

**Ministry of Agriculture and Forestry  
Department of Agricultural Land Management**



# **Governing Communal Land in the Lao PDR**

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Miles Kenney-Lazar

A review of literature on communal land in the Lao PDR, commissioned by Department of Agricultural Land Administration, Ministry of Agriculture and Forestry, Lao PDR.



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## **Abbreviations**

|         |   |
|---------|---|
| CALM    | Communal Agricultural Land Management                   |
| CLRT    | communal land registration and titling                  |
| DALAM   | Department of Agricultural Land Management              |
| DOLA    | Department of Land Administration                       |
| DONRE   | District Office of Natural Resource and Environment     |
| GDA     | Gender Development Association                          |
| GIZ     | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| GRET    | Professionals for Fair Development                      |
| ha      | hectare   |
| Lao PDR | Lao People's Democratic Republic                        |
| MAF     | Ministry of Agriculture and Forestry                    |
| MONRE   | Ministry of Natural Resources and Environment           |
| NLMA    | National Land Management Authority                      |
| NT2     | Nam Theun 2 Hydropower Project                          |
| NTFP    | non-timber forest product                               |
| NTPC    | Nam Theun 2 Power Company                               |
| NUDP    | Northern Uplands Development Program                    |
| PLUP    | Participatory Land Use Planning                         |
| PM      | Prime Minister  |
| SNV     | Netherlands Development Organization                    |
| SUFORD  | Sustainable Forestry for Rural Development              |

## 1. Introduction

Communally used land and resources comprise a critically important dimension of rural livelihoods in the Lao People's Democratic Republic (Lao PDR). Communal lands provide many benefits to villages, such as ecosystem services, subsistence food and resources, forest and agricultural products that can be sold for income, and spaces for the performance of religious rites. Communal land includes many different types of land, such as agricultural lands, forest areas, agroforestry spaces, grazing lands, sacred forests, and burial grounds. Rural people use lands communally to conduct a wide range of important activities, such as to plant rice and vegetables in swidden agricultural systems, collect edible and medicinal non-timber forest products (NTFPs), hunt and fish, collect firewood, cut timber for house construction, and conduct religious ceremonies.

Communal land is distinguished as a resource used by many or even all members of a community. It is a space that functions best when used collectively, rather than divided up individually. For example, grazing land is often used communally because livestock need a large area to roam freely, and as the forage that they feed upon does not grow evenly across such spaces, subdividing would be an impractical use.

Despite the importance of communal land use in Laos, regulations governing the registration and titling of communal land have only been recently issued. Prior to the issuance of new regulations in 2007, the legal framework only covered the registration and titling of individual land. While recognition, protection, and management of communal land is built on much more than a land title, land formalization can be beneficial for communal land tenure security and governance. They can be used to protect communally used land and resources from expropriation or extraction by external actors. Communal land titles can also serve to prevent elites within a community from unsustainably and unfairly selling off or leasing community land and resources. Titles can help clarify land ownership boundaries, such as separating communally owned land from land owned by individuals or the state. Additionally, the process of communal land registration and titling (CLRT) can be accompanied by the development of a management plan to ensure that the resource is used sustainably and equitably.

There has been a renewed focus on registering and titling communal land throughout Laos in the past half-decade. This has been in part due to the issuance of three documents that provide legal support for CLRT (albeit support that remains incomplete and unclear): Ministerial Instruction 564/NLMA (2007) on Adjudication of Land Occupation Right for Issue of Land Title, Ministerial Recommendation 6036/MONRE (2014) on Land Registration and Issuance of Land Titles and Decree 88/PM (2008) on the Implementation of the Land Law (hereafter abbreviated as Instruction 564, Recommendation 6036, and Decree 88, respectively). Recommendation 6036 updates many aspects of Instruction 564. Efforts to formalize communal land have been further aided by two successful cases of issuing communal land titles, based upon the new regulations. Communal titles have been issued for the bamboo forests of five villages in Sangthong district, Vientiane Capital and for all non-individual land of 10 villages resettled by the Nam Theun 2 hydropower dam in Nakai district, Khammouane province (Schneider 2013). While these two cases have shown the potential for issuing communal land titles in practice, they have not been reproduced elsewhere throughout the country, although there are an increasing numbers of cases where the first steps towards CLRT have been pursued. This shows that CLRT, although possible, is not easily and quickly implemented, in part because certain aspects of the process remain unclear and also because it is not being pursued systematically, but only sporadically on a project-by-project basis.

One common assertion of studies and reflections on CLRT, in Laos and elsewhere, is that registration of communal lands is not an end in and of itself and that activities and support must extend far beyond the issuance of the title (Seidel *et al.* 2007). While the title legally empowers communities to protect and manage their communal lands, there is a need to provide follow-up support for the management and governance of the land to ensure that it is used equitably and sustainably, thus maximizing the benefit of the title. This includes the establishment of rules for use, rules for decision-making processes, incentives for good management, monitoring of management practices, and enforcement of penalties or fines when rules are not followed. Doing so ensures that communal land titles become a living document with actual positive impacts upon people's use and ownership of land rather than just a piece of paper. As Dwyer and Devjongsa (2017) have pointed out, land tenure security is much more than a title and it is possible to achieve the former without the latter.

