</sup> Research Interview (V9 VX), Village Headman, Viengxay district, Houaphan province, Laos, 19 October 2012.



Photo 44. In a small hut built along the road side near to her village, a Hmong woman sells fresh bamboo shoots (*noh kom*) to travelers.

Managing the resource through village rules is more effective especially when neighboring villages agree to follow. Where there is no harvest rule outsiders are not prevented from gaining benefit from the bamboo shoots and these resources are likely to be overharvested. In order to avoid overexploitation over the resource, some villages limit access of neighbors to the bamboo resource but doing this without legal enforcement sometimes results in conflicts.

Most communities have not been allocated legal rights to bamboo forests and they do not have power to institutionalize the protection of the resource. Not legally owned, communities do not have power to keep people from taking advantage of the resource and it is therefore free for all and the resource can be over exploited. Based on the head of a Tai Daeng village LFNC:

*“Outsiders want to see a legal document (land title) that shows we are legal owners of the bamboo forest. Unfortunately, we don’t have it and we cannot say a word to stop them from harvesting the bamboo shoots and sometimes bamboo poles.”<sup>96</sup>*

In this case, not only outsiders but people within the resource-based community can cause the overutilization of the resource because it is not their resource and it can be taken by anyone at any time.

A French Bamboo Development Project (BDP) has recently worked in Houaphan province. This project is financially funded by the international NGO Gret and it is attempting to let its communal management system be embedded in local preference. Gret implies a strategy to provide secure access to use the resources like bamboo as a common property that is formally recognized and allow villagers to play a part in using and managing the resources in a sustainable way.

The induced institutional development for bamboo management is supported by four principles. Firstly, the bamboo was initially not owned by anyone. Secondly, the bamboo users group sees decrease of benefit from the resource due to a lack of power to balance resource regeneration capacity and number of resource users and villagers agree to maintain or increase the resource productivity when supported. Thirdly, an entity with technical knowledge and technology as well as power to link their work to government policy level works on the demarcation of the bamboo area. Finally, forest law allows a chance that the group can take the bamboo as leasehold (BGP 2010: 1).

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<sup>96</sup> Research Interview (V5 VX), head of village LFNC, Viengxay district, Houaphan province, Laos, 20 October 2011.

Under the NLMA 564 and the PLUP procedures on communal land, forest for use can qualify for communal title (NLMA 2007). In villages in Houaphan, the bamboo group members have an insight to classify the bamboo forest area as communal land and this voice is heard through the support of the BDP.

Legally, the government recognizes the customary utilization of forests if the use of forest and forest products has occurred for a long time in accordance with laws and regulations. The recognition relies on a designed plan, village regulations, laws and regulations on forests through which the use and harvest of forest products is allowed in non-prohibited forests for household utilization that causes no adverse impact on forest resources, and the environment. The use and harvest of forest also reflects the rights and interest of individuals or organizations (Forest Law 2007: Article 11, Article 42).

Applying the forest regulation and law of Laos, BDP works with villagers in four villages (Napang, Piengxay in Sopbao district and Napho and Ern in Viengxay district) to carry out forest zoning activities, forest function classification, and delineation of forest and forest land areas. A village Forest Management Plan (VFMP) is created and it includes three function-based bamboo zones for use, production and management. Agreed by concerned parties, particularly neighboring villagers, the VFMP is approved by DAFO and signed by the district governor. This approval means that rights of individuals, communities and the state to use, control and manage the resources are mapped making a possible way for so-called production forest to be issued as collective land title as indicated under the NLMA 564 and the PLUP procedures on communal land. When the exercise of the given rights comes into, though not yet fully legal enforcement, villagers are already assigned power to control “their” resource. For example, they can eliminate a practice that is against to what is agreed in the VFDP (BDP 2010).

According to villagers, BDP came to their villages and explained to them about sustainable bamboo development. The project worked with villagers to divide natural bamboo forest land into plots, each plot has the same land size, 40 x 40 square meters and they were allocated to each family in the village through a lottery draw or lottery pick-up.

Many families have bamboo land plots that are located quite far from the village. Some families get the plots that are quite near to the road and others get the plots that are just next to their paddy rice fields or residential area. Everyone wanted to have a bamboo plot that is near to road or the village so they can sell or transport bamboo resources to the village or to markets easily but they could not change the result of the lottery draw/pick-up because everyone agreed to follow it as a bamboo land sharing rule. It is also important that the pick-up was carried out at the presence of everyone in the village.

Though the size of each bamboo forest land plot allocated to families is the same, the resource produced from within the plot is different and this is a natural characteristic of bamboo. A villager:

*“Every family in our village now has a plot of bamboo forest land. Each plot has the same size, but the number of bamboo poles in the plot is different. For example, bamboo forest plot Number 1 that is distributed to family (A) has 100 bamboo poles while the plot Number 2 distributed to family (B) has 150 bamboo poles. To share the bamboo poles equally, family (A) is allocated 250 bamboo poles located in the bamboo forest plot of family (B)”<sup>97</sup>.*

To follow its objective, the BDP helped villagers to harvest bamboo resources (poles and shoots) in a sustainable way and at the same time to avoid the encroachment by outsiders to the resource area resulting in availability of sufficient bamboo resources for the resource based communities to reap the benefits. Seasonally, villagers in the project area can harvest enough edible fresh bamboo shoots for their family to eat and they cut bamboo poles in a managed way for household use, farming purposes and for sale. The project also helps villagers to plant more bamboo on their land to increase the population of the resources through providing them technical knowledge and materials.

Recently, Netherlands Development Organization (SNV) started to work collaboratively with BDP to support villagers to make handicrafts manually from bamboos and introduce these products to local and national markets. It is expected that the support will reduce

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<sup>97</sup>Field Research Interview (V3, SB), villager, Sopbao district, Houaphan province, Laos, 25 October 2011.



some imported products like kitchen tools and home furniture (most of which are plastic) from foreign countries mainly Vietnam, China and Thailand. The bamboo handicrafts made by local communities come in shapes and sizes reflecting the livelihoods of ethnic people and they can be shown in the national markets if communities gain further support.

The availability of bamboo shoots in association with family labor required for harvest and market demand for the resources has an impact on rice cultivation in upland. Villagers have reduced area of highland rice cultivation or shifting cultivation when they have to spend their family labor on harvesting bamboo shoots, making bamboo handicrafts to sell and



Photo 45. Sold in local market, these hand-made bamboo products (baskets, sticky rice boxes, coffee cups, and table lamps) are developed from traditional knowledge with technical support from an international project (SNV)

earn certain amount of income. Meanwhile, they put more labor on rice production when the availability of bamboo shoots is low or when its value in terms of price falls, or when there is less demand for handicrafts in terms of quantity and the proposed price is seen not

worth investing their labor. This uncertainty is derived from a lack of technical training on how to add value to handmade products and to link local produces to national and international market needs which can be changing. Also, there is imbalance power to bargain between traders and villagers.

The uncertain division of labor for bamboo activity depends not only on availability of the bamboo resources in association with access to market and cost of products but also road link. During rainy season, it is expensive for bamboo traders to approach the village by trucks; therefore the sale price of bamboo products becomes lower. In view of this, villagers invest their family labor force for cultivating rice in their uplands. When the cost of bamboo shoots is higher than what highland can provide, villagers postpone highland activities.

The benefit from bamboo resource can be improved if villagers are supported to maintain the availability of the bamboo products, if their handicraft skills are improved to match with the market trend and if the market is certain or guaranteed. In this case, secure right to the resources and thus to land is important. Villagers need to be protected from market risks including selling bamboo poles and shoots to the company at a very low price and quality of the handicrafts needs to be improved.

Besides bamboo resources, most farmers, mainly shifting cultivators have traditionally collected various natural products that are grown in fallow land in the upland and surrounding forests to supplement their food supply. In the forests and follows, villagers can find medicinal plants, wild meat, wild vegetables and building and handicraft materials, many of which cannot be easily grown in the village or supplied from the markets. Forest product collection is an integral supplementation to agricultural production of both lowland and upland villagers and mostly it is governed through customary agreements among villagers at the village level and also between villages.





Photo 46. Nests of young wasp (*hung toh*) villagers harvested from forest and brought to local market for sale

An addition to collecting forest products for household consumption, various natural NTFPs like jetrophas, broom grass, tree zap (*yan*), resin (*kang*), cardamom, tree bark (*peuak meuak*) and nest of young wasp (Table 28) have monetary value because they can be sold in the market. For most resettled Hmong villages, families find more availability of NTFPs in their previous settlement area where they go back to collect them. As a vice-village headman of Hmong put it:

*"It is difficult to find NTFPs in our newly resettled village but we can find plenty of them in our previous village. The NTFPs include peuak meuak, bamboo warms, jetropas and variety of bamboo shoots. Families from our village harvest NTFPs from the forest in our old place to sell to Lao and Vietnamese traders. Totally, we harvest around 10 tons of puek meuk and 10 tons of jetropas per year. Puek meuk is harvested between January and June. We dried it under the sun before selling it at around 20.000 kip per kilograms. Dried jetropas is sold at about 12.000 per kilograms. Bamboo warms give us a good price, between 60.000-70.000 kip per kilogram. They live inside the bamboo poles. The warms are not fully mature in September and too mature in December so we normally harvest bamboo warms from October to November. Recently, people from other villages and from town also go to our previous village to collect NTFPs. They take all what they find and we cannot wait to collect bamboo*

*warms in October or someone first takes them all and we don't have the right to stop them because it is the property of the nation and everyone can collect it.”<sup>98</sup>*

Considering what the vice-village headman said, it can be seen that the forest system provides natural resource units which is important source for villagers in terms of direct consumption need and also for money. However, rights to these resources are not legally recognized so unless supported by agencies the open access creates an opportunity for



Photo 47. Tree bark (*peuak meuak*) or *Boehmeria malabarica* Webb villagers harvested from the forest, dried in the sun, and sold to traders  
Source: Lao Non-Timber Forestry Product

<sup>98</sup> Research Interview (V1 SB), Vice-village headman, Sopbao district, Houaphan province, Laos, 25 October 2011.

everyone including people from different areas to harvest the resource and this happens without control as the resource-based community cannot protect them as their property. At the same time, the government cannot control the harvest and as a result, the resources are subject to overharvest and this may continue unless where outside support such as that of GRET emerges. This links to CPR analysis of this research because it helps villagers to create an open access area with bamboo to be an induced partitioned CPR.

Thinking of the legal aspects is sometimes contradictory to traditional thinking. Local people consider it unreasonable for them not to use some types of forest products because they are found in their village land boundaries and if they don't use them others do. This raises a question on who will protect it. In this case, the rights to resources need to be legally defined and a bundle of rights (access, withdrawal, management, exclusion, and alienation) introduced could be applicable.

In general, many people of older generations have used forest land and natural resources in the uplands with little or without support of legal rules. The customary use of the resource has long been an important culture of the people in the hills, earlier than the introduction of the law on managing land and forest resources so it is difficult for them to change their perception and practice because the resources around them mean to them a main source of their daily survival.

Meanwhile, the government thinks that the introduction of legal land and forest management activities is necessary and this is part of interpellation in Thomas Højrup's terminology<sup>99</sup>. In this process, the government tries to make ethnic people use the land in the way the government organizes for them. Doing this the government has to transform ethnic people into its "dependent subjects", as defined by Luis Althusser (see section on *Life Mode Analysis*) and make them to follow the government's development plan. It is, however, difficult for the government to do this successfully especially when the ethnic

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<sup>99</sup> Højrup, T., 2003, *State, Culture and Life-Modes: The Foundation of Life-Mode Analysis*, Ashgate Publishing Limited, England



groups already feel that they belong to a certain own ethnic culture that they think will ensure their survival.

