



## **Developments in Land Use Planning in Lao PDR since 2009**

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### Cover photo:

*Villagers in Talaknathin village, Gnommalath District, Khammouane Province clear their communal land boundary prior to measurement, registration and titling by local authorities .*

## **Executive Summary**

### ***Background***

This study has been commissioned by the Land Information Working Group (LIWG) in order to determine the extent to which Land Use Planning has alleviated poverty in, and strengthened the rights of, rural communities in Lao PDR, and how the positive impacts can be enhanced. A literature review, online survey, interviews and field visits examined this question according to the four key themes of participation, land tenure security, food and livelihood security and conservation.

### ***Key findings***

While development agencies have been able to deliver participation (over which they have full control), they have been less successful at delivering tenure and livelihood security. This partially reflects the way in which Land Use Planning (LUP) is regarded by government as a tool for land management and regulation, rather than as a tool for community ownership. Until local authorities give additional weight to ownership, it is unlikely that LUP can fully meet tenure and livelihood goals given the limited budget and timeframe with which Civil Society Organisations (CSO's) work. This conundrum is not new, and has been raised by many reviews of LUP in Lao PDR.

The study concluded that to alleviate poverty in rural communities, LUP models need to be rigorous in ensuring that farmers have sufficient agricultural land, since they often underreport their requirements to avoid land taxes. This is especially so in upland communities, in which farmers require a larger land base to ensure their food security compared to lowland farmers: in such instances, a LUP with annual shifting cultivation zones mapped out is well regarded by local officials, who are under pressure to reduce it. Since a LUP should also be an interim measure for recognizing and protecting customary and communal lands, regular monitoring is needed until a more secure legal framework is in place. Such monitoring also reinforces participation, farmer knowledge and the social contract within the community and between neighbouring villages. Quality LUP and monitoring comes at a cost, however, in terms of skills, budget and length of commitment, and CSO's need to carefully consider whether it is the best means for them to support vulnerable communities.

### ***Policy considerations***

There are two fundamental policy decisions to be made by the Lao government which will impact upon future LUP. The first is the extent to which it is prepared to extend tenure rights to local communities on a broad scale, and avoid the time and expense of securing tenure one parcel at a time. The second is whether it will continue to enforce two recent decisions that have enhanced the tenure and livelihood security of rural communities. The moratorium on plantation and mining concessions, and the reduction in illegal logging under PM15, will encourage them to manage and conserve their land. In short, good LUP cannot counter bad policy.

### ***Recommendations***

#### **Recommendation 1: Recognise the constitutional rights of the people as the objective of the Land Law**

As the revised Lao constitution makes clear, the role of the State is to protect and promote all forms of property rights (Articles 16 and 17). This should be reflected in the Objective (Article 1) of the

revised Land Law, thereby providing guidance to citizens on claiming their rights, and reminding governments at all levels about their obligation to provide these rights.

Recommendation 2a: Link land zoning and tenure security together as one process, and make the LUP legally binding

Currently, land zoning alone does not guarantee tenure security (actual or perceived) despite the signature of the district, resulting in land expropriation by outsiders or subjected to 'claims' (*din jab jong*) by its inhabitants. Land zoning needs to provide a tenure which is legally binding, so avoiding the additional time and expense of formalising tenure parcel by parcel (as is currently required under Article 18 of the 2003 Land Law). The same recommendation was made in the 2009 Participatory LUP (PLUP) Manual.

It is recommended that the GoL take measures to officially recognise and legalise village agriculture and forest land use zones delineated, and agriculture and forest land management agreements from PLUP, in order to protect the forest and land use rights of rural villagers. It is recommended that provincial and district authorities be bound to recognise village boundaries, village land use rights and land use zone maps when considering the allocation of land for agricultural development (p. 12).

Recommendation 2b: Recognise that all non –State and non-individually owned land in the village LUP is customarily owned, rather than unowned, until formal land titling may be completed.

Villages, under the direction of the district, have the right to manage non-titled land within village boundary (or territory) in accordance with the law<sup>1</sup>. It is impractical to consider it unowned until formal titling can be completed at some point in the distant future (Article 18 of the Land Law). This village rights approach to tenure security, rather than a titling approach, is anticipated to overcome some of past limitations of scaling up the registration of communal land, which include satisfying swidden farmers with customary private tenure within village common lands, the cost and time of attempting to 'measure out' private lands and the potential loss of tax revenue.

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

Due to their development priorities, most CSO's are unable to complete the minimum requirements for PLUP in accordance with the 2009 manual, and their data, while recognised at district level, is not entered into the National LUP database. The new legal framework should give communities the same rights as private individuals to register and title communal land, without the prerequisite of undertaking a full PLUP.

Recommendation 4: Include a compulsory review period for monitoring the LUP of at least one year before it is finalised

A trial period, whereby the LUP made can be reviewed in subsequent years, was found to be particularly effective in vulnerable upland communities, in which agricultural land requirements are consistently underreported by villagers wary of paying land taxes. This should become a formal part

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<sup>1</sup> It cannot be sold to a Third Party, or rented to unauthorised investors, for example.

of the LUP process, in which all stakeholders can re-negotiate the LUP before it becomes a legally binding document.

Recommendation 5: Introduce a new category of land in the National LUP database to recognise bush fallows, and ensure it is taxed at a low rate

The current land categories in the LUP database recognise land as either agriculture or forest, which discriminates against swidden farmers who rely on a mosaic of fields and forests to sustain their livelihoods, since they would have to pay extra land taxes on the larger land base they require to support themselves. A new category of land for bush fallow, with a low rate of tax to ensure an economic and legal claim on the land, needs to be incorporated into the revised Land and Forest laws.

Recommendation 6: Increase land taxes on unused land to penalise land speculators and benefit investors

The area of available lands which could be registered as communal within the village LUP is steadily declining with economic development, as savvy farmers, often in collusion with outside interests, 'claim' land for the purpose of speculation. As well as denying poorer farmers the chance to use this land, the associated fragmentation denies genuine investors, such as Stora Enso, the right to rent this land on a basis which benefits the community. The land tax system needs to be overhauled ideally with a progressive system, in which the amount of tax paid is proportionate to its land value.