The aim of this literature review is reflect on the possibilities for improving the tenure security and governance of communal land by considering the development of a communal agricultural land management (CALM) model. CALM is a project led by the Department of Agricultural Land Management (DALAM) of the Ministry of Agriculture and Forestry (MAF) in cooperation with the Department of Land Administration (DOLA) of the Ministry of Natural Resources and Environment (MONRE). The ultimate aim of the project, as stated in the project document is to “develop, pilot, review, and promote a good practice CALM model that will be applied after registration and titling, based upon village participatory land use planning and the relevant regulations of land use. The model will be designed to be replicable and able to be implemented in Lao PDR to safeguard communities' communal land tenure security”. This literature review is a preliminary activity of this project, the purpose of which is to 1) summarize and analyze how communal land is managed, governed, registered, and titled in Laos, 2) identify gaps in knowledge that need to be addressed in a field study to be conducted under the project, and 3) make recommendations concerning the development of the CALM model. The literature review is aimed at grounding understanding of communal land management in Laos as well as thinking through the remaining challenges and questions that the project must address.

This literature review is divided into four sections. After this introduction, the second section provides an overview of the context of communal land use, registration, and management in Laos. It starts with a review of how communal land has been customarily used and tenured in Laos. It then examines the legal regulations and policies that govern the tenure, registration, and titling of communal land. The final sub-section discusses two successful cases of issuing communal land titles in Laos. In the third section of the report, we discuss some of the remaining questions that need to be considered, investigated, and addressed throughout the rest of the project, particularly in the field study, in order to develop the CALM model. The fourth and final section provides some recommendations concerning how the CALM model might be developed, what needs to be further considered, and what it might eventually look like.

## **2. Communal land in the Lao PDR**

### *2.1 Customary use of communal land*

Rural people of Laos have used various types of land communally for centuries. Communal land management is an approach to land and resource use that has been well adapted over many years as small changes and innovations are made to meet community needs in a sustainable relationship with the environment. Communal land is an important land use that

comprises a critical resource asset for rural people’s livelihoods. However, communal land is a resource constantly under threat in the Lao PDR in part because it is not protected by the legal framework via land registration and titling. Most communal land is only under customary land tenure, which is not legally protected in Laos. Thus, there is much to be done to improve the tenure security of communal land in order to protect the livelihoods of rural Lao people.

In a study on communal land registration in the Lao PDR in which over twenty villages in five different provinces were visited, it was found that communal land is used and managed by all ethnic groups (Seidel *et al.* 2007). A variety of different types of lands were used communally, including swidden fields and fallows, grazing lands, and communal forests for collecting non-timber forest products (NTFPs) and lands that have religious elements (e.g. sacred forests). A table from their study is reproduced below (Table 1) showing lands which were identified in at least one of the villages visited as being communal (although these land types may be used individually in some villages).<sup>1</sup>

It is important to recognize that communal land can have different meanings to different communities and groups of people. Seidel *et al.* (2007) found that communities expressed four different meanings of “communal lands”: village territory that is 1) not individually claimed, 2) preserved and protected for the common good of the community, 3) available to all households with equal rights and duties, or 4) used to facilitate communal public services. Thus, communal land management models and plans must be guided by a diversity of local perspectives.

| Agricultural land             | Forest land           | Cultural land  | Construction land |                                      |
|-------------------------------|-----------------------|----------------|-------------------|--------------------------------------|
|                               |                       |                | Public facilities | Residential places                   |
| Grazing areas                 | Village use forest    | Temple areas   | Schools           | Reserved land for house construction |
| Upland fields                 | Rehabilitation forest | Cemeteries     | Markets           |                                      |
| Reserved land for agriculture | Protection forest     | Sacred forest* | Recreation areas  |                                      |
| Fish ponds                    | Sacred forest*        |                | Health stations   |                                      |
|                               |                       |                | Wells             |                                      |

Table 1. Types of communal lands. Source: Seidel *et al.* (2007).

\*Sacred forest fits in both the forest and cultural land categories

A typical misconception about communal lands, in Laos and elsewhere, is that they are open access, meaning that anyone in the community can use them in whatever way they would like. This longstanding and misguided assumption was famously termed the “Tragedy of the Commons” by the biologist Garrett Hardin (1968). He argued that commons, such as livestock grazing areas, will inevitably be overused because each user will seek to maximize individual gain at the expense of the common resource. His ideas, however, have been disproven over time by the Nobel prize winning political scientist Elinor Ostrom and her team of researchers who have shown, empirically and conceptually, that common pool resources

<sup>1</sup> The table uses the land categories established in the 2003 Land Law for purposes of comparability and clarity of statutory legal rights to such lands.

can be and actually are governed sustainably all over the world (Ostrom 1990, Agrawal and Ostrom 1999). This occurs because communities create rules, otherwise known as institutions or the “rules of the game” (North 1990, Leach *et al.* 1999), that they follow and enforce in order to ensure that the resource is used without being overexploited. They effectively argued that Hardin’s tragedy referred to open access resources, like international waters or the atmosphere, that are not (yet) governed by effective rules, rather than common pool resources which often are. Thus, an important component of understanding common lands in Laos is understanding the rules that govern their use. Community members cannot just use the land in any way they would like, but must follow communal rules and norms.