**Table 28. Some non-timber forest products (NTFPs) collected and sold by villagers in studied villages (2011-2012)**

No	Names of NTFPs		Kip per kg	
	Lao	English	Fresh	Dry
1.	mak kao (ໝາກເກົ້າ)	Vernicia Montana	200	3000
2.	mak ka (ໝາກກ້າ)	Jethropas	6.000	20.000
3.	dok kaenm (ດອກແຄມ)	bloom grass	1.000	2.000
4.	peuak meuak (ເປືອກເມືອກ)	tree bark	2.000	5.000
5.	to mair (ໂຕແມ້)	bamboo worm	50.000	60.000
6.	kang (ຄັງ)		20.000	
7.	yan (ຢານ)	Resin	45.000	
8.	mun on ling (ມັນອອນລິງ)		10.000	
9.	mak pom peng (ໝາກໂປມເປງ)		20.000	
10.	mak naeng (ໝາກແໜ່ງ)	cardamom	30.000	
11.	hung toh (ຮັງຕໍ່)	young wasp (nest)	60.000-70.000	

(Sources: Research interview)

Local resource-based villages have a dream that their children can continue gaining benefit from the natural resources so they attempt to sustain them. In the case of a Tai Daeng village, villagers create their own rules, use traditional events and village meetings as a communication strategy to protect the interest of people in the village. This internal rule is effective in tightening the commitment to share responsibility to use and manage communal property namely land and natural forest resources amongst neighbors.

The mentioned Tai Daeng village shares border with a village in Mok Chao district, Sonla province, Vietnam. Stretching to the border, there used to be many big trees and various NTFPs in the forest land area but villagers rarely approached the area and harvested the

resources because there were enough of them near to their residential land where villagers could collect for their own consumption as food, housing and agricultural production materials.

During the last two decades, road condition was improved, village population increased, and markets were available. Villagers did not harvest NTFPs only to eat any more but also to sell. After some years, the resources became scarce and villagers travelled farther into the forest to find them and they observed that strangers had entered their village's land territory, logged trees and harvested NTFPs without permission from the village. Tai Daeng villagers believed that their Vietnamese neighbors were the thieves.

To solve the problem of forest resource disappearance, villagers worked together as a team. Initially, Tai Daeng invited leaders from the Vietnamese village to participate in their social activities like the celebration of traditional Lao New Year and later in village meetings. Also, leadership representatives from Tai Daeng village were invited to attend similar activities held by the neighboring Vietnamese at the other side of the boundary. Aside from villagers, both sides included district land administrators, foresters, and local police officials as participant in their villages' events.

In the village meeting organized by both Tai Daeng and Vietnamese villages, villagers presented and discussed issues related to land and forest resources. They agreed to work together to create rules on use and management of land and natural resources, mainly trees and NTFPs as well as on protection of animals from stealing. The rules of each village were acknowledged by local government and their neighbors who are related to the use of the resources and it is enforced successfully.

*“Every year, our village holds a meeting and representatives from the Vietnamese village are our special guests. In the meeting, we reported our village development progress and challenges including enforcement of village rules. We then asked participants to contribute their ideas in seeking for solutions to the problems. We also*

*presented in the meeting our village's future development activities and proposed for cooperation in putting the plan in practice.”<sup>100</sup>*

According to Tai Daeng villagers, their Vietnamese neighboring villagers are currently playing a role in protecting the resources available within their village land boundary by making their village rules known and enforced in the Vietnamese community. Gradually, the problem of the “suspected” thieves reduced. As a Tai Daeng villager said, “the two villages worked together and as a result the people who we thought were our enemies became our friends, close friends.”<sup>101</sup> This case shows that the Tai Daeng village is successful in controlling the resources available from within their village land territory through collective and this is possible when villagers including from different countries see that it serves their interest.

Making close relationship with the Vietnamese village has furthermore opened an opportunity for Tai Daeng to have an access to Vietnamese market and to bring income to their families. This occurred when the Vietnamese neighbor introduced to them some traders/businesses from their country and the introduction led to a business contract that Vietnamese traders/businesses purchased agricultural products mainly corn directly from Tai Daeng villagers. An addition to money, the villagers gain some new agricultural production techniques from Vietnamese which they think important for them to improve their living condition because they gain more benefit from their land as they produce more. At the same time, the businessmen make their business grow as they can feed enough raw materials to the growing market in cities in Vietnam.

A part from the NTFPs which were mentioned above there are some natural resources within the communal land tenure system in some villages that have been untouched until

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<sup>100</sup> A Research Interview (V3 SB), Village headman, Sopbao district, Houaphan province, 26 October 2011.

<sup>101</sup> A Research Interview (V3 SB), villager, Sopbao district, Houaphan province, 26 October 2011.

very recently. They are, in this case, sand in the river and limestone/rock from mountains and wood from forests which are being collected or withdrawn from the communal resource system not only for household use but also for sale in the market.

Traditionally, houses of Hmong and Tai Daeng are built of wood and bamboo with thatched roof. These building materials are all found in the forest and fallow land around their villages. When accessible road was built, some families of the two ethnic groups bought bricks and cement from local market to construct new houses. In a Tai Daeng village, families used their workable labor to collect sand from the river near their village and used it as a construction material with cement. The sand is withdrawn from the common system not only for household use as construction material but also for sale.

In 2011, people from town visited the village. Observing that sand was there in the river, the visitors asked some families (with workable labor) to collect it to sell to them. This opportunity allowed families to earn some money. Averagely, a full labor force made 50.000 kip per day after the sand was loaded into the truck. However, only the families who contacted with outsiders and who have availability of labor force to withdraw the resource unit from the CPR system benefit from this informal business activity.

Withdrawing sand from the village's river is not yet included in the villages internal rules because this resource is new to villagers in term of making money or using it as construction material. In this case, only certain group of families benefit from the resource withdrawal despite it is a village's common resource. At the moment, however, the village collects fee from villagers who collect sand for sale. The fee is not big in amount but it is spent on village development activities and importantly it shows that a village can easily observe actions that are related to use of resources that are available inside their village land boundary and create rule to manage them. This is in order to protect the resource from overexploitation and at the same time to maintain its benefit for the whole village.



Photo 48. A young man is collecting sand from the river and putting it together as small mountains ready for sale



Photo 49. Mother and son are collecting sand from a village river to sell to outsiders, often small private business and individuals from town



A similar issue occurred in a Hmong village. Inside this village's land boundary, near to the residential area, there is a limestone (rock) mountain which is located along the No 6 (A) where the provincial government allowed a local business to operate limestone/rock mining concession in a total land area of 1, 5 hectares for a five year period which commenced in 2008. For some reason, the company left the mining site after they had operated their business on around only 0, 8 hectares of the concession area. The departure of the company left an ownership question for resource-based community:

*"The limestone/rock mountain is located very near to our village's residential land area but we don't know if it is the property of our village or the government's. Despite of this unclear ownership, we collect the rock and use it to construct our houses. We also allow some families in our village to collect the resource to sell."*<sup>102</sup>

There are around 10 poor families in this Hmong village (2011-2012) and most of them are new comers who move in to the village through family relation and do not hold rights to the village communal paddy land in the lowlands. Also, the village's agricultural land in the upland is limited so it is, from the villagers' perspective, not enough for the new villagers to use to produce sufficient rice for their family needs in terms of food. Consequently, these families often experienced rice shortage for months.

As a strategy to tackle rice insufficiency, members from poor families sell their labor. They work on the agricultural land of other families in the villages or in different villages and sometimes work for construction companies in town as daily labors. However, these jobs are seasonal which means that they are not always employed and in this case the poor find it difficult to find food especially rice for their family. Sometimes they borrow rice from other families in the village but this will happen as the last option because they think that borrowing rice this year play a part in having rice shortage in another year as they have to pay back the loan. This also reflects the view of Tai Daeng.

Dealing with the issue of food shortage, poor Hmong families turn to the limestone mining site and use steel sticks to break rock into small/moveable pieces. They are sold at 50.000

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<sup>102</sup> Research Interview (V10 XN), Vice-village Headman, Xum\_Nue district, Houaphan province, 17 November 2011.

kip per cubic meter to outsiders, often individuals from towns (Xum\_Nue and Viengxay) who need the rock for their house construction. The Hmong village allows the poor to benefit from the resource (collect the rocks to sell) without charging them any fee.

Withdrawing the limestone manually means that the volume of the resource taken away from the mountain is not great in amount and this also explains the level of financial benefit. Because of this, families that do not have rice shortage (often the first resettled families in the village who are communal paddy land right holders) consider it a hard work for little money. They therefore collect the limestone/rock only in their free time often when they are free from agricultural production work and they collect the resource for building their own houses, not for sale. In this village, however, the vice-village headman has a long-term worry about the sustainability of the resource. Accordingly, outsiders are not allowed to withdraw the resource without agreement from the village and paying fee.

The cases of river sand and limestone show that villages allow villagers to withdraw the resources available from within their village land territory under different conditions and purposes. Thus, village residents have the right to withdraw the resources not only for use but also for sale and depending on circumstances pay a fee back to the village fund. It is clear that villages can exclude outsiders from having the same right simply because they can easily see what happens from within their land area.

Since limestone/rock is located inside the Hmong village land boundary villagers perceive that it is their property and this is the reason why they protect against outsiders taking away the resource without any control. However, villagers do not know who legally own it. With this concern, villagers asked, “What benefit will we gain from the resource if one day the government allows a business to re-operate rock mining?”<sup>103</sup> Villagers further explain that if they know that they will not be given a share from the potential business they may not want to protect it and may take as much as benefit from it while there is still a chance.

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<sup>103</sup> Research Interview (V10 XN), Village Headman, Xum-Nue district, Houaphan province, 21 October 2012.

It can be observed that villagers naturally have a long-term vision on managing natural resources but its success depends on the government to make decisions on how its benefits are shared and this is all about how traditional rights to the resources are legally defined. Yet, there can be many other resources available within village land boundaries that are not yet discovered in terms of financial benefit so clearly defined rights of the communities to the natural resources and incentives for protection are important for sustainable resource management and improvement of local livelihood.

## **5. Access to social and economic connections**

In agriculture, the local government in Houaphan has encouraged private business to invest in the commercial crop production as an effort to boost employment opportunities for local people and bolster the district's economy. In line with this, the government provides villagers with new agricultural techniques (and chemical inputs) to increase the quality and quantity of crops to help villagers to generate income and improve their living condition (Noradeth 2013). This can be understood from the Life-mode Analysis perspective that local government takes a role in changing the mode of production of local people but on the condition that support from central government is provided. Where there is a lack of support, communities help themselves to improve their living condition through collective action and this is possible where communal tenure exists.

Many rural households have gradually experienced a shift from being based purely on subsistence agriculture to being focused increasingly on commercial farming in order to supply traders and investors most of whom come from Vietnam and China. This market force is increasing and villagers produce agricultural cash crops including corn, soybeans, and sesame on their communal land in the upland for sale. However, many rural villages are not accessible or accessible only during dry season restricting villagers to improve their own lives through access to markets.



Photo 50. Before an introduction of new technology, villagers used traditional rice mill that used energy from the flow in streams to pound rice. It was located near a river or stream outside the residential area and processing crops through this traditional method was woman's responsibility. Source: [www.google.com](http://www.google.com).

Where the government fails to provide infrastructure such as access roads, collective action makes it possible. Based on in-depth fieldwork in Tai Daeng and Hmong villages (Pok village and Long Ngeun village) in Houaphan, the result indicates that villagers cope with the problem of accessibility by working collectively to build and improve dirt path to create an opportunity for themselves to access development services including market and education. This is possible because they have access to communal land in their village.

Ban Pok is a village that is officially recorded inaccessible though it is only about 4 kilometers from the main road (Road No 6 B), on which Meaung Pure village is located. Accessibility problems have made it difficult for villagers for many generations to have a chance to improve their living standards. They used a narrow walking path (muddy and slippery when it is wet) to connect to the main road before they could access other places like town centers of Xum-Nue or Viengxay district where they could sell their cultivated



agricultural and natural forest products and bring home something they did not have back in their village like sugar, salt, and clothes, for instance. Children also walked the same path to access public school.

Poor path condition played a part in hindering children to exercise their right to education. Every day, children in Pok village spend more than two hours walking to school in Meung Pure village and come back home. The accessible path stretches through the forest which made parents worried about the safety of their children especially females. An addition to other poverty-related issues like a lack of family labor to carry out agricultural production activities and thinking that it is women's responsibility to do housework, parents stopped sending their children to school. Some families saw the future of benefit from education and sent their children to town to stay with their relatives for study. However, not many of



Photo 51. A Tai Daeng village collectively built an accessible road to connect the dirt road to their village in order to allow an opportunity for themselves to have a better access to public development facilities like school and local market

them were in this case so most children in the village did not finish compulsory school level.