## List of Acronyms

CCL	Comite de coopération avec le Laos
CIRAD	Centre for International Research in Agricultural Development
CLT	Communal Land Titling
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DAFO	District Agriculture and Forestry Office
DONRE	District Office of Natural Resources and Environment
EFICAS	Eco-Friendly Intensification and Climate Resilient Agricultural Systems
FALUPAM	Forests and Land Use Planning Allocation and Management process
FAO	Food and Agriculture Organisation
FSCAP	Forest Sector Capacity Development Project
GAPE	Global Association for People and the Environment
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GoL	Government of Lao
IFAD	International Fund for Agricultural Development,
LIWG	Land Issues Working Group
LSSWG	Land Sub-Sector Working Group
LUP	Land Use Planning
LUP/LA	Land Use Planning/Land Allocation
LWU	Lao Women's Union
MAF	Ministry of Agriculture and Forestry
MHP	Maeying Huamjai Phattana
MRLG	Mekong Region Land Governance
MoNRE	Ministry of Natural Resources and Environment
NLMA	National Land Management Authority
NPA	Non-Profit Association
NRM	Natural Resource Management
NTFP	Non-Timber Forest Product
NUDP	Northern Upland Development Project
NUOL	National University of Laos
PAFO	Provincial Agriculture and Forestry Office
PLUP	Participatory Land Use Planning
PONRE	Province Office of Natural Resources and Environment
SLT	Systematic Land Titling
SUFORD	Sustainable Forestry and Rural Development
TABI	The Agrobiodiversity Initiative
VDP	Village Development Planning
VFI	Village Focus International
VGGT	Voluntary Guidelines on responsible Governance of Tenure
WCS	Wildlife Conservation Society
WFP	World Food Program

## 1. Introduction

This report aims to understand the extent to which Land Use Planning (LUP) has been able to contribute to poverty alleviation and strengthened rights for rural communities in Lao PDR. It is undertaken on behalf of the Land Information Working Group (LIWG), a network of nearly 40 Civil Society Organizations (CSO's) which promotes awareness and understanding of the social, economic and environmental impacts of land and natural resource projects, by gathering and disseminating information, facilitating dialogue and carrying out research studies.

In its narrowest sense, LUP may be described as a means to maximise the potential of land for the needs of the population, while safeguarding these resources for the future (FAO, 1993). This definition, does not make mention of those with customary tenure rights, and their right to participate in decisions affecting their land and its resources. The FAO has subsequently issued the Voluntary Guidelines on responsible Governance of Tenure (VGGT) to safeguard these rights during LUP (or 'regulated spatial planning' in its own terminology), particularly for "vulnerable and marginalised communities."

Regulated spatial planning affects tenure rights by legally constraining their use. In this regard, spatial planning should reconcile and harmonize different objectives of the use of land, fisheries and forests (2012:16).

As stated within the Terms of Reference (TOR), the goal of this study was:

How much has Land Use Planning been contributing to alleviate poverty in and strengthen the rights of rural communities in Lao PDR and what can be done to strengthen the positive impacts?

The two expected outcomes are:

- To define key recommendations relevant to advocacy related to the land and forest laws in Laos. This process aims to look into the effectiveness of Land Use Planning from a human rights angle in particular the rights for land tenure (access to land) and the rights for the participation of rural communities where LUP is implemented.
- To outline guidance for CSOs working on LUP based on an investigation of the correlation between LUP, land tenure security and the impact on food security and on livelihoods for rural communities, in order to design strategies on LUP more beneficial for rural communities.

The research questions to achieve these outcomes are broken into four key themes, as follows:

### **1. Participation**

- What is the perception/understanding of participatory approach of the communities?
- How is LUP understood from the different concerned parties (communities, local authorities, CSOs)?
- How are/were the communities involved before and after LUP (in terms of livelihood planning, production's land management, forest land management, in rivers protection...)?
- What is their perception of ownership of the LUP process?

### **2. Land tenure security**

- Does the community perceive tenure as more secure when LUP is applied in their village? This includes communal tenure for whole village.

- Does LUP increase recognition of communal land & customary practices?
- How village land management plans are integrated into district land management plans?
- Do concessions respect land & forest management plans set up through LUP?
- Identify examples of improved tenure security or tenure insecurity since LUP.

### **3. Food security and livelihood**

- Has livelihood increased since LUP?
- How has LUP impacted in Food Security?
- Does LUP has an impact on upland crops production (better land management, better productivity, positive impact on pest management)

### **4. Conservation**

- How effectively are natural resources (forests, rivers, water sources) protected through LUPs?

The remainder of this report is organised as follows. Chapter 2 presents a brief overview of LUP in Lao PDR, and analyses the recent literature in terms of the four key themes listed above (participation, land tenure security, food security and livelihood, conservation). Chapter 3 presents the methodology along with its assumptions and limitations, and justifies these choices. Chapter 4 presents the findings under each theme, and discusses their implications. Chapter 5 draws conclusions, and Chapter 6 provides practical recommendations for LIWG and its members in accordance with the two expected outcomes. Supplementary information is in the Annexes.



## 2. Overview of LUP in Lao PDR

### 2.1 Spectrum of Approaches

Land use planning in Lao PDR has taken various forms since it was first practised on a nationwide level with the introduction in the mid 1990's of Land Use Planning/Land Allocation (LUP/LA) by the Ministry of Agriculture and Forestry (MAF). LUP/LA was designed to boost forest cover by limiting shifting cultivation and boosting investment in agricultural land through the allocation of temporary use rights. This approach however, led to worsened poverty in marginalised groups who found that the allocated land was insufficient to meet their livelihood needs (Ducourtieux, Laffort, and Sacklokhham, 2005; Fujita and Phengsopha, 2008). In 2003, the LUP approach was modified and renamed to ensure greater community participation, and Participatory Land Use Planning (PLUP) was formalised and adopted by the Lao government with the issue of a PLUP manual<sup>2</sup> in 2009 (GIZ, 2015). The objective of the manual was to document procedures that can be used for PLUP at village and village cluster levels and in a range of different situations in the Lao PDR. It aimed to institutionalise PLUP within the government structure, by clearly defining the functions, roles and responsibilities of the respective line agencies.

Along with PLUP, two other approaches to LUP have been scaled up since 2009. The first of these, Micro-LUP, was an attempt to speed up the LUP process by the Government of Lao (GoL), and focussed upon the then 47 poorest districts in Lao PDR, with a view to identifying areas suitable for foreign investment. Most of the Micro-LUP data was prepared at village cluster level, with limited involvement of the local population in the villages (GIZ, 2015b). The second is Forest and Agricultural Land Use Planning and Management (FALUPAM<sup>3</sup>) implemented by TABI,<sup>4</sup> which takes a more rigorous approach to assess the future agricultural needs of the community, invests additional resources to produce detailed maps meeting GIS protocols and includes a testing phase at village level before being transformed into a permanent agreement.

These three current approaches to LUP can be placed on a spectrum according to their level of local participation and detail, as shown in Figure 1.

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<sup>2</sup> Manual on Participatory Agriculture and Forest Land Use Planning (PLUP) at Village and Village Cluster Level, issued by MAF and the National Land Management Authority (NLMA), the latter agency now having been superseded by the Ministry of Natural Resources and Environment (MoNRE). This manual may be divided into two distinct stages: the first is detailed land classification and zoning at village level to produce a report with maps for approval by the district authorities (the LUP), while the second, which is more time consuming, expensive and often left undone by development agencies, is land registration and titling.

<sup>3</sup> Is also termed pFALUPAM, to emphasise the participation of stakeholders.

<sup>4</sup> The Agro Biodiversity Initiative (TABI), a long term program of MAF and Swiss Development Co-operation (SDC) which has been implemented since 2009.