Bounmixay’s (2015) detailed ethnographic study of communal land systems among Tai Deng and Hmong communities of Houaphan province in northern Laos, demonstrates the importance of rules and institutions. She shows how villagers have developed their own customary rules for managing their communal lands and resources over long periods of time, passed down by each generation. More recently, these rules have in some cases been endorsed by district officials, as long as they do not violate the land law and other relevant legal regulations. For example, Tai Daeng villagers decided to create a communal area for grazing cattle on forest land that was not used by any households. Villagers contributed money and labor to fence off the area so that cattle would be prevented from escaping and damaging rice in the nearby paddy lands. They also instituted rules for using the grazing area, such as how closely villagers should watch their cattle. They then showed this area to district officials, who later included it in a land and forest management and use map, thus showing a positive example of the integration between village-level rules and official government regulations.

The rule-making and decision-making power over rural lands in Laos is typically held by the village chief (*nai ban*) and the village committee, as well as committee members responsible for land and natural resource use, such as the village land official and village forester. However, village elders often play an important role in enforcing customary rules and regulations concerning land. Seidel *et al.* (2007) found that in some villages a variety of different traditional leaders, clan leaders, shamans, or fortune tellers played important roles in making decisions or mediating conflicts regarding common lands and resources. The most common type of customary rule governing communal land and resource use is that of the taboo, the forbidding of a particular practice of extracting resource. Bounmixay (2015) shows how customary village elders and clan leaders in Hmong villages often become formal village leaders and thus have greater authority over land and resources because they are in an official position and are respected by villagers.

When reflecting upon the importance of communal land in Laos, it should be recognized that just because the land is owned and managed communally does not mean that individual rights to use such land do not exist. Communal lands are often used with a mix of collective and individual practices. A common principle that often governs access and ownership over resources in many villages across Laos is labor, effort, and time – the fruit of one person or household’s labor belongs to them, even if they expended such effort within a common resource area. For example, Seidel *et al.* (2007) discuss a case from their research in which there is a pond in a village that is communally accessed and used, but when a young man released fingerlings into the pond to raise fish, all of the fish belonged to him.

Similarly, upland areas used for swidden agriculture are typically conceived of as being communally owned, but plots are used and belong to individual households during the time when they are under use, and in some cases over a longer time period if it is established that the household will return to fallow areas to use them again. There are a variety of different approaches that are used in different villages and across different ethnic groups to balance communal versus individual use. In Khmu villages in Phongsaly province, studied by Seidel *et al.* (2007), the whole village rotated annually between different large blocks of land for upland rice cultivation, which was then divided up among individual households. For an Akha village in Luang Namtha province, the location of individual household swidden fields within a larger area of communal land was discussed by all of the households and approved by the village chief – the size of the land allocated to each family was based upon labor availability.

Furthermore, individual and communal uses of land are combined with one another in various ways. Seidel *et al.* (2007) discuss how rights to land and resources are only linked to certain aspects of the resource at particular times, reflecting a more natural interaction between humans and the environment that cannot be captured by modern property systems. For example, they discuss how paddy rice fields and the rice harvested from them belongs to individual households during the planting, growing, and harvesting seasons. After harvest, however, the fields become a communal grazing area for all livestock in the village. Thus, it is important to take into account how communal land in Laos is used in heterogeneous ways that combine both individual and collective elements.

## *2.2 Communal land registration and titling: Regulations and policies*

As mentioned above, legislation regulating the registration and titling of communal land is relatively recent in Laos. It fits in with a broader effort by the government to clarify land use and ownership throughout the country as part of the government's aim to improve the country's legal framework and become a "rule of law" state by 2020 (MOJ 2009). Part of this effort has been to clarify the differences between state, private, and communal or collective land, the three types of land that can be titled.

The basis for formalized communal land tenure in Laos is the Prime Ministerial Decree No. 88 (2008). Article 3 states that communal land is the land and natural resources for which the state has granted the right to communal use by villagers, organizations and state organizations (following article 59 of the 2003 Land Law). Collective/communal land is further defined in Instruction 564 as land belonging to co-operatives and communal organizations or village lands commonly used by groups of people or ethnic groups in a village. Communal land is defined to include lands allocated to households for seasonal agricultural production without any household owning such lands, village use forests (production forests), sacred forests, lands for traditional or religious rites, common grassland used for livestock grazing or other purposes, and other lands commonly used by the community. In contrast, Paragraph 4.11 of Instruction 564 states that individual or private land is land that does not belong to the state and can be proven to belong to the individual, either by land adjudication documents or by peaceful and lawful occupation and use (either for 10 years or longer, following resettlement,

or following customary practice). State land is all land that is not titled as individual or communal land belongs to the state and can be titled as such (article 3 of Decree 88).

Generally, the legislation on communal land titling in Laos is viewed as quite progressive in comparison to other countries. Unlike in Cambodia, the right to apply for communal land title is not tied to indigeneity, thus opening it up to all villages and citizens. Baird (2013) views this approach as more progressive as many non-indigenous groups also use communal land in both countries and could benefit from its protection.

However, there are also important restrictions on communal land titling and ownership in Laos. There are several aspects of the communal land registration and titling legislation in the Lao PDR which indicate that even communally titled land is not outright owned by the community, but represents a “delegated management model” (Andersen 2011, 1) whereby the state continues to claim ownership of the land on behalf of the community. Article 3 of Decree 88 states that the even though the collective title is issued to the co-operative, collective organization, community, or ethnic group, the land is managed by the government. Collectively titled land in Laos also cannot be sold, transferred, leased, or allocated for a concession. Finally, titling cannot occur in protection forest areas and conservation forest areas and thus it is clear that it applies only to production forest areas, village use forests, and other uncategorized forest areas (article 7 of Decree 88).