From 2000, the market's influence on agriculture has become more important. The Tai Daeng villagers observed that many villages that have a link to market have improved their living conditions through producing agricultural products for sale. Seeing this change, according to villagers, they proposed to local government to improve the path for them but they were given a reply that the budget was currently tight.



Photo 52. Benefit from collective use and management of communal land and related natural resources necessary for agricultural production makes possible an access to road and market that villagers can afford to buy a new machinery rice mill and this replaces traditional rice mills. This replacement reduces labor demand, especially of woman as men often work with the machine

Villagers think that they cannot depend on the government's budget and have to do something before they are left far behind what other communities can do in terms of development. Their hope is that the improved path will allow them a better connection

with outsiders and gradually give access to many development activities. With this objective, the village organized a meeting and discussed with villagers about the problem of accessibility. They all needed to have better road and agreed to share their agricultural produce and family labor to reduce the problem.

Following their hope, the village representatives were sent to communicate with private construction companies in town to negotiate with them in order to find a way to improve the walking path, from their village to Meaung Pure village. A private construction business that has heavy vehicles agreed to cooperate with the village under a condition that the village paid the company 200 tons of rice (estimated to be 47.000,000 kips or US\$ 5,800) and that the payment was completed within a two year period.

Another village meeting was held to hear from villagers their opinions. Villagers agreed that every family (total 100 families) contributed 200 kilograms of rice, which was 100 kilograms per year in two subsequent years, 2001 and 2002 as a cost for improving the path. With this consensus, the village signed a contract with the business and the walking path was widening to about three meters and some areas leveled. After the rice harvest season in 2001 and 2002, the company came to the village with a big truck to collect the rice as payment.

Villagers now feel more comfortable using the path to access markets and are involved in social network often with outsiders. As a consequence, many families bring their agricultural crops, animals, and NTFPs to local markets for sale and bring some money to their families. Sometimes traders visited the village and bought the products from villagers.

Better accessibility has changed the condition of local life. Most families in the village produce agricultural product not only for household consumption but also for sale. This enables many families in the village to be able of afford buying motorcycles, rice mills and tractors most of which are imported from Vietnam and China. Though not luxurious, the bicycles make it possible for children to continue their study and technologies like rice mills and tractors play a part in changing daily work chore of men and women. Women do

not have to bear the responsibility of making clothes for everyone in the family as they can use money from selling their agricultural products to buy them in the markets.

Regarding access to market it was said:

*“We had things like rice, fresh bamboo shoots and vegetable and small water animals but to sell them was difficult due to market accessibility. Without vehicles, we carried rice or bamboo shoots on our backs and walked many hours to the market in central town. These products were so heavy and we could not carry much on our backs. Traveling to town from our village took many hours and we often stayed overnight at our relatives’ house in town. This also meant that mushrooms and fish, for example were spoilt so we earned very little money. Yet, we lost time spent on other activities”.*<sup>104</sup>

During the research interview, the Head of Village Women Union in a Tai Daeng village shared with me her life experience:

*“In the past, we did not have rice mill and it was women’s job to prepare food for their families. Every day, we got up at about 3:00 or 4:00 in the morning (when cocks/roosters started singing) and spent around 1 hour to pound rice (manually). Some families had traditional rice mills that use water energy but it worked slowly and we could not totally depend on it to prepare enough rice for the day”*<sup>105</sup>.

Another Tai Daeng woman said:

*“Like many other families in the village, my family rarely had money for clothes. We grew cotton on our land and raw cotton was processed through manually spinning, natural dyeing (using tree leaves and wild or domesticated flowers) and hand weaving until we had a finish product. The woven cotton was then used to make clothes for everyone in the family as well as other household necessities like beddings and sitting pillows. Cotton work was mainly carried out by women and we used our time free from agricultural production activities to make clothes so our family members had enough to wear especially when it was cold”*<sup>106</sup>.

The interviewing of Tai Daeng women indicates that villagers used to produce almost what they needed including food and clothes and their involvement in monetary materials was rare but this has been changing.

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<sup>104</sup> Research Interview (V9 VX), Village Headman, Viengxay district, Houaphan Province, 19 October 2012

<sup>105</sup> Research Interview (V9 VX), female villager, Viengxay district, Houaphan Province, 19 October 2012.

<sup>106</sup> Research Interview (V9 VX), femal villager, Viengxay district, Houaphan Province, 19 October 2012.



*“My family do not have rice mill but we pay the next family who owns it to mill our rice. The payment can be money or some kilogram of rice. It is mostly men that take rice sacks to the rice mill so it is not only our job anymore to prepare food for our families,”<sup>107</sup>*

*“Not like before, now we don’t have to make every piece of clothes or household materials that we need. We sell rice, animals and NTFPs and use money to buy finished clothes from the markets. We still grow cotton but it is often for sale and we make clothes as our free-time activity.”<sup>108</sup>*



Photo 53. A Tai Daeng woman is manually removing corn grains from the cobs to make it ready to sell to business. The grains that are not in a quality for sale are used to feed animals like chickens and ducks. Villagers sometimes use the cobs to make fire

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<sup>107</sup> Research Interview (V9 VX), femal villager, Viengxay district, Houaphan Province, 19 October 2012.

<sup>108</sup> Research Interview (V9 VX), femal villager, Viengxay district, Houaphan Province, 19 October 2012.

Despite improvement, the condition of the path from Ban Pok to Meung Pure is still poor being slippery and muddy during rainy season and accident prone. Because of this, the village is officially inaccessible but most families in the village benefit from their collective investment and school children can use it to attend their classes in a way that lessen the worries of their parents. Villagers probably would not get this advantage if they waited for the government support.

It is also important to point out that traveling on this road regularly, villagers monitor its condition and any problem that is considered important is reported to the village authority mainly village headman who then calls for action. As villagers are the ones who built the path through collective action they feel that they are the owner of it and therefore families are motivated to share their labor to maintain and fix the path by using simple labor-based tools (knives and hoes) and local natural resources like stones and wood.

It is clear that the Tai Daeng in this village acted together to help themselves to build and improve the dirt path which allows them better social and economic connections including access to market, education, and many other development opportunities without using the government's budget. However, this opportunity will not be possible without rights to land (communal land) to cultivate agricultural crops and collect NFFPs to subsist in terms of food. If these traditional rights are legally recognized, it is possible that the communities continue gaining benefit from the resource reducing level of dependence on the government.

Concerning the accessibility, Hmong ethnic group in Long Ngeun village also worked together collectively to build a dirt road for themselves and this was possible by using communal land in the upland to produce cash crop like corn to sell. At the end of 2000, the village signed a business contract with a Vietnamese company and it was approved by the district. In the contract, villagers buy seed from the business, grow it on their village land and sell the harvest to the company which built a dirt road, the length of which is within 2 kilometers, from the village to corn fields. Villagers cultivate corn on the land that is located within this length do not have to pay for the road construction cost but to sell corn to the company at the current market price. An additional condition was applied when the

company built the road longer than 2 kilometers for the village. In this case, families whose corn fields are more than 2 kilometers away from the village had to pay for the cost of building extra length by reducing 100 kips (or US\$ 0,01) from every kilogram of corn they sold to the company. For example, 1 kilogram of dry grains was sold at 1.000 kips per kilogram at the local market in 2011 but the reduced price was 900 kips (or US\$ 0,11). This continued until the village could clear the road construction cost. Averagely, each family in Long Ngeun earned around 3.000.000 kips (or US\$ 375) from selling corn in 2011.

As already mentioned, the village of Long Ngeun was officially allocated agricultural upland area for villagers to grow rice but many of them considered it insufficient. The government's policy that promotes commercial crop production creates an opportunity for villagers to generate income and this has a pressure on the agricultural land in their new village because villagers use it (the same piece of land) not only to cultivate rice but also to grow corn for sale and the soil becomes exhausted.

*"As an addition to rice, we grow cash crop mostly corn in the upland to sell. Usually we leave our land plots fallow after two harvests but we have not yet leave our land empty since 2000 when began growing corn for sale".<sup>109</sup>*

In relation to cash crop production, most families in a Tai Daeng village have grown corn in the upland areas to sell to Vietnamese since 2005. Like rice, families in the village observed that the second harvest of corn was reduced so they left the cultivated land plot after the first crop fallow for four years. This duration of fallow period is possible because these Tai Daeng villagers think that they have enough agricultural land which is different from the case of Hmong village in Long Ngeun where villagers think that they have insufficient agricultural land. In this circumstance, they had to expand agricultural land into forest area and use the land to grow corn for sale.

It can be seen from the cases of Hmong and Tai Daeng that villagers act collectively to create an opportunity for themselves to get involved in economic activities for the common

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<sup>109</sup> Research Interview (V1 SB), vice-village headman, Sopbao district, Houaphan province, Laos, 25 October 2011.

good. According to Life-mode Analysis described in the Chapter on *Theoretical Framework*, these families/communities are self-employed in a sense that they made their own decision on what to produce on their land and to sell the produce at the price they agree. However, these Tai Daeng and Hmong are not purely self-employed because they still produce their own food so they are a mixture of subsistence-based and self-employed people.

## 6. Tax/land use fee collection

Different villages use different rules to make contribution to the village's administrative work that is related to use of land. Depending on the agreement with villagers, this contribution can be made through collecting a land use fee in form of money or rice.

There are village administrative units and the number of units may not be the same in each village but it is often between six and seven and only the units that are directly related to communal paddy land in the lowland gain the contribution as indicated in the Table 29. Village security unit is exceptional because its main role is to protect village's property against theft and it receives 20 kilograms of rice from each family per year. The contribution can be made in form of money the amount of which is calculated from the current local rice price. In total, every family in a studied Tai Daeng village in Viengxay district pays 60-80 kilograms of rice to the different village administrative units annually.

**Table 29. Paddy lowland farming families contribute rice as village's administrative fee.**

No	Village Administrative Unit	Payment from a family (kg)
1.	Youth Union	10
2.	Lao Women Union	10
3.	Land Management Unit	10
4.	Lao Front for National Construction	10
5.	Security Unit	20

(Source: Research Interview)

Collecting land tax is organized by the government. Each year, district officers come to the village to collect the statistics on paddy land area in the lowland that is being used for agricultural purpose by villagers. Aside from village report, the government representatives can visit the fields to ensure accuracy of the reported statistic. The statistics and the fee is based on the size of the land, not on the production and yield. Without differentiating whether the land is used to produce only annual rice or both annual and seasonal rice, or cash crops, the figure of the land size was used to set the amount of money villagers (as a whole) have to pay.

Without budget and modern tools, it is impossible for the government to ensure correct statistics on the use of land in the uplands for agriculture. In this case, data collection and thus accuracy of the statistics rely on the report from villagers.

The villages report the actual amount of land they are actually cultivating in a certain year to local government officers when they come to the village to collect annual agricultural land use statistics. As land use fee requirements on agricultural land, the government uses the total land use area to estimate how much a village should pay as a lump sum, and it is then up to the villagers to decide who contributes how much. With communal tenure, villagers pay land use fee according to their agreement. It is paid according to production (often cash crops) and also number of plots of land being used. Rotational land is not titled individually, but villagers allocate, as explained already, themselves traditional rights to use it. Therefore families in the village are likely to be assessed based on the estimated productivity they gain from the land parcel they used that particular year or on the number of upland plots being used or size of the land plots being cultivated and charge land use fee accordingly. So internally, the tax is based proportionately on production results, but to the government the tax is based on the size of land.