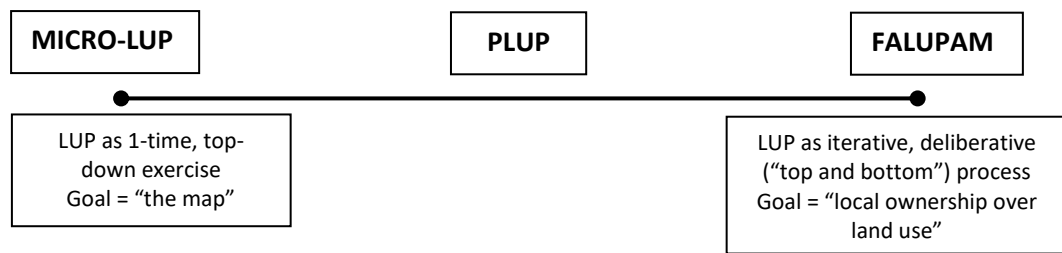


Figure 1: Spectrum of LUP approaches in Lao PDR (modified from Dwyer and Devongsa, 2017)

The time, expertise and cost required for each approach increases from left to right in Figure 1. Further, those undertaking LUP typically invest in specific activities to support the community to make the transition to, and enhance the ownership of, their new LUP. These include nurturing capacity and social inclusion (most CSO's), land registration and titling (GIZ), and community sub-projects that enhance biodiversity (TABI).

### **An alternative paradigm**

While governments and many development actors present LUP as a means for local communities to better manage natural resources and strengthen their tenure security, it may alternatively be considered as a 'territorialisation' process, whereby LUP is a form of control that puts into practice "particular socio-environmental perspectives and values" which entrench "existing unequal power relations" (Lestrelin, Castella and Bourgoin, 2012:2). When LUP has been used as a tool to eradicate shifting cultivation or resettle communities for example, land shortages and impoverishment result (Baird and Shoemaker, 2005). Alternatively, efforts may be wasted when donors implement LUP in areas where tenure is already secure and uncontested, an outcome described as a 'geography of evasion' by Biddulph (2010).

## **2.2 Participation**

The right of local communities to participate in their development (or 'bottom-up' planning) is enshrined as a key working principle of most development agencies in Lao PDR, and contrasts with the 'top down' planning whereby decisions are taken at a high level and disseminated through a bureaucratic hierarchy to the bottom, or village level. The importance of involving communities in taking land use decisions within commonly pooled resources such as forests and streams was recognized by Elinor Ostrom, who received the Nobel Prize for Economics in 2009. In their description of her work, the Royal Swedish Academy of Sciences (2009:3) noted:

One instance is that active participation of users in creating and enforcing rules appears to be essential. Rules that are imposed from the outside or unilaterally dictated by powerful insiders have less legitimacy and are more likely to be violated. Likewise, monitoring and enforcement work better when conducted by insiders than by outsiders. These principles are in stark contrast to the common view that monitoring and sanctioning are the responsibility of the state and should be conducted by public employees.

The right to consultation and participation is enshrined within the VGGT (FAO, 2012:3):

**Consultation and participation:** engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances

between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

Gaining genuine participation from local communities remains challenging, however. While PLUP was developed in response to a perceived lack of participation during the LUP/LA process, a study comparing both processes in Houaphan found that the potential benefits of PLUP were lost during application in the field (Lestrelin, Bourgoïn, Bouahom and Castella, 2011). Non-elites continued to be excluded from the LUP process, resulting in unsustainable land use plans. Further, participation was often measured by the 'number of participants', which is a more objective and simpler indicator than trying to assess enhanced social justice and socio-environmental outcomes. Lestrelin et al. conclude by advocating for improved monitoring to ensure that local stakeholders are fully engaged in the PLUP process.

However, low participation remained an issue in two subsequent studies, which had institutionalized monitoring within their respective projects. A review of outcomes in 42 NUDP<sup>5</sup> villages in the three provinces of Luang Prabang, Houaphan and Phongsaly, reported participation rates of only 2-3% for the land use zoning activities, although this proportion increased for the subsequent village development planning activities (GIZ, 2015). Ethnic women in particular were underrepresented, with hierarchical social structures and an inability to understand Lao being considered as contributing factors. The report suggested that gender issues needed to be given a greater focus in facilitation training, along with better monitoring.

The second study, undertaken by the international CSO World Renew, evaluated the outcomes of PLUP which had taken place in seven of its target villages in Phongsaly three years previously (World Renew, 2015). The study found that participation for the majority (or non-village leadership) meant "passive attendance at one or two village meetings" (p.8-9), where they were told about the new regulations with little understanding of the zoning processes behind them. Like the NUDP report, low participation was especially true of women. The report recommended that better community engagement may occur if there was more emphasis given to having villagers understand their rights under the LUP framework, rather than just their responsibilities.

### **2.3 Land tenure security**

The property rights of Lao citizens are enshrined within Article 16 and 17 of the revised Lao Constitution (2015), as follows:

**Article 16:** The State protects and promotes all forms of property rights: State, collective, private domestic and foreign investment in the Lao People's Democratic Republic.

**Article 17:** The State protects the property rights (such as the rights of possession, use, usufruct and disposition) and the inheritance rights of organisations and individuals. Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws.

Section 4 of the VGGT (FAO, 2012:6-7) also states the rights and responsibilities related to tenure:

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<sup>5</sup> Northern Upland Development Project, which covered a total of 230 villages within the three provinces

**Point 4.4:** All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions that are inconsistent with States' existing obligations under national and international law, and against harassment and other threats.

The community monitoring surveys of GIZ (2015) and World Renew (2015) cited earlier, reported that villagers were satisfied with the demarcation of village boundaries (the first step in PLUP), since they felt it would reduce encroachment on their lands and forests from neighbouring villages. Overall though, they felt that PLUP made little difference to the land use practices of the general community, since the regulations made were not enforced. Critically, they were not confident that PLUP would provide tenure security in the event of a land conflict, with GIZ (2015:23) stating that:

Less than 15% of respondents thought PLUP could support them in resolving substantial conflicts with private companies, foreign investors or conflicts with the government, especially where decisions of the district or higher levels of government are involved

However, communities did feel that tenure security was enhanced when PLUP led to land registration and titling (GIZ, 2015:26).

Broegaard, Vongvisouk and Mertz (2016) point out that while PLUP is theoretically intended to strengthen tenure rights for the rural population in Houaphan, villagers may underreport their agricultural land requirements for tax reasons and so reduce their legally permitted agricultural areas in the LUP map. In practice however, villagers continued to use the land as before, since the revised LUP is neither respected nor enforced by both villagers (who continue to encroach on forest lands to grow maize) and local government (which approved a biofuel contract farming investment on village lands). Broegaard et al. conclude that the multiple and contradictory land use plans and policies allows local communities and government alike to 'forum-shop' and interpret these according to their own best interests, which "may end up benefitting the already powerful and thereby reinforcing unequal power relations" (p. 10).