The protections and rights that communal land titles actually provide to communities in practice remain an open question. There is much to be learned concerning how decision-making regarding such lands will occur and who will have power in such processes. That the state maintains management rights while the community only has the right to use the land (for commercial or subsistence ends) indicates that the community may have little control over such lands. Additionally, while the state cannot grant land use rights to other actors within titled communal lands, Liu and Sigaty (2009) point out that there are no legal protections that prevent the state from requisitioning such lands (and potentially transferring them to other actors later on).

In addition, there remains a lack of legal clarity concerning how CLRT should be implemented in practice. There have been two successful cases of the registration and titling of communal land (see more in section 2.3 below), but they occurred with support of donor agencies and thus should be treated as exceptions that cannot be easily replicated (Liu and Sigaty 2009, NLMA and LIWG 2012, Schneider 2013). Beyond these cases, it remains unclear how communities that are not supported by a project would go about registering and titling their communal land. According to guidelines from the Sustainable Forestry for Rural Development (SUFORD) project for registering and titling communal forest areas (SUFORD 2015), the Law on Local Administration (article 47) gives the village the legal right to apply for land use certification or registration of village use forests. An application for a communal land use certificate should first be submitted to DONRE. After the land certificate is issued then it should be inspected three years later by DONRE to ensure that it complies with requirements and regulations, after which the village can apply for a land title. The rights and obligations for village use of the land would then be determined by a village forestry agreement and village forestry management plan.

One legal challenge concerning the registration and titling of communal land is that it is not always clear what land is eligible for formalization. The legal distinction between communal and state land is a challenge that has long vexed land governance in Laos, especially as communal land is often referred to as state land so that it can be granted in concessions to agribusiness and resource extraction companies (Dwyer 2007, Baird 2011). As discussed above, Decree 88 states that communal land is land that has been granted to the community by the state for communal use, individual land is land that has been granted to individuals for their use, and state land is the land that remains. The problem, however, is that much communal land customarily used in Laos has not been officially granted to communities for use and thus can easily be claimed by government agencies as state land. The remaining question is how to determine what land is granted as communal land. As the village is the lowest administrative level in Laos, all land within the country technically falls within the boundaries of villages and thus they cannot simply claim that all non-individual land within their territories is communal.

Although there have not been any additional legal documents created or passed by the government since Instruction 564, Recommendation 6036, and Decree 88, there have been attempts to create guidelines or recommendations concerning such a process, which can prove instructive. One such attempt is the Draft Guidelines for Registration and Communal Titling of Village Use Forests in Production Forest Areas (SUFORD 2015), created by MAF with support from SUFORD. While these guidelines are specific to communal forest areas within production forests, there are three key lessons that can be learned from them to be applied to other communal land areas:

First, article 4 states that one of the first steps that should occur is the identification of the location and boundary of village use forests and one prominent way to do so is through participatory land use planning (PLUP). PLUP is particularly useful for CLRT because it can achieve a number of goals which are essential for CLRT and CALM, and the process for PLUP is already so well defined in the manual (MAF 2010). PLUP can a) identify existing customary uses of communal lands, b) identify and settle disputes concerning boundaries, use or access, if any, c) survey and demarcate boundaries of communal lands, and d) define the users and main principles of use of communal lands, e) collect all other data and fill out forms needed for CLRT (SUFORD 2015, Article 8).

Second, for the registration and titling of communal use forests, it is written that a village forestry management agreement and management plan must be developed (articles 12 and 13). These are written documents created in collaboration between the village and government. The agreement specifies the rights and obligations of the village forestry unit, PAFO, and DAFO and should be based upon the approved PLUP. The management plan is developed by the village administration and forestry unit with technical support from the District Forestry Office. It should be based upon the PLUP and village forestry agreement and should define a) existing customary rights, b) basic principles for sustainable management, preservation and utilization of village use forests, c) rights and duties of parties involved in the management of village use forests, and d) the principles of benefit sharing. According to the guidelines (article 13), the management plan shall give the village forestry unit the right to

make management decisions, such as concerning when forest products from the use forest will be sold and who the buyers will be.

Third, the Draft Guidelines state in article 14 that it is only after PLUP and the signing of the village forestry management agreement can the village administration apply for the land use certificate or registration of village use forest. As defined in article 19, the user rights for the village use forest are then based upon the village forestry management agreement and village forestry management plan. These rights include the right to protect, right to use, and the right to benefit from the use but not the right to transfer, lease, or grant concessions or use the land as collateral.

### *2.3 Cases of formalized communal land tenure*

Thus far, formal land certificates or titles to communal land have only been awarded in two locations in Laos (Schneider 2013). The former National Land Management Authority (NLMA, which has been since incorporated within MONRE) awarded the first collective land use certificates to five villages of Sangthong district, Vientiane capital, in 2011. Later, the governor of Vientiane province issued communal land titles in 2012. The titles covered 2,189 hectares (ha) of village forest area and were issued with the support of a bamboo value chain project supported by the Netherlands Development Organization (SNV) and implemented with the Lao non-profit Gender Development Association (GDA) (Sayalath *et al.* 2011). In Nakai district of Khammouane province, 14 hamlets that were resettled to make way for the Nam Theun 2 hydropower dam received permanent title to communal agricultural and forest areas in 2013. The small number of cases of formal registration of land since the issuance of communal land legislation shows that there are serious challenges in formalizing communal land tenure in Laos. However, there is much to learn from these examples, which is the focus of this sub-section. Additionally, other cases where communal land has been registered, but not titled, are discussed.