To pay land use fee, the village discuss among themselves in order to reach agreement on how much each family should contribute. Concerning this, the head of LFNC from a Tai Daeng village said:

*“All agriculturally cultivated land in our village is charged fee. In 2010, our village had to pay land use fee at 2.200.000 kips in total and this amount was set by local government. When we knew the amount to be paid, the village headman had a meeting with the village party members. They discussed about how to collect the fee from villagers in a way that they see appropriate. The result was presented in a village meeting so that everyone knew and made inquiry if there was any. Our village agreed that each family contributed money (land use fee) according to estimated agricultural crops the land they are using can produce. Some families use the land to produce short-term crops like corn, soybeans, cucumber and cabbage and these produces are for sale so they agree that families who use the land to cultivate agricultural crops for sale pay more fee than those who just use the land to grow only rice for their family to eat.”<sup>110</sup>*

The Lao government of the district allows the village to keep 20% of the total amount of land use fee collected from villagers as village land management fund and 80% of the fee is sent to the district. Regarding this, another Tai Daeng village did not collect from villagers the 20% of the total amount set by the government. Instead, each family that shares village paddy land in the lowlands for rice cultivation has to contribute 10 kilograms of their rice to every village administrative units. The calculation on this is:

Total amount of tax villagers have to pay	2,200,000 kips	100 %
Amount sent to district	1,760,000 kips	80 %
Amount villages keeps as village land management fund	353,000 kips	20 %

## **7. Free-riding**

In general, most villagers hold that supporting each other in life is a way to survive. In one community, for example, there are families that face more problems including food and labor shortage than others. In this situation, other families cannot ignore helping them and ignorance is considered unacceptable especially when a need for support is critical and the ability to help is there. This culture may be understood as an opportunity to create a situation that one relies on another but reliance on others without reasonable explanation is seen not workable.

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<sup>110</sup> Research Interview (V5 VX), Viengxay district, Houaphan, Laos, 20 October 2011.

Similarly, the problem of free-riders was found to happen within the communal tenure system in the study area in Houaphan. It is however not seen as a significant issue as it happens only at some occasions, by few individuals and it can be explained with understandable reasons. Free-riding involves mostly avoided contribution of labor in collective action organized as agricultural production activity within the communal system. In this case, it can be defined as not contributing labor to the work as everyone else does but gain benefit from it.

A related example is how villagers maintain irrigation canal. Before rice cultivation season, families who are included in the communal paddy land are also included in the communal irrigation system as water users. They are required to send their family representatives to clean the canal so water can flood the paddy rice field efficiently. This requirement may not be honored by every family in the village. There should not be an important problem in a village if the family that failed to contribute their labor to the work without a reason is charged in cash (rice) or kind (money) based on current local daily rate.

When this occurs, free-riding is observed by everyone in the community and this observation leads to traditional pressure that forces the free-riders to change their action. Traditional pressure, in this case, means how one is perceived by others about what she or he is doing in comparison to what others within the community where she or he lives are doing. The perception cannot be measured or seen but it is something that can be felt by, in this context, the free-rider.

In villages, individual villagers as friends and family members communicate in a way that allows free-riders to see if they fail any required contribution to the village's development activities. They can see this from two standpoints: what they actually do and how others look at them. Most often, a family sees it as important and necessary that they are not singled out as a free-riding family.

In relation to the fact that there are formal and informal institutions in each village, aside from dealing with free-riding issues at an informal level (often by elder people and clan leaders), village leaders also get involved in solving the issue. This happens when the free-riding affects others at an important level. Village leaders especially village headman takes into account causes of the problem and responds to it accordingly.

## **8. Conflict and conflict resolution**

In general, the number of persons in communities has increased and this results in greater demand for food and thus land to produce food to feed the increased population. In the past, most rural families would use land and forest product only for their subsistence, as it was enough for their family members to consume.

The country has recently developed to a stage where many rural ethnic minority people come into closer contact with the outside world people living in a higher standard than what they do and this raises their expectation for a different life for them and their children. This change pushes villagers to turn to their land and natural resources around them to help meet their secure their expectation.

Conflicts arise mostly due to unclear rights to the resources or to greed by the powerful people.

Hmong and Tai Daeng villagers often “perceive” that their rights to the resources are equal in the community. But due to different capacities to exercise those rights in order to serve their own needs different individuals or groups meet their needs at different level. Usually people with more social and capital level have more benefits and this is accepted by most villagers. This imbalance in some places creates change in thinking but villagers in most villages have solidarity and social capital that they often support each other and conflicts are not serious.

This section deals with causes of conflicts, parties involved in the conflicts (Table 30) and conflict resolutions in relation to use and management of natural forest resources.



The findings from this fieldwork in Houaphan indicate that there are different levels of conflicts and they involve different groups of people. The conflicts over land and forest resources can happen between government and village, village and village, and families from within a village. Because they involve different parities and levels, conflicts resolution requires their participation.

**Table 30. Parties involved in conflicts and types of conflicts**

Parties involved in				Type of conflicts
conflicts				
G*	V*	B*	F/V*	
x	x			village land boundary
x	x		x	use of land for business
x	x			production of opium
x	x			claim over land in the lowland and in the upland
x	x	x		harvest of timber/trees in a village land boundary
	x			harvest of NTFPs
	x			use of land for agricultural crops (e. g. rice)
			x	distribution of communal paddy lowland
			x	claim over land in the upland
	x		x	destruction of the animals on agricultural cultivated crops

\*G (government), V (villages), (B) business, (F/V) families/villagers

(Source: Research Interview)

In the uplands, there may be a conflict about village land boundary and this relates to the government's classification of land or it relates to the neighboring village. This conflict derives from a lack of participatory consultation during land demarcation and a lack of attention to traditional land use practice in the regulatory formulations of the government. In a Hmong village, according to villagers, informal village elders know the history of the village land territory because they were those who first came to the village. The resettlement of this Hmong village was organized by the government. The Hmong replaced an existing Lao village that moved further to (Xum-Nue) town center. In their newly

resettled place, Hmong (elders) made an agreement with their new neighboring villages about where the boundary lays but the agreement was not recorded in a written form. Despite of this, there has never been a conflict over the village boundary.

The conflict over the village land boundary arises when the village land boundary is legally delineated and one village is allowed more land than others. Another village feels that it loses. Often conflicts begin when the State legal land management activity is introduced as it alienates villagers who are used to trust and rely on their own native mechanisms. Improper technical work by government in resettlement result in social-cultural problems and this slows down the process as, for instance, Hmong villagers do not agree with the new boundary. They think that they lost the land they were promised as part of their resettlement condition. A Hmong villager said,

*“Elderly people know the best about our village’s land boundary because they were the ones who involved in the agreement on the area that is shared with our neighboring villages’. Some of the elders did pass on the information to us, the younger people, before they passed away. Only few of them still live and they are at their late 70s or older. They were not consulted during legal village boundary lineation process and the government mapped the village boundary, at some points, different from the boundary that we know. People in our village cannot accept this because it means we have smaller land area. We then organized a village meeting to hear from villagers what they think and we agreed that until the mistake is fixed we will not sign the official paper to accept the new village boundary.”<sup>111</sup>*

Initial technical land and forest management activities carried out at the village level may not pay attention to ways of social inclusion and participation by the ethnic groups. It was complained by a local governmental social representative responsible for ethnic group issues that they were not fully included in the technical process where they can bring about an understanding of ethnic issues. A lack of integration of social perspectives into technical resettlement perspectives has led to disagreement and the Hmong refuse to participate in the legal act by not signing the paper. The governmental social representatives are reluctant to take responsibility to deal with the issues at the later stage because they were ignored at the earlier stage.

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<sup>111</sup> Research Interview (V11. XN), villager, Xum\_Nue district, Houaphan province, Laos, 9 November 2011

Reasons for not fully including social perspectives are likely due to a lack of communication and budget that leads to inability to see the importance of ethnic social and cultural concerns. This could also stem from a lack of ability of some government staff to carry out ethnic group-oriented work in a way that integrates technical aspects and this discourages land and forest administrators to include them. At the same time, results of social work cannot be easily seen or measured as can the technical work result and therefore it is paid less attention. As a local social (LFNC) staff explained:

*“We work with the inner of ethnic people. The impact of our work may not be seen as the way people see the impact of technical work. For example, people see poles that are put in land to indicate boundaries between villages but they may not know what people think about the poles if they don’t express it and to know this is difficult if we don’t approach them in a culturally appropriate way. It is our job to understand them from their standpoint and bring this understanding to concerned development partners so that they are aware of potential problems. It is not easy. In this case, getting social experts involved in the technical process from its very start would allow mainstreaming social work into technical work and this will reduce if not avoid occurrence of serious conflicts.”<sup>112</sup>*

A technical (forester) who did not integrate social issues in his work said:

*“We sometimes include staff from LFNC in our team when we carry out technical activities in the field but we don’t always see why we should include them because they do not have any particular activity to do. This is important when there are already many members in our team.”<sup>113</sup>*

The conflict between government and villagers over village land boundaries clearly indicates the importance of traditional rights of villagers to communal land which includes many natural resources this land produces. The conflict also shows that Hmong villagers refuse to participate in the official land management activity carried out by the government if it does not take into account traditional views and this is a problem of interpellation as explained by the Life-mode Analysis theory.

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<sup>112</sup> Research Interview (P1. LFNC), a governmental social expert, province LFNC, Houaphan province, Laos, 11 October 2011.

<sup>113</sup> Research Interview (P2. PAFO), forester, Provincial Forestry and Agricultural Office (PAFO), Houaphan province, Laos, 3 February 2011.

Beside conflicts regarding village land boundary, there are sometimes conflicts between villagers and government over land use. Generally, the government has a policy to use and manage land and forest resource that ends up being contradictory to the customary agricultural practice of local residents who have been practicing traditional agriculture activities on community land for many years. However, this conflict is not important in the studied villages because the local government has improved its working strategy, from top-down approach to a participatory manner where villagers are given the right to accept or reject, for example a proposal of a business for plantation concession on the village land.

According to a Tai Daeng village headman:

*“Private businesses came to our village and asked if we want to lend them our village land. They want a large piece of land area that covers mountains. They said that we would have the rent money and be employed to work on the farm to grow corn, cassava, and Jetropas for them. When we had a village meeting, we talked about this business proposal but most villagers said they did not want to lend out the land. They said they have never worked for others as employees and they are afraid they cannot do it well. I agree with them. I do not have to be worry when I work on my own land. I can relax when I need or when I am tired. Also, having forest around is something I am familiar and I don’t want to see it disappear because it means food, shelter, and medicine. I know that many villagers here think like this. We finally refused the business proposal. We will slowly improve our living condition if we have better road and access to market and this is something that is happening now in our village.”<sup>114</sup>*

Conflict can happen between village and business but sometimes it is unclear for villagers if the government representatives take side the business to do something against rules and laws of the government.

The case presented above is one of the many cases in many similar villages where villagers are unsure about the benefit they will gain from the impact of investment in land by outsiders. This understanding makes villagers refuse the change and they choose the development pathway that they are sure about and local government, in the case of the presented Tai Daeng village, did not make any interference on their decision.

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<sup>114</sup> Research Interview (V9. VX), village headman, Viengxay district, Houaphan province, Laos, 29 October 2011.

Communities that rely on agricultural production in the uplands often have few alternatives and without support for what they see as a better way to live their life they refuse to turn away from a traditional agricultural mode of life which is a main part of their culture.

Some cultural practices are seen by the government as contradictory to its development vision and plan and the practice must be eliminated in the eyes of government. It was mentioned by villagers in a Hmong village that they follow their ancestors and produce opium which grows well on the certain upland areas in the forest. Young plant of opium is food for people and it can be sold in local market as food. Hmong villagers use raw opium as medicine, to reduce or stop body pain. Raw opium also means money but it is illegal and there are also a large number of drug addicts among the elderly people.

As already mentioned in the section on *Two Modes of Agricultural Production and Government Policy on Eradication of Shifting Cultivation* growing opium poppy is illegal in Laos. The poppy fields are destroyed by the government or the poppy growers are forced to destroy their own cultivate crops if they are discovered. Putting this opium eradication strategy into practice creates a silent fear and conflict. Local governmental officers who are involved in destroying the opium poppy field feel that they do not want to destroy the field but are forced to do it and they also are aware that they hurt feeling of villagers. As they live close to each other, these governmental officials are afraid that opium growers may one day fight back.

Hmong poppy growers know about the law and they can see that in some villages opium addiction is causing problems for the families and their communities. Among opium addicted villagers often men and women have to take over their responsibility mainly finding food for their family members.

There are Hmong families that grow opium not to smoke but to sell. They feel that their fields should not be destroyed (by the government) because it means an alternative source of survival. They cannot express their dissatisfaction in a formal way or claim for the loss because they are seen by legal eye as wrong. This shows that the government and family

each have their own interpellation strategy but doing it successfully is difficult especially when one is contradictory with the other.