Boutthavong et al. (2016), found increased land inequity in Napo village, Sangthong district, in which the history of land use changes over a fifty-year period was examined. Successive LUP processes recognized the steady conversion of customary owned land to temporary and finally to permanent land title, which eroded the communal land base and meant that newcomers to the village did not have access to agricultural land. This conversion to private ownership, he concludes, by those with sufficient labour and capital to 'claim' (*jab jong*) community-owned land, is eroding rural livelihoods and necessitates land tenure reform.

Communal land titling (CLT) has been promoted as a solution to improved tenure security, because it builds upon existing customary tenure to provide the community with a formal tenure that is recognized by the State, and safeguards against the conversion of commonly held lands to private ownership (Liu and Sigaty, 2009). Ewers (2011), differentiates between two models of communal title in Asia, these being the 'permanent title' model and the 'delegated management' model. In the permanent title model (typified by the Philippines), land is granted to the community for collective ownership, and generally does not distinguish between agricultural, forest and other land categories. In the delegated management model, the state maintains ownership of the land and delegates management to local groups, who typically comprise those using a specific resource such

as forest, pasture or irrigation system. The principle of communal land titling was agreed to by donors and government at the 2015 Round Table Meeting:

Communal land titling should also be promoted and be accepted as a means to formal land ownership. This would serve to protect the most vulnerable poor who have the least access to privately owned land and instead rely on rights of use of communal land (GoL, 2015:31).

Despite a process for the issue of collective title being set out in the PLUP manual, only two such cases of any significance had been issued by 2016, being for five villages (2,189 hectares) in Sangthong district close to the capital Vientiane (to conserve bamboo forests for handicraft production) and for 14 villages (20,208 hectares) resettled to make way for the Nam Theun 2 hydropower project in Khammouane province (Schneider, 2014). The lack of clear guidelines for government on how to transform the legal definition of communal land into actual land use certificates has been cited as one reason for the lack of scaling up (Schneider, 2014; GIZ 2015).

All respondents in Schneider's research in Sangthong reported satisfaction with the communal title, including that tenure security had been enhanced due to the clarity of boundaries and protection from outsiders<sup>6</sup>. This was despite the fact that the majority of villagers did not actually harvest the bamboo resource, since they had sufficient resources on their own land. In Nam Theun 2, community land use rights remained poorly understood since titles were issued in 2013. The latest report of the international environmental and social panel of experts (McDowell, Mann and Talbot, 2016:15), notes that:

The pressure on land on the plateau continues. During this mission, it became clear that land grabbing was widespread, encroachments and illegal use present in almost every hamlet, and unresolved disputes growing in number.

The experience of these two pilots suggests that scaling up CLT will be challenging.

## **2.4 Food security and livelihood**

The right to food security and sustainable livelihoods is also included in the FAO VGGT (FAO, 2015):

**Point 4.1:** States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.

Food security can be represented by the four pillars of food availability, food access, food utilization and food stability, and is fundamentally linked to land tenure security (Kenney-Lazar, 2016). The distinction between access to and ownership of land and natural resources is important here: while villagers may have access to land for producing or collecting food, only strong and secure ownership, in which the land use is socially and/or legally recognized, is able to prevent the loss of access rights.

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<sup>6</sup> The land use titles issued to the Sangthong villages were temporary and lasted only three years. They have now expired pending the update of the Land Law.

Improved LUP methodologies are just one of many factors that have impacted on food security and livelihoods through changing land use. GIZ (2015) reported a reduction in shifting cultivation in its NUDP villages following PLUP, likely due to a net increase in cash crop production: as Vongvisouk, Broegaard, Mertz & Thongmanivong (2016) point out, high demand from Vietnam has meant that maize has replaced large areas of upland rice cultivation in Houaphan as well as primary and secondary forests. However, livelihood benefits from commercial agriculture are not evenly spread, and disproportionately accrue to those with sufficient capital and labour, as Rigg (2006:132) observes in his study of livelihoods and the poor in Lao PDR:

Some households will find themselves in a position to embrace new opportunities; but others will be forced to continue to rely on a declining and degrading forest resource.

Rigg observes that failure to consider communal forest resources in the land use plan is likely to mean that poorer villagers, who lack the capital and labour to take advantage of cash crops or grazing areas, will be disadvantaged and social inequality will increase. Women are particularly affected, since they take a greater responsibility for gathering and producing nutritious food for the household, as well as looking after children. They have to travel further and spend more time searching for foods including non-timber forest products (Daley, Osorio, and Mi Young Park, 2013). The ability to protect communal land close to the village can benefit the livelihoods of women and the food security and nutrition of their families.

Because indigenous groups in Lao PDR rely to a greater extent on access to natural resources than the majority Lao/Tai, they are particularly vulnerable to LUP policies which restrict their use (WFP, 2006). Formal titling processes often do not document important customary tenure systems which distribute resources fairly within the community, leaving such lands unrecognized and susceptible to expropriation. Government policies to reduce shifting cultivation, for example, limited household swidden areas and led to large areas of secondary forest being classified as unused, and available for investment projects. A government minister stated in the official press “We approved large plots of land without looking into the details, like what land belonged to the state and which belonged to local people.” (Vientiane Times, 2012).

For many upland communities, there are few alternatives to shifting cultivation in terms of food security. Higashi (2015:273-274) expresses the interchange ability of forest and agricultural land for the Kmhmu, an indigenous group of northern Laos, which leads to insufficient agricultural land being allocated:

When asked where their agricultural land is, a Kmhmu villager may point to where they practice swidden. However, if the same villager is asked the same question again in the following year, she/he may point to another area, which was a forest in the previous year, and their previous year’s agricultural land has become a forest.

FALUPAM contrasts itself to other LUP projects in Laos with its investment in identifying sufficient areas of bush fallow, which are essential for livelihoods but which are often considered as forest by district officials keen to ‘eradicate’ shifting cultivation (Heinimann, Flint, Bernhard, and Hett – in press)<sup>7</sup>. In a pilot program to re-delineate forest categories in Luang Prabang province, TABI and

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<sup>7</sup> The national target of 70% forest cover by 2020 is also likely to be in the minds of officials.

provincial officials were able to reduce the number of villages which overlapped “State Forest Land” from 324 to 31 villages (TABI, 2015:8), thereby significantly increasing the area of agricultural land (Figure 2).