In Sangthong district, CLRT was pursued after previous land use zoning and titling efforts had already been carried out (Schneider 2013). A PLUP process was already conducted and after villagers had already received temporary certificates for individual agricultural land and permanent titles for individual housing land. Then, with project support, the village applied for collective temporary land use certificates for village production forests that covered a period an initial period of three years. It was ultimately decided that the communal land would not be taxed and the SNV-GDA project paid for the service charges and land registration fees.

In Nakai district, permanent land titles were issued for collective land to 10 villages resettled by the Nam Theun 2 hydropower project (NT2). This was not based upon the hydropower project agreement but upon a decision made by the Khammouane Provincial governor. This was important in part because the amount of agricultural land allocated to resettled households was seen as insufficient for subsistence and there was a general concern for security of land tenure throughout the resettled area (Schneider 2013). Like in Sangthong district, a PLUP process was followed first to ensure that the appropriate areas for agricultural land were chosen and that land use zones and boundaries were clearly established. Use rights and responsibilities for different land types were established as part of the PLUP process.

These rules and responsibilities were eventually merged into a set of Community Land Title Regulations. It also discusses rights, safeguards, and consequences for misuse. Funding for PLUP and CLRT was provided by the Nam Theun 2 Power Company (NTPC). Titles were issued in 2013 for three different types of collective land: village forest land, agricultural land, and “public benefit land” for village buildings including a market, school, rice mills, and warehouses. The communities were exempted from a land tax and the NTPC paid for all service charges and titling fees.

Despite the success of issuing land titles in these two cases, several challenges were met in each case. One important challenge faced was that the CLRT process was not sufficiently participatory. Although the projects targeted rural beneficiaries, they were still designed and funded by donor agencies, in partnership with the Lao government, and thus may reflect the interests of such organizations over those of the community. This occurred in the Sangthong case: although the communal land certificates were developed for village bamboo forest, few of the residents report harvesting bamboo from such land (Schneider 2013). In one village the villagers even designated the communally titled land as village protection forest and prevented the harvesting of bamboo from there because they felt that villagers had access to enough bamboo on their own land (a trend showed that villages with more private forest land were less likely to use the collective land).

Second, the legislation was interpreted in significantly different ways for each case, reflecting the different interests and approaches of donor agencies and local officials (Schneider 2013). For example, only village bamboo forests were registered as communal land in Sangthong while all non-individual lands within the village territory were registered in Nakai. Similarly, in Sangthong the village authorities make decisions regarding the communal land while in Nakai decisions are made by voting in which each resettled household has one vote.

Third, in the Sangthong case there was a mismatch between the management plan and the collective titles. The management plan established rules of use among bamboo user groups which did not completely overlap with the collective land title, which was based upon village membership and controlled by the village forest management committee (comprised of all major village officers). This could lead to conflict or lack of clarity concerning management among the two groups. It could also lead to a situation in which the owners of the collective land, the village members, do not have a management plan. This may explain why villagers interviewed had different understandings regarding the rules for accessing and harvesting from the collective land (Schneider 2013).

Despite these challenges, villagers in Sangthong district were still satisfied with the collective land certificates and even hoped to register and title other types of common lands. However, the benefits that villagers mentioned were intangible or immaterial. They were more concerned with issues such as ease of management, avoidance of conflict, protection of land from outsiders, and protection of the environment.

Although communal land titles have only been issued in two locations in the Lao PDR, there have been preliminary steps taken toward doing so. GIZ and GRET have been experimenting with CLRT in 12 villages of Viengxay district, Houaphan province, but have thus far only conducted registration and adjudication of communal lands prior to titling (Sirivath 2015).

Discussions and a workshop held with villagers showed that they had an appreciation and desire for communal land titles based upon a number of common advantages that they saw: a) communal titling helped to clarify boundaries of the village and land use zones (similar to the effect of PLUP), b) communal titling could help to limit and prevent land-related conflicts, c) communal titling could help to ensure more sustainable management of the land, d) communal titling can prevent others or individuals from claiming the village land, thus strengthening land tenure security, and e) communal titles could help villagers to receive compensation if there were a development project within the boundary of the communal land. These perceived benefits of communal title mirror those identified by villagers in Sangthong district (Schneider 2013).

The villagers also noted a number of remaining challenges and questions: a) there are no regulations that govern how the land will be managed after it is registered and titled, b) there were questions concerning what would happen if the village wanted to enlarge or reduce the size of communal land after it is already titled, c) the loss of an opportunity to get individual land registered, such as household paddy land included within a communal land area, d) the amount of control that the state may still have over communal land, thus threatening communal land tenure security.

The Northern Uplands Development Program (NUDP), a donor-funded program covering three northern provinces of Phongsaly, Houaphan, and Luang Prabang, has largely focused on individual titling but since 2014 has transitioned towards communal land registration and titling. By the end of 2015 they had registered communal agricultural and forest areas in 29 villages, covering 257 plots and 11,260 ha, but had not yet issued any titles (Vientiane Times 2015).