In one of the Tai Daeng villages, villagers said that many generations of people have been watching trees grow in the forests. Their ancestors thought that the trees and forests were the property of their village. Some members of a new generation of people have different thinking after the government came to work with them to classify forest and land type. They currently understand that trees are the State's property which villagers as country's citizens are committed to protect for benefit of the nation and only approach the forest area in order to collect NTFPs that they are legally permitted. The village knows that they should be informed if logging companies are allowed in their administrative territory. However, logging happen in a way that the village is not informed but villagers know that trees were being cut because the forest was inside their village land territory.

Though the government gave village power to investigate illegal loggers that happen in their village administrative territory this could not be possible when villagers see the government and the logging business as one person. In this circumstance, the village cannot be sure if they will be able to exercise their given power successfully and their understanding on the protection of the State resources brings about many questions including: what benefit will villagers gain from protecting the trees? Who will be responsible to the transparent issue that may occur as a result of exercising imbalanced power between government officers, businesses and villagers?

Referring to a bundle of rights brought to the academic discussion by Elinor Ostrom, the Tai Daeng villagers have the right to access the state forest to harvest non-prohibited NTFPs. They are given right to protect timbers from illegal logging but their legal power to exercise their right is questionable.

Conflict between villages is about withdrawing NTFPs. Resource-based communities want to control outsiders (people from neighboring villages and sometimes from town) from harvesting the resources but many villages do not have power to do it because they are not given legal right to the resources like bamboos, for instance. In this case, both resource-

based villagers and outsiders understand that the bamboo resource is the property of the nation and everyone can enjoy its benefit. This is a political ideology of the Lao government that creates silence conflict. Outsiders enter bamboo forest in the village to harvest bamboo shoots for food and for sale. Many villages want to protect the resource for themselves by creating rules to exclude outsiders but these rules are not effectively enforced particularly if they are not endorsed by the government and that the forest is the State forest.

Also, a conflict between villages over land takes place in an existing Tai Daeng village whose neighbor is newly settled Hmong where villagers perceive that they are allocated insufficient agricultural land by the government. Hmong families use the land of the Tai Daeng village without permission and this leads to conflicts between the two villages of different ethnic groups and it requires government's reaction to solve.

Said by a Hmong village headman, a conflict resolution requires involvement of government:

*"When we were resettled in this village in 1997, the government allocated upland area for us to cultivate agricultural rice crop but the land is small compare to what we need to produce enough food for our families to eat. As a way out, some families intrude the agricultural land of our neighboring village without asking for permission. This happens because they think that having food for their children is something they must do."<sup>115</sup>*

The conflict resolution that requires involvement of government was also mentioned by Tai Daeng village headman, a neighbor of the Hmong:

*"Hmong families use our land fallows in the uplands to grow rice without informing us. We know that they have limited agricultural land in lowland and upland area is small and they will have problem finding food for their family members if they don't use our land. We understand them and it will be difficult for us as well if we fall in the same situation as they currently are. However, we are really afraid that they will claim our land as their land. They are growing not only rice but also corn and long term crops like fruit trees on the land area where they are using. We are worried that our children will face more serious land problem when we are not with them. The Hmong may say that the land is theirs because their crops are standing there on our land. This will*

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<sup>115</sup> Research Interview (V 4. VX), Village headman, Viengxay district, Houaphan province, Laos, 29 October 2011.

*make a difficult situation for our children to claim for their land despite it is inside our village territory.”<sup>116</sup>*

It can be said here that Hmong villagers are facing a shortage of land for agricultural production and that both Hmong and Tai Deang are trying to fight for their rights to land and this is a way for them as farmers to survive their livelihood. They also foresee that rights to the resource are also important for their children and that conflict over the use of land will continue unless their rights are clearly defined and people from within this resource area accept.

A conflict over corn production involves villagers, government and business. It is especially about an increased international market demand for corn that matches villagers need to make their living condition better by producing corn for sale. This corn business requires villagers to expand agricultural land area and where there is a lack of agricultural land villagers clear state forest which is contradictory with the policy of the Government of Laos that forest area is recovered.

The government knows that corn villagers produced is paid cheap price by traders or business if compared to corn seeds villagers buy from the company, labor villagers spent on corn production activities and value of the forest that was cleared. Local government however lacks power to control over the business, in this case, to bargain with the business in order to ensure corn is paid higher price and environmentally friendly agricultural method is applied. The government is also afraid that the business might lose interest in doing business with villagers. It furthermore cannot strictly control villagers so that state forest is not cleared because it understands what villagers needs and at the same time it lacks ability to support them with alternative source livelihood.

Corn business does not often run smoothly. Villagers sometimes grow corn for business without any written contract and without government's involvement. When business does not come to buy the corn or buy it at the (lower) price than the price it orally promised the villagers who cleared state forest to grow corn could not ask local government for help.

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<sup>116</sup> Research Interview (V 13. VX), Village headman, Viengxay district, Houaphan province, Laos, 29 November 2011.



The conflict between villagers immerses over the distribution of communal paddy lowland. It arises due to change in value of what the land can produce. Farmers previously encountered with accessibility to the market so agricultural production was valued mainly through subsistence. One product was voluntarily exchanged with another in order to supply daily needs to sustain a living so the monetary cost of the product was not important. The market barrier has recently been broken by development activities and the agricultural products with a subsistence value slowly change to a market value. Rice price, for example has recently been increasing in a continuous trend and farmers expect extra income from selling the surplus of their production. Consequently, the increasing value of the agricultural products means that land value is getting higher. Conflicts arise if communal land is distributed unfair because it means unfair shares of benefits that the land can produce.

Unfair land sharing rarely occurs where villages share communal land in a way that everyone participates. However, land sharing is seen by few individual families as unfair. They are often families that lack labor to cultivate the land and do not have ability to express their concern. Despite the village having a policy to share fertile paddy lowland plots with poor and labor shortage-families, most families in the village view it unfair if the families are disadvantaged in every land sharing circle.

Regarding unfair sharing of communal paddy land in the lowlands, a middle-aged Tai Daeng woman whose house condition is poorer than others in the village shared her experience:

*“I am a divorcee. I am married and moved to live with my husband but he left me and my three children for a new woman some years ago. We are poor. My family does not have enough rice for a whole year. I have to borrow rice from my neighbors and pay them back after harvest. In fact, I just moved to this village from a nearby village. In that village, I was not happy about how my family was allocated plots in the communal paddy lowland. We were offered the most infertile land in the village and it was difficult to access. Adding to a lack of labor, we gained little harvest from the land we were shared. Many families in the village have enough labor to work on their land, yet they are friends with village leaders. They negotiated with the village headmen in order to cultivate the paddy land area they wanted and gained good yields. I think that the village headman in my previous village was unfair. His family never cultivated*

*infertile land and this is why I moved to this village, my original village, where I have no problem about land sharing though I still have rice shortage.”<sup>117</sup>*

In most visited villages, I observed that conflicts over sharing of communal paddy land in the lowland cannot be avoided however this conflict is understandable by most households in the communities and they can accept it. For the case presented by the divorcee, the conflict can be caused by many other factors including how families from within the community where she lived would see her if the village headman always give her fertile plots of land to cultivate. Also, the problem can also relate to her contribution to the village work in terms of sharing of responsibility like fencing and irrigation work.

Another conflict between villagers occurs when there are overlapping claims over land mostly in the uplands. Currently, the province is implementing Land use Planning (PLUP) as a strategy to cope with poverty (Houaphan Province 2012: 41). This LUP takes place at an important point in time for communities' customary rights to agricultural land particularly relevant to those who are living with slash and burn agriculture to be recognized. Villagers see this as their opportunity to secure their rights to land and therefore try to create a private claim for the land and this happens particularly where there is a lack of agricultural land.

In uplands, the land claimed by Hmong families is seen overlapped internally. The strategy for holding on to land claims in uplands is to let the land appear cultivated rather than being left empty. So by changing resource characteristics where otherwise the normal practice would have been fallow under natural regeneration a person can put a claim on the land because of leaving some domesticated crop growing, even just a cover crop, which appears as a result of his investment. Where the land is left fallow it may become subject to claims by others. This type of issues occurs more frequently at present because of in-migration of Hmong families from elsewhere where benefits from cultivation is limited by the government policy on reducing slash and burn.

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<sup>117</sup> Research Interview (V6. VX), Villager, Viengxay district, Houaphan Province, Laos, 21 October 2011.

Some people reserve more land for their own families as a way to individually accumulate wealth by privatizing common property while others often new comers to the village have no land and want to use that land to produce food to survive. This can be viewed as a conflict but the new villagers may not have the right to argue because the village has a set of internal rules including *Determination of Village Members* which villagers create in order to define right holders to the village common property. However, conflict does happen if leaders in the village use their power to allow outsiders often their family members or relatives to use village's common land and villagers whose power is lower, if they do not act together, cannot raise their concern. This problem is seen mostly in Hmong communities and this is related to power of clan system.

Finally, some villagers may have conflict over the loss of agricultural crop mainly rice that is destroyed by animals.

Currently, villagers in many villages of Hmong and Tai Daeng work together collectively to arrange animal grazing land to protect their agricultural crops from animals' harm. This arrangement comes with internal rules that not only people from within a community but also those from nearby villages accept and follow the rules. In this way, animal problems are effectively reduced.

Conflicts are solved traditionally and legally based on actual conditions of localities. Conflicts are formally solved at the village level. For example, families will first deal with the minor problem, as shown in Figure 3. Being unable to solve it at this level; the problem is transferred to the village development group<sup>118</sup>, informal leaders<sup>119</sup> and representatives of village development units including mass organizations like LFNC and LWU (but sometimes representatives from LFNC and village informal leaders are the same persons).

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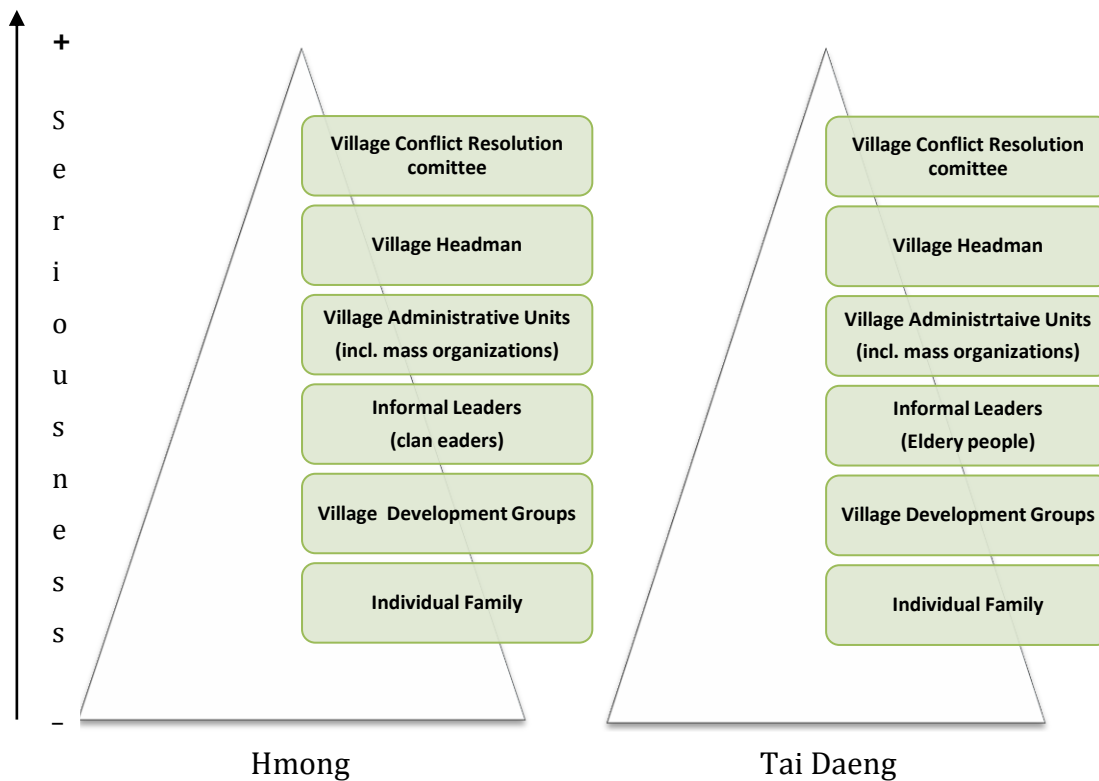
<sup>118</sup> There are many village development groups in most Tai Daeng villages. They are grouped according to the location of their houses, often around 10 houses that are near to each other are a group. Each group has its head. He/she takes lead in dealing with the problem.