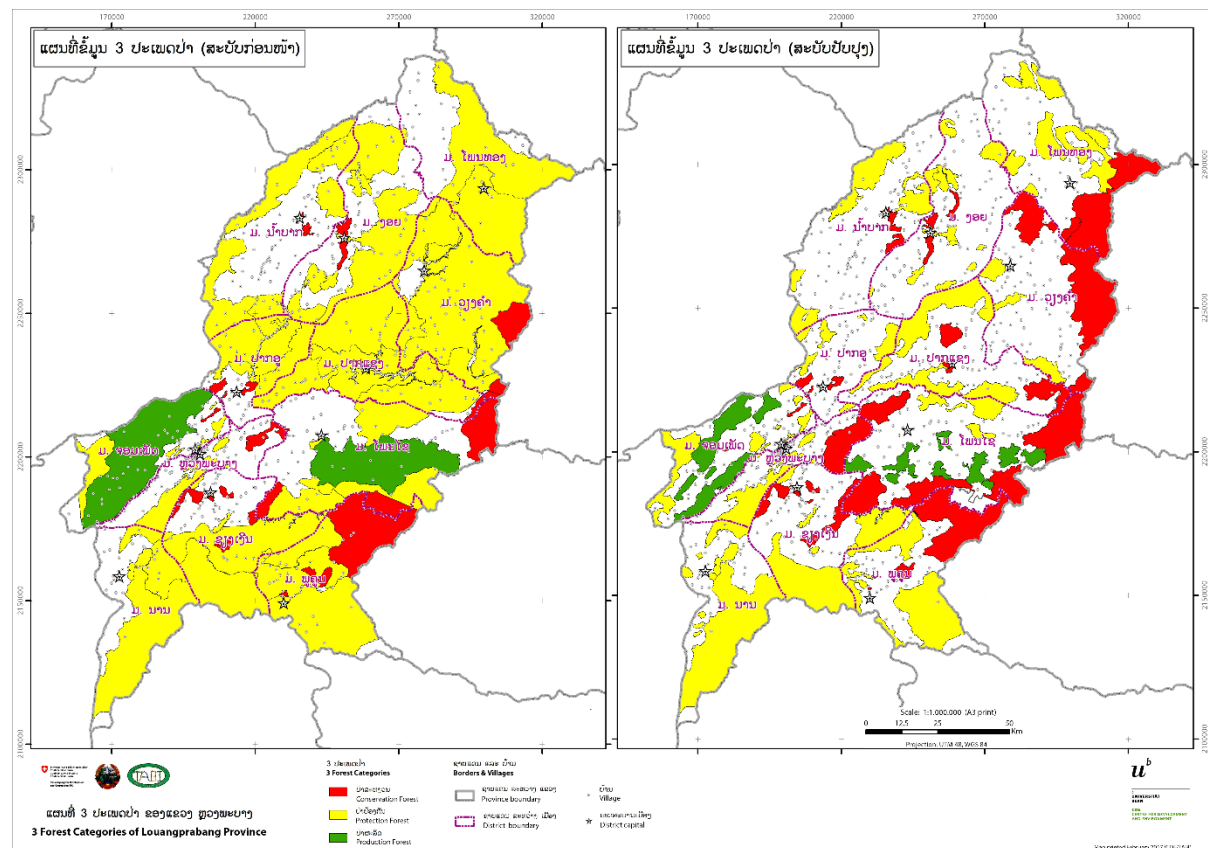


Figure 2: Maps of Luang Prabang province showing the area of state-owned Forest Lands before (left) and after (right) re-delineation

LUP alone, however, is unlikely to enhance livelihoods without some support to transition to the new plan. To take advantage of the opportunities that a LUP provides, and ensure that the benefits are equitably spread, NAFRI (2012:26-27) states that the LUP process and its outputs should be linked to the identification of “concrete development activities” for the village, as well as support for these activities through extension and/or development projects (NAFRI, 2012). NUDP, for example, intended that land-use rights to villagers would become “a basis for engaging in upcoming agricultural promotion, investment and targeted extension activities” which would be identified through a subsequent Village Development Planning (VDP) process (GIZ, 2015a:5).

## 2.5 Conservation

There are several models in which LUP has been undertaken with the primary objective of conserving natural resources with the co-management of local people, in the belief that livelihoods and conservation can co-exist. This is in contrast to the protectionist model, which attempts to “reduce and eliminate human activity in the protected area in order to enable preservation of biodiversity” (Kenney-Lazar, 2016:11). In the Nam Et-Phou Louay National Protected Area, the Wildlife Conservation Society (WCS) has used LUP to demarcate ‘management zones’ for adjoining village in which sustainable hunting, fishing and gathering is permitted, and ‘core zones’, in which it

is not (WCS, 2010). In Houaphan, GRET used LUP to develop bamboo management plans within village use forests, following which villagers would receive support for sustainable harvesting and market chain development (Sfez, 2015). Other projects have targeted landscape preservation (EFICAS<sup>8</sup>) and forest protection using the REDD+ framework (CLIPAD<sup>9</sup>).

The importance of considering the needs of local people is mentioned by the World Bank supported SUFORD<sup>10</sup> project, which points out that providing insufficient land for agriculture within the LUP may lead to increased forest destruction (2013:50):

Land use plans sometimes do not reserve enough agricultural land for local people, especially for those who practice shifting cultivation. If they do not have enough land they may go to regeneration and restoration sites. In this case there is a risk that the investments made in regeneration and restorations are lost.

There is also the policy dilemma between promoting increased forest cover for conservation purposes, and promoting the intensification of commercial agriculture to reduce rural poverty. Using the 'maize boom' in Houaphan as an example, Vongvisouk et al. (2016:190) highlight the manner in which contradictory policies can be reinterpreted by both villagers and government to their own advantage to undermine land use plans, and conclude: "there is no doubt that economic development is a clear winner over forest-protection measures." As a result, the areas of swidden fallow which served as biodiversity buffers for the environment are disappearing to leave a landscape increasingly segregated between areas of intensive commercial agriculture and areas of protected forest (Castella, Lestrelin, Hett, Bourgoïn, Fitriana, Heinimann and Pfund, 2012).

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<sup>8</sup> Eco-Friendly Intensification and Climate-resilient Agricultural Systems.

<sup>9</sup> Climate Protection through Avoided Deforestation.

<sup>10</sup> Sustainable Forestry for Rural Development, which supports LUP in villages which overlap National Production Forests.



### **3. Methodology**

#### **3.1 Guiding assumptions**

This research is guided by the interpretivist paradigm, in that it relies primarily upon the interpretation of qualitative data with a range of stakeholders to ascertain the impacts of LUP on rural communities. It allows for flexibility when choosing those to interview and the questions to be asked. This approach is justified given the numerous factors (including landscapes, ethnicities, village leadership, resettlement and an inconsistent interpretation of the LUP framework at all levels of government) which would influence any attempt at objective analysis within a limited timeframe.

Some key criteria that I will be attempting to address under this paradigm are:

Transparency: similar findings/meanings could be generated by other researchers.

Authenticity: my interpretation accurately represents the perspectives of the participants.

Sufficiency: a sufficient and representative number of stakeholders/documents have been sampled to provide a convincing account.

Transportability: this account and its perspectives have meaning/relevance in other contexts.