Based upon these experiences there are important lessons that can be learned for pursuing CLRT and related activities in other communities:

- CLRT is likely to be most effective if conducted in parallel with other land use planning and titling efforts, such as PLUP, the creation of village forestry management plans, and the titling of individual agricultural and housing land.
- The cost of CLRT for communities can be high and thus it is important that either there is funding provided to assist them or ways are found to reduce the costs
- It is important that communal land titles match the interests and needs of the communities. Thus, close participation from the communities throughout the process is important.
- To ensure that communal land titles are valuable for communities, it is important that the land titled provides the maximum amount of benefit and number of uses to the community. This will inevitably include both tangible and intangible benefits.
- Processes must be put in place to ensure that any marginalized or vulnerable community members who do not normally participate in village governance processes are given a voice in discussion and decision-making.
- There is a need to develop a management plan as part of CLRT to ensure that communal land is sustainably and equitably managed.

- The management plan for communal land must clearly specify the rules for use, the process of monitoring, and the fines that will be put in place for any infractions.

### **3. Remaining questions**

Although much can be learned from the literature on communal land concerning the practices that should be incorporated into a CALM model, there are many remaining questions that ought to be reflect upon, discussed among various actors, investigated via fieldwork, and tested in trials. Here, we summarize these questions.

- What interest do communities have in pursuing CLRT and CALM? How important is it to them that their communal land tenure is formalized and that the land is managed under a plan? What lands would they want formalized and managed and for what reasons? What costs would communities be willing to bear in order to achieve these goals?
- What types of land would communities want to be put under communal title and for what purposes? There should be deliberative discussion concerning the advantages and disadvantages of CLRT and CALM for different types of land.
- What type of governance arrangement would best suit community needs, lead to sustainable management of the land and resources, and meet legal requirements? Who are the different actors that should be involved in making decisions regarding the management of common land and what roles should they play? What arrangements would be equitable, inclusive of all community members, and also efficient and effective?
- What types of rules need to be put in place in order to ensure that community members equitably and fairly benefit from the resource but also that the resource is sustainably managed? How would individual use rights to communal lands be decided? What types of penalties and incentives should be established? How will rules be monitored and enforced? What approaches are most cost effective?
- What procedures need to be established to prepare for situations in which external actors use communal land without approval, such as in the case of extracting timber or NTFPs or if an investor is awarded a lease or concession upon such land? How will villagers ensure that their communal land title is effective in protecting their access to such land and their ability to exclude outsiders from using it?
- How should the CALM model be integrated with the CLRT process? As recommended above, the CALM model should be implemented prior to, during, and after the CLRT process. However, it remains unclear as to exactly how this would occur. Should CALM and CLRT always be conducted in concert with one another or could they be done separately? Could CALM activities be used to prepare communities for CLRT? Would CLRT be more effective if a management plan was established beforehand? If CALM activities were implemented, but a title was never issued for whatever reason, would such activities still have a material benefit for the communities?

#### **4. Toward a model of communal land management: Recommendations**

While guidelines towards a nationwide model of communal land management are necessary, it is also important to leave space for adaptation to local contexts. Communal land tenure and governance arrangements must match the needs and interests of the community, including the type of land, the land uses, and preferred and customary decision-making processes. With these considerations in mind, we offer the following recommendations concerning the development of a CALM model.

*Recommendation 1: Villages must decide to pursue the formalization and titling of their land, it should not be forced upon them.* Discussions should be held prior to any efforts to register the land so that information can be provided to the community regarding the benefits and drawbacks of communal title and the process for registering the land. The community should then discuss amongst themselves, and later with civil society organizations and government agencies, as to whether they wish to pursue this path. This is important because one issue that often comes up in research on community perspectives regarding land titling is that not all villages or households see the value of titling their land, especially if there will be a financial cost for them. This is even the case for the titling of individual land, which arguably provides greater material benefits to households than communally titled land because it can be used as collateral for a loan, leased, or sold. As reported by Liu and Sigaty (2009) in a survey of villages in Lao Ngam district of Salavan province, villagers do not feel that the fees associated with titling their land are equivalent to the abstract protection that a title might provide, especially as they do not perceive any external threat to their lands. It is important to advocate that the CALM model and management plan not be predetermined, but should be generated in a participatory and deliberative manner. A deliberative governance approach is one in which there is sincere communication between individuals and actors, especially those with divergent interests, conducted in a way to allow the inputs of the most marginalized of actors (Elgert 2010, Ayers 2011).

*Recommendation 2: Emphasize the importance of communal land with equal rights for all villagers, even if it is under the category of “village collective land”.* One potential challenge with the legal use of the term “collective land” is that it would be possible for collective land to exclude some village members, such as marginalized or vulnerable populations within the village. Additionally, it is possible for collectively owned land to act in ways similar to private land, bought and sold by private groups of people, the only difference being that there are multiple owners rather than only one. Thus, we advocate for emphasizing the ideals of communal land as it denotes that the land is owned and used by everyone in the community, retains the concept’s public and communal meaning, and acts for the purposes of protecting the land for the community’s use, thus providing greater tenure security. If the term “village collective land” is preferred and used by the government, it is important to emphasize that rights to such land belong to all members of the community. Furthermore, there should be a focus on lands that are essential for rural livelihoods and cultural practices, which would likely include: community forests, agro-forest lands (a swidden landscape of fields and fallows), communal agricultural lands (also likely to be swidden areas), livestock grazing land, sacred forests, and burial grounds. These categories will not necessarily be mutually exclusive and should not be treated as such.