<sup>119</sup> Hmong clan leader of the same family often involves in dealing with a conflict but leaders of different clans are also involved if the problem is related to them. For example, member of clan X has a conflict over land with a member of clan Y.

An involvement of the village headman is required when the problem gets serious and cannot be solved informally.

For resolving conflicts in Hmong and Tai Daeng ethnic communities, especially in rural areas, informal leaders become heavily involved, as they are expected. Most conflicts are dealt upon negotiations and agreement between concerned parties facilitated by informal leaders allowing involved parties a chance to reveal their problems face to face and end with acceptance from both sides. Community people consider conflict resolution approach of informal leaders as a good system, that is, approachable and acceptable.

**Figure 4. Conflict resolution in visited Hmong and Tai Daeng villages**



(Source: research Interview)

Informal leaders have a significant role in participating in problem or conflict resolution processes within family and community levels. They are important in motivating community people, especially those who are young not to behave in a way that create negative impact on others often of older generation who have shared common interest and

perspective on living their life. Informal leaders are respected for their recommendations, especially regarding what youth should invest in for their future. In regard to the problem of sharing communal property like land informal leaders play their role in solving the problem in a way that make people think that living together need support from each other.

Only the conflicts that villagers cannot work with are referred to the government at higher level based on its administrative hierarchy structure. Conflicts over land and forest boundaries (between villages) arise due to unclear rights to the resources and they most likely ask for the government to handle. However, this requires more parties to involve and it can be expensive.

## **9. Communal land registration process**

In 2010 the Department of Land Planning and Development of the National Land Management Authority, the Department of Forestry, the National Agriculture and Forestry Research Institute and the Forestry Extension Service of the ministry of Agriculture and Forestry published a comprehensive Manual on Participatory Land Use Planning (PLUP). This manual contains a chapter on communal land registration which may be constructed to support the codification of the customary communal tenure in the Tai Daeng and Hmong communities.

The PLUP manual introduces a system of rural land registration and titling of residential, individual and collective or communal lands that should be adopted and implemented to secure land tenure also for the poor in rural areas. There are seven steps in the Manual for registration of a communal land title in the name of the entire village community or a user group or an association. It requires a village land zoning map is prepared and the drafting of a village land and forest management agreement as a proof of the claim by the village authorities, on behalf of the community, on the proposed collective land areas. The land use zoning must be carried out by accurate mapping methods, for example, by GPS (Global Positioning System) and satellite image map prints. Villagers must review and verify the location of the various land use zones, and identify the zones that they wish to register as

communal land, for example, village sacred areas, village forest use zone, village agriculture land under rational (shifting) cultivation, village common grazing land etc. A written document must specify the conditions of management and use that will relate to the communal land, using what is called a Village Land and Forest Management Agreement as a reference document. The land use zones that will be registered as communal village land are then verified and the details of each communal or village land parcel are measured. An important feature is the identification of the right-holding entity, whether it is in the name of a village which should be the norm or of a user group or association if for small areas (MAF & NLMA 2010: 12-60).

The PLUP Manual has been officially endorsed by concerned government agencies for providing national guidelines. Field practitioners, such as international NGOs, indicate that adaptation must match local circumstance (LIWG 2011<sub>(a)</sub>). This means rural land registration and titling in one area does not fit in doing it in another area.

The Land Administration Department of the new ministry of MONRE (NLMA has become this Land Administration Department) is assigned to provide detailed working guidance on ways of issuing the communal land title or titles for the communal land parcels (MAF & NLMA 2010: 57). Under the Department of Land Administration, the Natural Land and Resources Research and Information Center (NLRRIC) is currently studying modalities of communal lands and the possibilities of titling these as part of the countrywide land registration (Andersen 2011<sub>(a)</sub>: 7).

According to the Deputy Head of Lao National Resource Research Information Center (LNRRIC), the center cooperates with many national and international organizations including the National University of Laos (NUOL), National Forestry Research Institute (NAFRI) and international development assistance agencies and the UN to work on land issues and generates lessons from field practice to feed to policy levels. Presently, a concept paper on how to implement communal land titling is under preparation which is crucial questions about what it actually takes to carry out communal land titling with a sustainable result. This is a starting point that calls for the actual definition of “communal land” in a

local context needs to be made clear (Xayaraj 2011). The result of this study will be very useful for this official land management process.

As stated in the Prime Minister's Decree on Land Titling, No 88, dated 03 June 2006, Land Titles can be issued for all types of land that occur in the Lao PDR which are allocated by the Government to village communities (Bounman, Phommasane and Greijmans 2012: 1). This was followed then by the Ministerial Instruction No 564/NLMA, dated 6 August 2007 on Adjudication Pertaining to Land and Occupation for Land Registration and Titling for three kinds of Land Titles in rural villages which are Individual Land Title (*Bai Ta Din Ekason*), State Land Title (*Bai Ta Din Lat*) and Community or Collective Land Title (*Bai Ta Din Luam Moo*). According to MAF & NLMA (2010), agricultural land and forest land is eligible for Community Land Title (CLT). Based on this criterion, Table 31 shows existing communal land found in the area of this research in both Hmong and Tai Daeng in Houaphan province that is possible for communal land title.

**Table 31. Customary communal land in the uplands and lowlands in Hoauphan compared to criteria for eligibility in the PLUP manual**

No	Land eligible for CLTs by GoL <sup>120</sup>	Communal land found in the studied area in Hoauphan	
		In the hills ( <i>hai or souan</i> )	In the lower land area ( <i>na</i> )
1.	<i>“land allocated to households for undertaking seasonal agricultural production with no individual having definite ownership (village agricultural zone or khet kasikham khong ban);</i>	<ul style="list-style-type: none"> <li>– Agriculturally cultivated land which is in use in a given year based on the actual annual or regular division and sharing of land among families within each particular community for growing rice as well as other crops including corn, peanuts, and cassava.</li> <li>– Follow land areas that are indispensable parts of the agricultural rotational fallow system. Fallows are left to generate fertility in order that the community can come back to repeat the use of land later</li> </ul>	<ul style="list-style-type: none"> <li>– Paddy land previously used for collectivized agriculture in the days of the cooperatives and where the collective management modality has been kept by the community.</li> <li>– To use this land, village authority divides the land annually/periodically among families with the agreement of villagers to grow mainly rice.</li> <li>– Paddy land that the government provides to resettled villages (mainly of Hmong ethnic group) to use for rice cultivation as a condition that is the part of the resettlement program of GoL.</li> </ul>

<sup>120</sup> Source: MAF & NLMA 2010: 61



2. *village use forest (pa som sai khong ban);* – Forests where villagers have rights by Forest Law (2008) to cut trees for house construction and agricultural production materials and to harvest NTFPs for household consumption.
  - Bamboo forests of different kinds
  -
3. *sacred forest and cemeteries (pa saksit, pa cha, pa houg harm, pa mahasak);* – Land where villagers collectively use to hold rituals
4. *lands for organizing traditional or religious rites;* – Hmong New Year ground
5. *common grazing land (khet liang sat khong ban)”* – Common grazing land where villagers collectively organize based on an agreement on sending cattle to the field

In villages in Houaphan where this research took place, villagers' terms for communal ownership compared to what it means to the government is not clear. Ownership to the villagers is a permanent claim on a territory and temporary claims each year for withdrawal of produce inside a common property because all community land annually/seasonally is shared among families within the village. The temporary claims to produce from allocated plots from inside the common property pertain to agricultural land and grazing land and forest within the common property of the village. This means that villagers think the agricultural and forest land belong to the village as a whole and does not split it up the way the PLUP Manual does. At the same time, villagers manage their common property in a way that allows permanent claims inside the common property by families if they plant perennials and prepare the land for that. In this case families may erect a fence around the plot where they grow fruit trees and industrial trees. This situation may also pertain to certain areas of the irrigated paddy land in lower areas if villagers have used their family capital (labor and money) for expansion of the common property area, thus increasing the overall productivity of the total land area. In some areas, the additional area may be claimed by the very individuals who put in the labor to establish more permanent rights and villagers accept that this newly expanded land is taken out of the common property.

#### **10. Pilot communal/collective land title (CLT)**

The present study of customary communal tenure and collective action among Tai Daeng and Hmong shall contribute to the ways the codification of such tenure is carried out. Actual registration of communal tenure by government in Laos is new. We have some pilots carried out with NGO support and donor support such as the case of Sangthong and the case of the Nakai Plateau.

This section shall therefore bring into discussion the registration of CLTs in Sangthong and Nakai in Laos. The registration data are analyzed in relation to eight principles of Ostrom's CPR situation (which is already presented under the Chapter on Theoretical Framework: *Theory on Common Property*) and in relation to findings of this research fieldwork in Houaphan in order to see the differences and shortcomings.

The current Five-year National Socio-Economic Development Plan of the Laos 2011-2015 aims to issue 1.5 million title deeds over the period. The registration of community land is part of the objectives but format and detailed technical concept are not yet fully developed (Sayalath et al. 2011: 6). In 2014, the government's most recent draft of a National land Policy was circulated to the national Assembly (NA) and stakeholders in general. NA members recognize that people do not have titles to the land they traditionally used for generations and that they should be given the legal ownership rights to it (Vientiane Times: 13 June 2013). This means that the parliamentarians now recognize that incompletely titled landscapes can create serious dangers for people who haven't received titles yet. An example may be households who are right holders in customary communal land but who may not have made use of the same specific plots of land in the common property over time and therefore not can prove affiliation with particular plots in the context of potential privatization of land.

An objective of giving Communal Land Titles (CLTs) to communities is to officially recognize customary communal tenure in Laos. Moving towards the objective, one of the attempts by government bodies have been the registration of communal land title to communities in Sangthong district in Vientiane capital and to communities in Nakai district in Khammouan province as pilot projects. The case of CLT in Sangthong is about bamboo forest and it is a kind of delegated management for a particular resource such as bamboo although the word bamboo forest is not found in the title deed but the Nakai communal land title is permanent and comprises agricultural land which the Santhong title does not.

For decades, communities in Sangthong traditionally collected bamboo resources (shoots and poles) within their village land boundaries for family direct consumption and for sale of handicraft products based on this raw material. These resources gained more popularity in local markets when population increased and caused greater demand for bamboos for consumption. In this situation, outsiders (village's neighbors and people from other places) entered the village land boundary and the harvest of bamboo resources became environmentally unsustainable.

In Sangthong, international NGOs including SNV, Gender Development Groups (GDG), and World Wide Fund (WWF) supported Lao Government to initiate the process for communal land titling (*bai ta din loaum mou khong lat*). It is noted that the title issued for Sangthong includes “*lat*” or “state” which means that the land is seen still to belong to government for a three year period.

The development towards titling the land communally is based on previous engagement by the NGO. Since 2007, SNV has supported Bamboo Handicraft Producer Groups (BHPG) - *Bamboo Handicraft Association Level in Sang Thong District* - to produce bamboo handicrafts to sell domestically and some of the products were sent to a neighboring country like Thailand. With this support, the bamboo handicraft association families made some money and the project perceived that to ensure their source of income is to secure a sustainable source of raw materials and a set of rule is created in order to control the harvest of the resource. This perception motivated the project to help communities to secure their rights to use and manage forest resources to prepare a participatory management of existing bamboo resources (Sayalath *et al.* 2011: 6).

As shown below, BHPG created a set of rules on harvesting of bamboo resources and environmental protection and it is agreed by the district governor:

- Harvest of bamboo poles for business activity without permission is prohibited,
- Bamboo poles that are younger than a year is not allowed for harvest for handicraft purpose,
- Bamboo shoots that are taller than 50 centimeters must not be harvested,
- Harvest of bamboo shoots must not exceed one thirds of its availability (BHPG 2009, Article: 5).