#### **3.2 Refining the scope of the research**

The broad scope and overlapping nature of the 14 research questions in the TOR posed the challenge of how to meet the expected outcomes within a document of reasonable length, with all having already been addressed to various degrees within the extensive literature of LUP in Lao PDR. In particular, the deficiencies of firstly, LUP prior to the rollout of the 2009 PLUP manual, and secondly, mining and plantations concessions prior to the 2012 moratorium, have been widely dissected in the academic literature, and so it is not necessary to repeat them in this study.

Therefore, this study intends to answer the research questions since this period, which coincides with the rollout of improved LUP methodologies by donor agencies (such as PLUP) and the execution of the moratorium. In doing so, it will attempt to compare the positive impacts of the different LUP approaches, which will guide LIWG and its members in their efforts to improve the legal framework for LUP and replicate successful approaches.

#### **3.3 Researcher positioning**

My twenty years of experience living and working in rural Lao PDR has influenced this study, since I have been able to witness first-hand how rapid economic development has changed in land use practices. My local knowledge and fluency in Lao language meant that a translator was not required.

#### **3.4 Research design and survey instruments**

The research design was jointly agreed between the LIWG committee and myself, beginning with a stakeholder analysis. Three types of data were collected. Firstly, qualitative data was gathered using semi-structured interviews with as many of these stakeholders as possible, in accordance with their availability and my own schedule in Vientiane. Most interviews lasted between one and two

hours, with several undertaken by phone. Interviewees represented the following based organisations:

- Bilateral development: GIZ, TABI, CIRAD, SUFORD
- CSO's (LIWG members): VFI, World Renew, CIDSE, GAPE, GRET
- Private sector: Stora Enso<sup>11</sup>
- Central government: MoNRE
- Higher education: National University of Lao PDR (NUoL)
- Independent consultants with experience in LUP (3 people)

Secondly, a short survey was undertaken of LIWG members undertaking LUP, based upon LIWG's member data. A total of 16 members were asked questions about their LUP activities since 2009, of which there were eight responses. Although this small number is not statistically significant, some general trends could be observed which are integrated into this report. Full responses are given in Annex 3.

Finally, field visits were made to four provinces to understand the practical implementation of LUP in the field, being Khammouane<sup>12</sup>, Houaphan, Salavan and Champassak. Additional semi-structured interviews were undertaken with project staff and government officials at provincial and district level (including PONRE, DONRE, PAFO and DAFO). Group discussions were held with village LUP committees in six villages which were complemented with field observations. An overview of LUP Projects visited, and their respective number of target villages, is given in Table 1, while demographic details of the six villages are shown in Table 2.

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<sup>11</sup> The TOR requested that Stora Enso be included into this report, due to its application of Corporate Social Responsibility (CSR) principles in its LUP operations prior to plantation establishment. CSR is not practised by the majority of agribusiness companies in Lao PDR.

<sup>12</sup> This case study was prepared under a separate contract with CIDSE Lao.

Table 1: Overview of LUP implementers visited at provincial level

No.	Name of organisation	Type	Focus provinces	No. villages LUP complete <sup>13</sup>	LUP Process used
1	NUDP	Bilateral	Houaphan, Phongsaly, Luang Prabang	230	PLUP manual
2	TABI	Bilateral	Houaphan, Xieng Khouang, Luang Prabang, and Phongsaly	204	FALUPAM
3	CIDSE	CSO (LIWG member)	Khammouane	14	PLUP manual
4	GRET	CSO (LIWG member)	Houaphan	20	PLUP manual, Combined method <sup>14</sup>
5	Stora Enso	Private company	Savannakhet, Salavan	80	Current Land use survey (not LUP)
6	GAPE	CSO (LIWG member)	Attapeu, Champassak	18	Identify community forest zones, LUP

Table 2: Demographic details of villages visited

No	Province	District	Village	Ethnicity (Language group)	No H'holds	LUP Donor
1	Khammouane	Gnommalath	Talagnathin (Talak hamlet)	Yoy (Lao-Tai)	33	CIDSE
2	Houaphan	Viengxay	Namone	Tai Deng (Lao-Tai)	49	TABI
3	Houaphan	Viengxay	Soy		120	NUDP
4	Salavan	Ta Oy	Lapheung	Ta Oy (Mon Khmer)	45	Stora Enso
5	Salavan	Ta Oy	Sabong Kokhai		77	Stora Enso
6	Champassak	Paksong	Nongphanouan	J'ru (Mon Khmer)	167	GAPE

Data collection took place over several stages between November 2016 and March 2017. All information from the qualitative interviews and the field visits was entered into field notebooks during the interviews. No interviews were electronically recorded. The notes were analysed and typed up into case studies following the visit to each province and additional reflections added. A complete list of organisations interviewed (with names omitted to protect their identity) is given in Annex 4.

<sup>13</sup> Only since 2012. Based on interviews with the respective organisations.

<sup>14</sup> A streamlined method that focusses upon zoning and mapping of the bamboo resource, rather than the village as a whole.

This review also incorporates information gathered by Mike Dwyer and Vimala Dejvongsa, who completed a review of LUP within the TABI project (FALUPAM) in late 2016.

### **3.5 Limitations of the methodology**

As may be expected given the diversity of factors influencing the success of LUP, and the short period of study, the interviewees and target villages finally chosen for study cannot encompass the depth of this topic, which has limited the sufficiency of the research. Key limitations are:

- Limited basis on which to make direct comparisons: In seeking to identify the positive impacts of LUP, it is inevitable that comparisons are made in this study between the different approaches. While the literature review (Section 2) has attempted to synthesise this information, the report contains examples based on one of the six villages visited. It is potentially misleading to draw firm conclusions from such a limited sample, as positive (or negative) outcomes may be artificially inflated.
- Lack of central level representation: Despite several visits to Vientiane over the research period, staff from the Department of Land Management at central level were unavailable for interview. Only one central level representative was eventually interviewed.
- No 'challenging' LUP villages visited in the fieldwork: The six villages visited in the four provinces where LUP had recently been completed were selected by local counterparts. None were resettled or villages of mixed ethnicity, which may have provided a different perspective on the effectiveness and impact of LUP.
- No Tibeto-Burman or Hmong-Mein speaking ethnic groups included: Historically, these groups have a greater mobility and may think differently about the imposition of village boundaries, as compared to the more sedentary Lao-Tai and Mon-Khmer groups.
- Limited female representation: The vast majority of stakeholders interviewed were male, which reflects their authority within this sector, particularly at government level (Annex 4). Village land use committees in the six villages interviewed were also male dominated.

An additional limitation was related to the scope of LUP. For programs like NUDP, LUP leads onto village development activities, including land registration and titling. If, for example, there appeared to be little ownership of the LUP map, but a greater ownership of the subsequent activities, then how should this distinction be captured? Given the broad scope of the TOR and the difficulty to attribute impact, this study has confined itself to assessing the value of the LUP itself rather than its subsequent activities.

## 4. Findings and Analysis

This chapter answers the research questions according to the four themes of participation (sections 4.1 to 4.3), land tenure security (Sections 4.4 to 4.7), food security and livelihood (sections 4.8-4.9) and conservation (section 4.10). The original questions in the TOR are given in italics.