*Recommendation 3: Ensure that the formalization of communal land, in its registration and management, is a benefit rather than a burden upon the community.* There are two potential costs that titling communal land imposes upon a community: registration fees and taxes. For fees, titling land can be costly, even more so if not done as part of a systematic process of land registration. Many villages, especially the poorest, are unable to bear the costs of land titling, certainly when done sporadically and sometimes even when it is done systematically. Thus, there is a need for the costs to be heavily subsidized. The village, however, should bear some small portion of the cost to ensure that they have a material interest in titling their communal land. Secondly, if communal land is taxed then it could create more costs than benefits. For example, Schneider (2013) recommends distinguishing between communal land registered for its economic versus conservation value so that conservation areas can be taxed more lightly. One possibility is to calculate taxes based upon the value extracted from the land rather than its area. According to interpretations offered in SUFORD (2015) guidelines, Presidential Decree No. 01/PO 2007 (article 5) exempts community land for a land tax, however it is unclear whether this would apply only for forestry land or also for agricultural land.

*Recommendation 4: The Communal Agricultural Land Management (CALM) model should not only be implemented after communal land has been registered and titled, it should accompany the process before, during, and afterward.* Considering that communal land titles have only been issued in two cases throughout the country, it is clear that communal land registration and titling is a long, challenging, and uncertain process. While the CALM model would certainly be important after titling, it would be as important to help facilitate the process and ensure that more communal land titles are issued throughout the country. If the model were only to be used after titling was completed, it may only be lightly implemented. As discussed above, communal land titles are not an end in and of themselves, but a tool for securing land tenure and improving sustainable land management. Thus, all of the steps taken before and during the process of registering and titling the land, such as PLUP and village land use agreements, should not be seen as obstacles or as tedious, but as important steps that strengthen the security that the title ultimately provides.

*Recommendation 5: Use the PLUP process as a key step in moving towards CLRT and developing a CALM model.* PLUP has been identified as a key to successful CLRT in both cases where collective titles have been issued in Laos (Schneider 2013). This is because it helps to achieve a number of goals that are necessary for ensuring that communal land titles provide real benefits to communities. PLUP clarifies land use zones and boundaries, helps to create rules of sustainable and equitable use, and enables the identification of areas suitable for communal title. Furthermore, the PLUP process and steps is already well-defined and accepted and thus will save time in implementing CLRT and the CALM model.

*Recommendation 6: The CALM model should be viewed as a process that encompasses all relevant steps of CLRT.* Building upon the previous two recommendations, there are clearly many steps towards successful CLRT and management already established and thus it is not necessary to re-invent the wheel or add another step that reproduces work achieved in other

processes. Instead, CALM would be more effective if envisioned as a process that is inclusive and integrative of all steps towards CLRT and sustainable management of communal land.

*Recommendation 7: Include all types of communal land within the CALM model.* While the focus of the CALM model is on communal *agricultural* land, it is important to recognize that communal land is used for a number of different non-agricultural purposes or a mix of agricultural and non-agricultural purposes. In particular, much communal land is forested or of a mixed agroforestry use, such as swidden cultivation. It is important for common land management models to include all forms of communally used land and for all uses, otherwise the management models may not fit the needs and interests of rural communities. Relatedly, an important first step of the CALM model is to determine which lands it includes and excludes.

*Recommendation 8: The CALM model should be flexible and accommodating to customary village uses.* It is important that the CALM model applied to communal land is not too rigid in terms of how the land should be used and by whom. Although the land tenure will be formalized and the land will be protected by law, this should not mean that village use of the land must go through complex bureaucratic procedures that make it difficult to use. The land should still be used in a largely customary way, following village traditions, even if this are clarified and revised somewhat through the development of the CALM model. This may also include individual uses of such collective land, which has been an important part of customary communal land use.

*Recommendation 9: Ensure that the CALM model carefully balances power over decision-making between all relevant stakeholders, without giving any one actor too much control.* The CALM model must, in many ways, be a balancing act of decision-making and power over how communal land is managed. Clearly, the community should be the primary actor in decision-making to ensure that the land is managed in a way that suits their interests and culturally specific practices. There are also dangers in giving complete control over management to the community, as it is possible that community elites could dominate the process and exclude marginalized community members or the community could poorly manage the resource. Oftentimes, community-based resource management strategies assume that a community will act in solidarity with shared norms and interests, but this is not necessarily the case for many villages (Agrawal and Gibson 2001), especially villages in Laos that have been resettled or result from the joining of multiple villages, even comprising different ethnic groups (Baird and Shoemaker 2007). Thus, it is clear that other actors, including civil society organizations and government agencies must be involved in the governance arrangement, but nonetheless communities should still be centered as the primary agent.

*Recommendation 10: Clearly identify and specify the rights and responsibilities of all involved actors.* This is similar to the ways in which SUFORD (2015) had proposed for the management of village forestry areas. This includes the village committee, the Village Land Unit, possibly the Village Forestry Unit, PAFO, DAFO, MONRE, and DONRE. Similar to village forestry management plans, the CALM model and plan needs to define a number of aspects, including but not limited to: existing customary rights, basic principles for

management, preservation and use of communal land, rights and duties of parties involved in the management of communal land, and the principles of benefit sharing.