NGOs referred to Instructions, and Decrees as well as technical guidance on communal land titling of the Lao PDR to help local government authorities to develop a methodology to use and test the following potential steps and processes: public hearings with concerned villages; village consultation workshops; 1) development of common understanding with

private land owners bordering the proposed communal land; 2) confirming data or re-measuring land area by DLMA; 3) establishment land markers/poles; 4) finalizing official paperwork and submitting for approval from Land Management Authorities at Provincial level; 5) announcement of the temporary communal land title deeds; 6) waiting (for three months) for comments from involved villages and bordering land owners; and (if possible) 7) permanent land title is issued (Bounman, Phommasane and Greijmans 2012: 3).

As a consequence, four resource-communities were given CLTs of more than 2.000 hectares of land with bamboo, areas of classified production forest in 2011 (Sayalath *et al.* 2011: 6) under BHPG. The title can become permanent after three years without disputes over land use rights (Bounman, Phommasane and Greijmans 2012: 3). During this period, the communal land is still under the eminent domain of the government but must be used together by all people in the village including all ethnic groups according to the culture of the village. The communal land cannot be traded, or put into transfer, collateral, rent or concession to outside companies (LIWG 2012 <sup>(a)</sup>).

In Sangthong villagers can become BHPG members and if they are BHPG members they become rightholders in the resource niche of bamboo. Then they can also borrow money from SNV and use it to invest in bamboo handicrafts for sale (Bounmany, Phommasane & Greijmans 2012: 1). Being involved in this business means that villagers would spend time on producing bamboo handicrafts and they would work less on other activities. The result of this case because the resource niche in question was meant that only villagers from families that had labor to invest in bamboo manufacture including harvesting the raw materials from the allocated bamboo forests and making bamboo products gained financial benefits from the project. Poor families who formally as residents would also be seen as right holder in the eyes of the title deed often lacked labor for this bamboo work but had to look for day labor opportunities. They could not reply to the project fund because they could not produce the handicrafts as planned. Sometimes they had to spend the project

money on food and other necessary things including rice.<sup>121</sup> The result in Sangthong means that because of the biological nature and the kinds of resources inside the established common property a pre-selection of beneficiaries took place. In an ideal situation where every villager was seen as a right holder the families which did not withdraw the bamboo resources should be given a share of the benefits by being paid for the use of their rights by others.

The case of Sangthong is very different from customary communal tenure in Houaphan where all and everyone in the community knows and accepts who are members with the corresponding rights. It is not about choosing to become members of a group so Sangthong is not an Ostrom example of a CPR. The poor are excluded because of the way the induced institutional development was done. If a proper CPR the membership is clearly defined and the poor have equal rights, and if they don't use the rights to harvest bamboo, they can sell or lend their rights to others and gain an income. The example is Sukho Majri in India in FAO working paper written by Andersen (2010) where poor landless sell their rights in irrigation water as they have no land and gain an income from selling this right to others that are landed.

CLTs in the case of Sangthong has been heralded in Laos as a pilot<sup>122</sup> to be used to evaluate possibilities of replication in other areas, and to advocate for communal land tiling to become a widespread option in land titling in Laos. Lathoughtit is written in the communal land title in Sangthong that all people in the community including all ethnic groups according to the culture of the village have the right to use the communal land, the pilot in Santhong did not develop Internal Rules about sharing among everyone the rights in the land and how such rights would be carried out.

Up to now, several issues concerning CLTs including those of the Sangthong case remain unclear. Unclear issues in the actual registration of communal tenure would be of taxation if the fallow land is included in the title, transfer ownership, mortgage, inheritance,

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<sup>121</sup> Field visit to Bamboo Producer Groups in villages of Netherland Development Organization (SNV) project in Sangthong district, Vientiane Capital on 16 November 2011.

<sup>122</sup> A meeting on CLT that I attended during my field visit to Laos on 25th April 2011.

concessions and compensation (LIWG 2011<sub>(a)</sub>). These are all about the rights of communities or villagers to access to land and keep land fallow as part of the agricultural system and forest resources which need to be first clearly defined in relation to both the existing social institutional and the natural resource characteristics and then recognized by the government. Regarding this, the field study on communal tenure in Houaphan has more understanding on bio-logical characteristics of the common resources and matching customary institutional set up for how communities use and arrange them in a way that everyone including how the poor share benefits and responsibilities to keep the resource sustainable thus contribute to the national land management process.

An assessment of the results of the official communal land registration in Sangthong compared with the characteristics of customary communal land management institutions in my fieldwork area highlight a number of shortcomings.

In Sangthong, communal land was titled in names of the particular six villages where villagers would have rights of access, withdrawal, management and exclusion (as shown below). It is observed that the rights that would feature in internal rules in the case of Sangthong are linked to a management plan for specific Resource Units of bamboo only:

- |            |   |
|------------|---|
| Access     | Villagers have accessible right to bamboo resource for family consumption and for business although the title deed does not mention the word bamboo but "land".   |
| Withdrawal | The withdrawal pertains to bamboo resources. It does not give full rights to the community to cut down the bamboo and plant something else on the land. This is a rule understood in the community but it is not written. The object of withdrawal thus is the units of bamboo resource which are poles and shoots. Since the withdrawal of the resource is for family consumption and for an income the withdrawal rights of these two products are different because the two resource units are naturally different and they provide different social and environmental impact. For example, paying resource use fee is required when harvesting bamboo for |

sale in Sangthong and this does not benefit the poor.

**Management** The forest management plan says that villagers must survey the forest annually, patrol forest boundaries periodically, report on illegal harvesting, monitor the harvest to ensure sustainable harvest, for example, harvesting the bamboo of correct age class.

**Exclusion** There are two groups of communal right holders in Sangthong. The first group is original villagers who are primary right holders using bamboo products for their susistance. The second group is villagers who are members of Bamboo Handicraft Association making handicratfs from bamboo for sale. Based on personal interest and capacity to use the raw bamboo products for handicrafts for business, these second group communal bamboo users can leave the association and lose their right to use bamboo for business. Meanwhile, villagers who did not join Bamboo Handicraft Association in the first place can gain right to harvest bamboo for business if they apply to become the association members or if they send written request to village forest committee to harvest bamboo resource and if their request is approved by the entity with the right to approve the request. However, this entity is either forest management committee or governmental district authority and villagers may not be involved in the process of making decision to approve the request.

**Alienation** Alienation rights were not mentioned but it is the village forest management committee<sup>123</sup> that makes decision about the communal land.

In the case of Sangthong, neither statute to make the village legal incorporate as a right holding legal entity to manage the collective forest nor bylaws or institutional rules was

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<sup>123</sup> Village forest management committee is a legal entity comprising representatives from the Lao governmental organizations including village chief, village forester, village land management officer, village police, village security, Lao Women's Union, Lao Trade Union, Lao Youth Union, and Lao Front for the National Construction.



created. This means that communal land holders are not allowed to make decision over the expropriation of the land and resources and this remains the power of the government. Like anywhere else in Laos at present, none of the documents issued in rural areas fully gives security to the owner to exclude others from the use of the land (GTZ 2009: 10-11) and it is unclear how temporary communal land use certificates will be converted to permanent titles. At the same time, Sangthong is a lowland Lao village without need to have the shifting cultivation fallows registered as their communal tenure assets. This is a very important difference regarding replication elsewhere in the country.

Although the title says land, the issue for communal land title in Sangthong is the discussion from Ostrom on resource niches as the CPR product is only bamboo. According to Ostrom, rights in one resource niche compared to rights in total area to all land with clear physical boundaries are different. Resources niches are embedded in a common property like rights of households to particular resource niche, for example, small trees inside the common bamboo forest or tapping of resin from particular trees. In Sangthong the situation is different. We are not dealing with households' resource niches inside a full common property but with established rights of a forest association member to harvest the bamboo resources. Many other natural resources like mushrooms, wild vegetables, insects and small animals can be available within the bamboo resource system in Sangthong but they are not mentioned. In fact, the Sangthong case resembles the communal tenure arrangement for community forestry in Asia where the government delegates management for a time bound period. For Sangthong the final registration may be done with reference to a forestry laws, not land titling regulations.

For Sangthong the question therefore is what the legal entity that become the right holder in the title deed? All villagers in the village area or only members of the bamboo association under NGO support? Should these names be written down in official documents? How to update if there is a change of village composition, for example villagers move out and villagers move in? How about compensation to be given if communal land is taken away (by the government or by business) or the land is expropriated? Can the poor (labor

shortage families) benefit from communal resources through compensation for their rightful share that they do not effectuate?

Another example of pilot communal officially in Laos took place in Khammuan province, the Nam Theun 2 Hydroelectric Project (NT2) which has been implemented with funding from the World Bank. This has meant that a number of conditions were linked to the loan, among others that a fair share of the income from the running of the hydropower was ploughed back to the local communities that needed to be resettled to make room for the reservoir. The NT2 project has affected a number of ethnic villages that were moved from their original villages into the Nakai Plateau, the resettlement area consisting of about 32.000 hectares of land and forest.

As part of the business conditions mentioned above, the NT2 hydroelectric project has supported the resettled families to obtain private land titles for their residential land and communal land titles for agricultural areas. The project used PLUP to clarify types of communal land and issued a communal land title to the resettled families including by established Internal Rules their direct descendants in the Nakai resettlement area (ND 2012).

In January 2013, two years after CLTs in Sangthong were issued, the Provincial Office of Natural Resources and Environment (PONRE) and Nakai district in Khammuan province formally issued community land titles to 14 villages of more than 1.300 families for all their respective village land amounting to approximately 17.000 hectares. The titled land includes village forest land, community agricultural land, conservation and production forest land. An aim is to ensure the permanent access and use of land and to preserve natural resources for long term development by the villages (Vientiane Times: 18 January 2013). The case of Nakai communal land title is permanent, not delegated management because it is time bound for a number of years only.

Within the new village land territory, communal land includes different land categories which are endorsed by each village. They are cemetery land, agricultural land, forest land, drawdown zone and reservoir islands (for livestock grazing and planting of crops), road

and others (ND 2012: 2.1). It is therefore rather different from the Santhong case that grew out bamboo forest utilization only.

The villagers together with PoNRE established Rules and Regulation (R&R) on Collective Land Titles of the Nam Theun 2 Project, No 0212/NK, dated 24 July 2012. The R&R was approved by Nakai District Governor and it says: the Land Management Authority, a member of an eligible family, Village Authorities, or by any person or organization within or outside the village cannot either individually or collectively use communal land titles as collateral, sell, transfer, give as inheritance (except direct descendant), lease, and mortgage or lend the land. The R&R set penalties and fines for misuse of the communal titled lands or abuse of the rule. Village Authorities cannot unilaterally decide on an alternative use of CLT land and any change of CLT land use has to be endorsed by the majority, with 70% of eligible families. In the rule, the communal land right-holding families and their descendants, including second generation families (from the original resettled households by birth) can use the land. Other families that may have come to reside in the village cannot. The rules permit a large size family (of not less than six persons) to request for additional agricultural land but “all consisting of verifiable natural growth of resettlers” (ND 2012: 1-4).

In the regulations of Nakai CLT, social and economic vulnerable groups are prioritized. It is stated that communal land in Nakai is shared within the family but the land can be taken back by the village if it is not used productively for duration of three years. Regarding this, if the poor come from a family lacking labor they may not be able to use the land and may lose it (ND2012: 4-9). The available information from the Nakai shows that communal land title membership of Nakai is relatively clearly defined indicating right-holder criteria but it can be seen that the rule is problematic as villagers cannot have fallows of four years if land is taken away after three years.

In the Nakai area there were earlier examples of induced communal tenure for forest land through Village Forestry Associations. Regulations of the Nakai Village Forestry Association (VFA) were endorsed in 2003 by the district governor. These regulations were by

coincidence close to fulfilling all the CPR requirements of clear membership rules through statutes and internal rules for sharing the resources, e.g. the 2003 regulations say in the Article 11 that the community itself must develop “internal rules” (PAFO 2003).