### 4.1 Understanding of participation by different stakeholders in the LUP process

*How is LUP understood from the different concerned parties (communities, local authorities, CSOs)?  
What is the perception/understanding of participatory approach of the communities?*

#### **Civil society organisations**

For all donors, community participation is not only important for LUP, but also for achieving their higher development objectives. The three CSO's visited in the field (CIDSE, GRET, GAPE) use various forms of LUP as a prerequisite for community land titling, bamboo forest management and community conservation zones respectively. For Village Focus International (VFI), LUP facilitates dialogue within the community on land issues.

It is more than just a plan: it is a means to consider how to manage natural resources, how to solve internal conflicts, how to build local leaders to be accountable to their populations, how to strike the balance between food security and conservation. To get people thinking long-term though, it needs a good facilitator. This is the challenge. (VFI, Vientiane, 5/1/17).

Compared to the bilateral donors, which have a high number of LUP target villages across several provinces, the operations of the CSO's are limited. The eight CSO's responding to the online survey had completed 84 villages since 2009 (Annex 3). The survey asked CSO's to list their most important and least important reasons for undertaking LUP, and these are summarised in Table 3.

*Table 3: Reasons for undertaking LUP by CSO's (N=8)*

Most important	Least important
Foster community control over land, forest and natural resources	Provide individual titles to marginalised families who can't otherwise afford them
Encourage sustainable management of NTFP <sup>15</sup> 's by villagers	Identify land available for investment by private companies
Protection of watersheds or wildlife	Stabilise shifting cultivation and increase forest cover

**Source:** Online survey – see full results in Annex 3.

Table 3 indicates the importance that CSO's place on participation, with people centred objectives ('community control', 'management by villagers') taking precedence over more impersonal ones ('identifying investment land', 'stabilise shifting cultivation').

<sup>15</sup> Non-Timber Forest Product

The online survey indicated that the time taken for LUP varied between ten and 42 days, with CIDSE taking the longest time to ensure the full participation of all sections within the community (Box 1).

**Box 1: Principles of CIDSE to ensure participation in the LUP process**

- All members of the community understand their legal rights with respect to the LUP, and have a say in the future use and management
- Women, youth and other marginalized members of the community fully participate to ensure their priorities are included
- A management committee is established comprising elected representatives including women
- Work towards social justice at the local level through more equitable access of land to poorer households and women
- A management plan and regulations needs to be in place to manage communal lands which are understood and agreed to by all

**Source:** Interviews with CIDSE team

This emphasis on ensuring full participation, despite the additional cost, is a value that CIDSE-Lao and most CSOs aspire to in their work with villagers. The LUP process is typically staggered in several steps, rather than being completed in one go since “if done in one step, then villagers wouldn’t have time to participate.” (Interview with CIDSE team, 25/11/16)

**Bilateral Donors**

As well as the community, the bilateral donors seek to use LUP to influence government policy and develop capacity from central through to local levels. For GIZ’s Land Management Decentralised Planning (LMDP) project<sup>16</sup>, PLUP leads to systematic land titling (SLT), the promotion of quality investments and better development planning – hence an emphasis on integrating PLUP into local government planning systems in order to build capacity and ownership.

It is great to decentralise PLUP to the districts, and the cost is also much cheaper, at a cost of about 10 million kip per village<sup>17</sup> (PAFO, Houaphan, 1/2/17).

TABI, seeks to enhance biodiversity with the FALUPAM approach, since the maintenance of fallow systems is a crucial component of the ‘multi-functional landscapes’ needed for livelihood security (TABI, 2017). As noted in Figure 1, FALUPAM’s detailed mapping and monitoring increases the cost and expertise required, which raises the dilemma of how to scale up LUP within a reasonable timeframe. One observer noted:

Both the PLUP and FALUPAM systems have their merits, the challenge is to link these two together. (CIRAD, Vientiane, 4/1/17).

<sup>16</sup> This project uses PLUP data previously collected by NUDP.

<sup>17</sup> NUDP paid a fixed price per village (with some variation for village size), which meant that government staff could remember the figure easily. Cost data for FALUPAM was not obtained, but government officials estimated it about three times the price at provincial level, due to the expense of organising monitoring visits.

### **Stora Enso**

The Finnish/Swedish wood products company Stora Enso is committed to obtaining social license to operate within the communities where it plants trees, including the use of Free, Prior and Informed Consent (FPIC) (VFI and MRLG, 2016). This is exceptional in Lao PDR, since without FPIC standards and community accountability, past industrial tree plantations have led to negative impacts and internal conflict (Hett, 2015). FPIC is also a requirement of the VGGT when dealing with indigenous peoples (FAO, 2012:16).

To satisfy its FPIC standards, Stora Enso has engaged VFI to assist with training its staff in facilitation skills and providing awareness materials to ensure community participation (Figure 3).



*Figure 3: Land use planning process delivered by Stora Enso and VFI*

Stora Enso's community engagement is enhanced through the recruitment of ethnic minority staff from the local area. In Ta Oy district, there are five ethnic technical staff (out of 12 in total) who work with villagers during the PLUP process and subsequently when establishing and managing the plantation.

### **Government**

Provincial and district governments understand participation in the LUP process to various degrees, depending on their level of exposure and with a degree of loyalty to their respective donors. Houaphan has at least seven projects undertaking LUP to various degrees, and the proportion of villages completed (170 out of about 700) is the highest proportion in the country (PAFO, Interview, 1/2/17). By contrast, both PONRE and PAFO in Champassak reported that there was not a single

LUP project beyond some micro-LUP that had been undertaken in conjunction with the central level.<sup>18</sup>

Local government considers that current LUP processes are more participatory than previously:

In the past, a committee was established and a land use plan was developed, but this was done in a top-down way. Now there is still a committee and a land use plan, but there is more participation by the people in making the plan (DONRE, Viengxay District, 2/2/17).

Micro-LUP was regarded as unsuccessful by both provincial and district level authorities in Houaphan, with one respondent noting:

Firstly, it wasn't done properly and the boundaries overlap. Secondly, it makes no provision for shifting cultivation, and so there are implications for food security of villagers. Finally, there is no provision for monitoring it (DAFO, Viengxay District 2/2/17).

### **Communities**

Understanding of LUP within the community was strongly influenced by the exposure that communities had through the LUP process and its follow-up. This was neatly expressed by the two villages visited in Viengxay district Houaphan, being Namone (47 families, Tai Deng, 12 km from Viengxay) and Soy (120 families, Tai Deng, 64 km from Viengxay). In Namone, TABI undertook FALUPAM in 2014, taking several visits to produce a draft land use plan. This was followed up by two monitoring visits in 2015 and 2016, where villagers were given an opportunity to change the land classification if they so wished.

Most women in our village understand the LUP. The project uses a projector to put a map on the wall so that can see clearly the boundaries of our land and how we are using it (LWU<sup>19</sup> representative, Namone, 2/2/17).