*Recommendation 11: Ensure that the project acquires support from district and provincial officials before moving forward.* While support from villagers is most important, it is not likely that CLRT and management plans will move forward without local political support. This has been an essential agreement for successful cases of communal titling (Schneider 2013). As the legal framework for communal titling is not as robust or as clear as it needs to be and is still in its infancy, local political support is important for ensuring that the certificates or titles are eventually approved and supported by the local government.

## **References**

### *Published articles and reports*

- Agrawal, A. and C.C. Gibson. 2001. The Role of Community in Natural Resource Conservation. *In: Communities and the Environment: Ethnicity, Gender, and the State in Community-Based Conservation*. New Brunswick: Rutgers University Press, pp. 1–31.
- Agrawal, A. and E. Ostrom. 1999. Collective Action, Property Rights, and Devolution in Forest and Protected Area Management. Presented at the CAPRi workshop on Devolution, Property Rights, and Collective Action, Puerto Azul, the Philippines.

- Andersen, K.E. 2011. *Communal Tenure and the Governance of Common Property Resources in Asia: Lessons from Experiences in Selected Countries*. Rome: FAO.
- Ayers, J. 2011. Resolving the adaptation paradox: Exploring the potential for deliberative adaptation policy-making in Bangladesh. *Global Environmental Politics*, 11(1), 62–88.
- Baird, I.G. 2011. Turning land into capital, turning people into labour: Primitive accumulation and the arrival of large-scale economic land concessions in the Lao People's Democratic Republic. *New Proposals: Journal of Marxism and Interdisciplinary Inquiry*, 5(1), 10–26.
- Baird, I.G. 2013. 'Indigenous Peoples' and land: Comparing communal land titling and its implications in Cambodia and Laos: 'Indigenous Peoples' and land. *Asia Pacific Viewpoint*, 54(3), 269–81.
- Baird, I.G. and B. Shoemaker. 2007. Unsettling Experiences: Internal Resettlement and International Aid Agencies in Laos. *Development and Change*, 38(5), 865–88.
- Bounmixay, L. 2015. *Communal Land Tenure: A Social Anthropological Study in Laos*. Doctoral Dissertation. Murcia, Spain: Universidad de Murcia.
- Dwyer, M.B. 2007. *Turning Land Into Capital: A Review of Recent Research on Land Concessions for Investment in Lao PDR: Part 1 of 2 - Existing Literature*. Vientiane: Land Issues Working Group.
- Dwyer, M. and V. Devjongsas. 2017. *Forest and Agricultural Land Use Planning: A Strategic Analysis of the TABI Approach in Lao PDR*. Vientiane: Swiss Agency for Development and Cooperation.
- Elgert, L. 2010. Politicizing sustainable development: the co-production of globalized evidence-based policy. *Critical Policy Studies*, 3(3–4), 375–90.
- Hardin, G. 1968. The Tragedy of the Commons. *Science*, 162(3859), 1243–8.
- Leach, M., R. Mearns, and I. Scoones. 1999. Environmental Entitlements: Dynamics and Institutions in Community-Based Natural Resource Management. *World Development*, 27(2), 225–47.
- Liu, M. and T. Sigaty. 2009. *Legal Analysis of Communal Land and Communal Title in the Lao PDR*. Vientiane: VFI.
- MAF. 2010. *Manual: Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level*. Vientiane.
- MOJ. 2009. *Legal Sector Master Plan*. Vientiane: Ministry of Justice.
- NLMA and LIWG. 2012. *Draft Report on Policy Overview on Community Land Registration and Titling (CLRT)*. Vientiane.
- North, D.C. 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.
- Ostrom, E. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge, UK: Cambridge University Press.
- Sayalath, E., V. Photilack, K. Mabounkham, K.T. Boulom, S. Sengkannaly, M. Chanthavongsa, S. Soupidi, J. Foppes, L. Bounmay, S. Phommasane, and M. Gerijmans. 2011. *Towards Communal Land Titles in Sangthong District*. Vientiane: SNV, GDG, GEF, UNDP.
- Schneider, T. 2013. *Communal land titles in the Lao PDR: Extracting lessons from pilot initiatives*. Vientiane: GIZ.
- Seidel, K., K. Phanvilay, B. Vorachit, L. Mua, and R.B. Boupphachan. 2007. *Study on Communal Land Registration in the Lao PDR*. GIZ.
- Srivath, H. 2015. *Workshop to draw lessons learned on Communal Land Registration and Titling in Viengxay District, Huaphan Province*.
- SUFORD. 2015. *Communal Land Titling in Laos Guidelines and Process - Draft*.
- Vientiane Times. 2015. Agricultural experts review northern upland development, 2 Nov.

*Legal documents*

No. 03/NA. 2003. *Law on Local Administration of the Lao PDR*. Vientiane: National Assembly.

No. 04/NA. 2003. *Law on Land*. Vientiane: National Assembly.

Ministerial Instruction No. 564/NLMA. 2007. *Adjudication of Land Occupation Right for Issue of Land Title*. Vientiane: National Land Management Administration.

Prime Ministerial Decree No. 88/PM. 2008. *Implementation of the Land Law*. Vientiane: Prime Minister's Office.

Ministerial Recommendation No. 6036/MONRE. 2014. *Land Registration and Issuance of Land Titles*. Vientiane: Ministry of Natural Resources and Environment

Ministerial Guidelines (Draft). 2015. *Draft Guidelines for Registration and Communal Titling of Village Use Forests in Production Forest Areas*. Vientiane: Ministry of Agriculture and Forestry.

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