According to the Deputy Chief of the Cabinet at Administrative Bureau of Khammouane Province, Sivixay Soukkharath, that community in Nakai needs to develop internal rules, based on the existing Law on Local Administration. Creation of the rules is, as he understood, under the responsibility of the local authorities and is not necessary related to NT2 project. Soukkharath further stated that each rule/regulation can be amended based on situations in reality, but after consultation with all stakeholders, especially with villagers (Soukkharath 2013).

The regulations of VFA are quite clear in the Ostrom sense of constitutional statutes and internal rules that the CPR holding families are allowed to transfer their right to use the land to their present family members who continuously are in the village for more than six months (KPAFD 2003: 4).

Today the constitution of the VFA has changed as plans were prepared to turn this arrangement into a forest management and exploitation company. The application of the rules of 2003 may no longer be valid.

The poor can gain benefit from the communal tenure through communal title that allocates the rights to communal property to all and everyone and these rights include options the poor may lend out the land to others in the same village (not outsiders) and receive the rent money. However, in the process of giving communal land title, it is needed to identify clearly the right-holders in communal tenure and the poor should be allocated rights but maybe not the same rights to common resource and this is Ostrom’s principle.

As said the VFA have changed and it is not indicated if communal land title of the NT2 project (2012) interfaces with the Regulations of the VFA dated 2003 so it is not known if constitutional bylaws or statutes are prepared, how the members of the village

authority are elected? What are the means for the groups to change the rules? Can they have general assembly in the village and change some rules?

According to the Deputy Chief of the Cabinet at Administrative Bureau of Khammouane Province, Sivixay Soukkharath, that community in Nakai needs to develop their own internal rules, based on the existing Law on Local Administration. Creation of such rules is, as he understood, under the responsibility of the local authorities and is not necessary related to NT2 project. Soukkharath further stated that each rule/regulation can be amended based on situations in reality, but after consultation with all stakeholders, especially with villagers (Soukkharath 2013). We see this example of the Nakai as a clear example of induced institutional development. While the ethnic groups that live in the resettlement area may have had customary communal tenure back home before they were moved, they have no history of communal land rights to resource niches in the new area so the way to gradually develop an induced arrangement has been to co-opt the characteristics of the customary arrangements with clear delineation of territory, boundaries and rights holders.

In particular, both Sangthong and Nakai are induced institutions and not reflecting customary communal tenure as found in Houaphan communities which mostly are shifting cultivators with fallow lands as part of their system and where all land is traditionally communal.

In Hoauphan, though not yet legally recognized, it is locally known to most that villagers themselves take the lead in the process of use and management. The land they manage is both upland rain-fed rotational fallow lands as well as in lower elevation irrigation paddy land. They understand that the rights that pertain to each kind of land as a corollary implies other kinds of associated rights such as raising fish in the water of the standing paddy rice or use the normally irrigated lands also in the dry season (Table 32-33) or obligation to establish fences. This understanding means that such rights are given to villagers under the agreement of communal land holding members.

In Houaphan, right to exercise the use of plots inside the communal paddy land in the lower land area is carried out as a right to a share of the common property periodically (for one year, for five years, ten years). The land is still common property though it occasionally may be is appropriated permanently by families that expand the territory or families that plant perennials, because all decision on a person's use of land is based on a collective choice situation.

**Table 32. Communal paddy (low) land right holders in Houaphan have many other related rights and they are created and accepted internally**

<b>Ostrom's "Bundle of Rights"<sup>124</sup></b>	<b>Right to use of land</b>	<b>Other rights borne out of the rights to land</b>
Withdrawal	<ul style="list-style-type: none"> <li>– Use paddy land plots for cultivating rice and other short-term crops periodically</li> </ul>	<ul style="list-style-type: none"> <li>– Seasonally raise fish and plant vegetables in the paddy land plots in the dry season</li> <li>– Collect wild plants, natural fish and insects from the paddy land plots</li> <li>– Harvest bamboo poles and small woods in the village use forest to make a fence around the paddy land fields, to build and to maintain traditional irrigation cannels, and to build water wheels important for rice and other crop production</li> <li>– Withdraw water from the river to feed into paddy rice plots</li> </ul>
Management	<ul style="list-style-type: none"> <li>– Participate in the village meeting on allocation of paddy land out of the common property. For</li> </ul>	<ul style="list-style-type: none"> <li>– Families who have the right to use paddy land share labour and responsibility and</li> </ul>

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<sup>124</sup> The details of five rights is in the section on *Theory on Common Property*

example, regulate the use of land by being involved in decisions about sharing, using and managing the village's common property of paddy land

- Allocate labour within family to cultivate the land
- Make sure boundaries of the temporarily appropriated plot of land are known
- Ongoing discussions with other right holders and guiding agricultural production
- Contribute rice or money to the committee for the body for the collective choice arrangements, often the village administration
- Participation in the general assembly of villages to determine right holders and determination of who are and who are not eligible to have rights to the paddy land

## Exclusion

make, for example, possible protection of agricultural crop from animal destruction by creating fence around the paddy land, building traditional irrigation and

- Exchange use of different land plots in each land sharing circle in order to allow fair benefit gained from what land and surrounded nature offers in relation to location, land types and surroundings
- Inclusion and exclusion are not only limited to people. Cattle are allowed to graze on the land seasonally. Also, collection of plants and small water creatures are allowed and this is related to who, when, where and how to harvest.



**Table 33. Communal upland right holders in Hoauphan have many other related rights which are created and accepted internally**

<b>Ostrom’s “Bundle of Rights”<sup>125</sup></b>	<b>Right use of land</b>	<b>Other rights borne out of the rights to a land parcel within the common property</b>
Withdrawal	<ul style="list-style-type: none"> <li>– Sow and harvest crops in land plots in the upland/hills for cultivating rice and other short-term crops.</li> </ul>	<ul style="list-style-type: none"> <li>– Rights to appropriate trees cut down during the land preparation process to make fence around the rice plots to protect the crops from animal invasion.</li> <li>– Use the cut down trees as firewood.</li> <li>– Plant fruit trees and industrial trees in the cultivated plots and harvest them. This parcel of the household is still part of a common property or communal tenure because it is not a permanent claim over the land that others will get access to the land if perennials are harvested.</li> <li>– Collect wild plants and insects available in the claimed rice land plots.</li> </ul>

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<sup>125</sup> The details of five rights is in the section on *Theory on Common Property*

## Management

- Based on the collective choice arrangement a household communicates with other upland rice families in the village to agree on an upland area and plots to cultivate.
- Based on the collective choice situation the community makes sure a family does not select the same plot already selected by another family through talking to each other to inform where they will select as a plot to grow rice.
- Pay land use fee (rice or money) to the village administration cost.
- Based on collective choice arrangements each year families agree on the new areas for each of them to cultivate.
- The community exercise collective choice in a way that villagers discuss with each other what to grow on the selected land plots.
- Coordinate through meetings the management of the land through planning the timing of sowing and harvesting
- Exchange seed with each other within the village makes up safety net to provide individual households enough seeds. Sowing is coordinated to make harvest happen roughly at the same time.
- Collectively make fence around the collective area of individually claimed parcels/plots of several families' cultivated area (for many plots used by different families) to reduce demand of labour, time and materials.
- Decide on production circle and this is based on discussion and agreement among upland rice families who cultivate within the same common

- property landscape that is shared through allocation of parcels to individual households the same land area.
- Collective choice arrangements call for villagers to participate in the process of creating and enforcing rules on what crops they can and cannot grow on the land.
  - Other families will not use the land plot other families are planning crops on the land.
  - Cattle are kept out of cultivated land before harvest through joint efforts.
- Exclusion
- Based on collective choice arrangement villagers participate in a village meeting to make decision on who are and who are not eligible to use a particular area of village communal land in the hills. This decision is made by a committee that includes informal leaders (representatives of ethnic groups, clans/families and gender) and village headman elected by villagers.
- Alienation
- Upland land right holding families in the village can use the land plots that are not claimed by other families in a given season allow and this happens in a circle.
  - Villagers collectively agree that families that grow perennial trees on communal land in the upland can sell the perennials they individually invested to families in the village or from outside, but this

sale comes under a condition that only the perennials are sold, not the land and the land is still common property.

Registration of CPR in Laos would preferaly be carried out in the future based on formulation of two set of rules: constitutional statutes on governance that define right holders (and implicitly who are not right holders) and internal rules on how to share internally. These are salient characteristics of successful CPR that Sangthong and Nakai are still missing although Nakai is a better example which may work out. In Sangthong, it seems that the rules on bamboo harvest and membership in the rightholding group is created by the international project in collaboration with the government based on their technical knowledge. It has ignored recognition of traditional practice on harvest of resources niches (for example, mushroom, small wood, and wild plants) from within the bamboo resource system and it has ignored the right of those in the village who are poor and who will not be members of the established association.

For Sangthong and Nakia committees under the institutional structure of collective choice must be assigned clearly defined roles and responsibilities to take lead in creating rules in a participatory manner on how to withdraw, use, manage common pool resources and implement the rules. This is part of the long term sustainability of the institutional framework for common property management.

## **CONCLUSION**

A developing country like Lao PDR is struggling to gain recognition from other countries in the world. This requires that the country applies a human rights perspective to governance of land. In this case the land rights are the rights of the ethnic groups in the uplands that practice customary communal tenure. These groups would like the government to accept and register their communal land use legally. The first step towards this is in the development of the National Land Use Policy which is still in draft. This study provides evidence-based arguments for the inclusion of a respect for customary communal tenure in the land policy.

The field study on communal tenure in Houaphan can serve the government in terms of integration of local land governance aspects into its development planning process. The research has brought an increased understanding on biological characteristics of the common resources and how communities use and manage such resources in a way that everyone including how the poor share benefits and responsibilities to keep the resource sustainable and thus contribute to the national land management process.

The research analyzed how local ethnic group farmers in Houaphan view the resources that they have traditionally used as the property of their community. They have communally organized institutions that provide sufficient incentives to ensure equity in access to land and for the farmers to invest in enhancing the productivity of the resource system through internal rules that assign rights to individual households, while protecting the outer boundaries. These rules are oral internal rules. They are collectively created, used and developed by generations of villagers. The internal rules include characteristics of natural and social aspects and they support the improvement of local life in terms of protection of the resources for future use.

The research has found that the communal tenure system in Houaphan is slowly affected by legal land and forest management activities of the government, particularly where the government does not integrate local practice of use and management of local resources of local ethnic people.

Currently, many international and local business investors are looking at natural resources in Houaphan province as business destination. Evidence-based research result shows that it is necessary to protect the land of the ethnic groups to safeguard against land loss to business activities which may be planned without considering existing communal tenure. Many local communities will lose their customary rights to their common property resources and the country will at the later stage have to address more complicated political issues if local communities see that they are losing land to outsiders.

The evidence-based findings of this research suggest an option that communal tenure rights of local communities in Houaphan should be legally recognised along with provision of clear set of management rules and the formation of the village as a legal entity to fully exercise the management of the resources through an issuance of communal titles to the land parcels that make up the common property of the village. The communal tenure should include the fallows of the shifting cultivation uplands and all the customary communal tenure of upland and lower land communities. The cultural and social dimension of communal land use is a critical aspect to consider in order to work out strategies for the future development of rural life in the province. This will lay a foundation for local people to improve their social-economic condition and ensure their participation in the country's development process.

The study has applied selectively the theory of Thomas Højrup to form a macro view of the country's development process in the remote areas. As part of the interpellation conditions highlighted by Højrup, the country is experiencing a profound process of transformation. The Government of Laos organizes local societies and re-arranges land and forests in order to transform a traditional subsistence economy to a market economy.

In practice, interpellation does not always turns out successfully because many economic development activities destroy a local practice that is worth preserving in terms of livelihood and human rights of the communities. This happens in particular where traditional common property systems are found and the systems that have existed long before Lao PDR came into being.

The transformation means change and this change is a question that needs to be clearly answered before communities agree to participate in the development process. Where such change is proposed by outsiders, local people need to know that it brings to them better results in comparison to what they already have. Otherwise they are reluctant to participate in the country's transformation process as they value their own customary ways. This reveals that not only the country's worldview, but also the view of local people towards how communal resources should be managed is important for the transformation. So far the local perceptions and practices of communal tenure is not widely understood by government officers and the more studies that are carried out to feed into the finalization of the land policy and new land law the better.



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