In Soy, NUDP completed PLUP over one visit in December 2013, and made a 3D model which is still kept in the meeting hall. However, the village committee could not recall the process used, which appeared to be lost in the regular visits by GRET (bamboo management), and LMDP (systematic land titling).

In Salavan, the regular visits made to the village by Stora Enso reinforced community participation in LUP and its follow-up activities.

We understood Stora Enso's work in LUP because they visit us regularly to implement their activities. We can always ask questions at these times (Village land use committee, Saphong Kokhai, 7/2/17).

Follow up activities were considered essential by CSO's to avoid ending up with "nice maps that collect dust" (World Renew, by email, 10/5/17).

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18. After this interview, in March 2017, it was reported that some LUP had been started in Paksong district in the villages affected by the Xe Namnoy/Xe Pian Hydropower project.

<sup>19</sup> Lao Women's Union.



## 4.2 Community involvement before and after LUP

*How are/were the communities involved before and after LUP (in terms of livelihood planning, production's land management, forest land management, in rivers protection...)?*

The six villages visited during the fieldwork had all established committees at the beginning of the LUP process to represent their communities, chaired by the village chief or deputy, and with a committee comprising of the heads of various village units (such as militia, police, forestry, land, youth union, elders, and LWU). In the villages visited, the LWU representative was the only woman on the committee.

As would be expected, community involvement varied according to the time and cost invested in the LUP process, and trade-offs were made by LUP practitioners and the villagers themselves. As pointed out in Box 1, CIDSE took particular care to ensure that separate meetings were held for men and women, and that young people were engaged, to avoid always having the older 'family heads' that attend the meetings. This contrasts with the position of GRET, who reported:

After trialling a full PLUP in 5 villages, we realised that it was too time consuming and expensive, and we now use a 'combined method' which focuses on delineating the bamboo plots. At the beginning, we explain to the villagers that the committee represents them and can make rules on their behalf, before they are endorsed by the whole community (GRET team, Houaphan. 31/1/17).

A trade-off in participation occurs between choosing a replicable, standardised model which can be entered into the National LUP database (hosted by MoNRE) and letting villagers make their own maps. GAPE takes the latter approach, whereby villagers identify their lands and uses according to their own vision. Early maps were hand-drawn and covered only the area to be managed for conservation and sustainable NTFP management, but later versions, such as the 2016 LUP map for Nongphanouan covered the whole village area (Figure 4).



Figure 4: GAPE's participatory LUP for Nongphanouan village.

This land use map was made without the input of DAFO and DONRE, who were not available to participate in the LUP process, and so it is not recognised officially. A district officer from Paksong explained:

To be accepted by the district, neighbouring boundaries have to be clearly defined with the agreement and participation of neighbouring villages (10/2/17).

The regulations made for the village protected area (dark green in Figure 2), will likely be recognised however, as in other GAPE villages. It is interesting to speculate how the map would be different with the involvement of government– would villagers have been able to maintain such a large agricultural area (4,464 hectares, or 26 hectares/household), or would large areas have been converted to forest, thereby making it theoretically unavailable for agriculture and possibly affecting food security?

Villagers also assess their own perceived benefits of participating in LUP, since they also have competing demands on their time, particularly in commercial agriculture. This is partly responsible for the low participation rates identified by GIZ (2015) and World Renew (2015). As livelihoods diversify, villagers increasingly put their trust in their elected representatives to take decisions on their behalf (thereby reflecting the GRET position), rather than being personally involved at every step. The LUP committee of Namone stated:

We don't need to call special village meetings to discuss the LUP with the villagers. As members of the village authority, we can make decisions regarding land issues within our regular village meetings, which villagers already attend.

All those interviewed made the point that a LUP map alone does not lead to community involvement in land management, and that LUP is only useful when it is linked to a higher benefit, whether as income from bamboo or plantation labour, or increased tenure security from land titling. Such activities kept the village land use committees busy, and the communities engaged, thereby giving a sense of ownership (Section 4.3).

#### **4.3 Community perception of ownership of the LUP process**

*What is their perception of ownership of the LUP process?*

In Houaphan, Namone (FALUPAM) reported a sense of ownership of their LUP, because the regular monitoring visits had provided villagers with a chance to air their grievances about the neighbouring Hmong village (Na Khao) which had been undertaking swidden on their eastern boundary. The satellite maps, which had been shown to the villagers on a LCD projector, were able to clearly identify swidden areas which encroached onto Namone's land, which the DAFO then used to identify their owners and resolve this issue. Likewise, regular monitoring by GRET in Soy generated a greater sense of ownership of the bamboo management zones, compared to the PLUP map undertaken as a one-off process by NUDP<sup>20</sup>.

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<sup>20</sup> This is an example of a limitation of this study noted in Section 3.6. NUDP argues, quite reasonably, that its focus on post LUP activities, which were planned and initiated by the villagers themselves, leads to a different conclusion of "ownership."

This suggests that there is a sense of ownership of the LUP as long as monitoring continues. So what happens when a project withdraws?

It is difficult to think of an example where villagers have real ownership of their LUP. The projects PAREDD<sup>21</sup> and CLiPAD come close due to their level of extension support, but these are isolated cases and not replicable. The case of GRET is also interesting – the people are looking after their bamboo forests in a more sustainable way, but this is not directly due to LUP. It is because the level of income from these forests has increased, which means that there is a reduced possibility of these forests being converted to other uses with a higher value. (NUoL, 6/1/17)

This suggests that strategies to link LUP to economic benefits have a higher chance of being owned by the community.

Even without monitoring, however, a well facilitated LUP with legal training and community awareness may still generate a latent sense of ownership. Two cases were observed in which villagers were mobilising to defend their rights following a threat to their land.

- In Namone, Houaphan, villagers were concerned about blasting to produce lime for a new cement factory and the potential environmental damage it would cause, and the LUP was being used to negotiate a suitable location with the company.
- In Nongphanouan, Champassak, the Xe Pian/Xe Namnoy hydropower company implemented its own LUP in Nongphanouan and three neighbouring villages: GAPE's prior LUP awareness work (Figure 4) is considered to have strengthened the ability of villagers in their negotiations with the company.

Ownership also depends on how flexible the LUP is to future adaptation. Once completed, should it be regarded as an inflexible document used as a basis to punish those who have violated it (more ownership to the government) or as a community vision which can be modified should the need arise (more ownership to the community). Dwyer and Devongsa (2017:9) consider that ownership is enhanced by the management approach of TABI, which attempts to 'tidy up' swidden areas both spatially (consolidating them) and temporally (allocating years), which "seeks to not simply balance local ownership against state control, but to actively use the latter as a means to create the former." Further, the existence of the annual swidden zones will encourage villagers and district officials to revisit the map on a regular basis (Figure 5).

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<sup>21</sup> A Japanese (JICA) funded project to protect forests using a REDD+ approach.

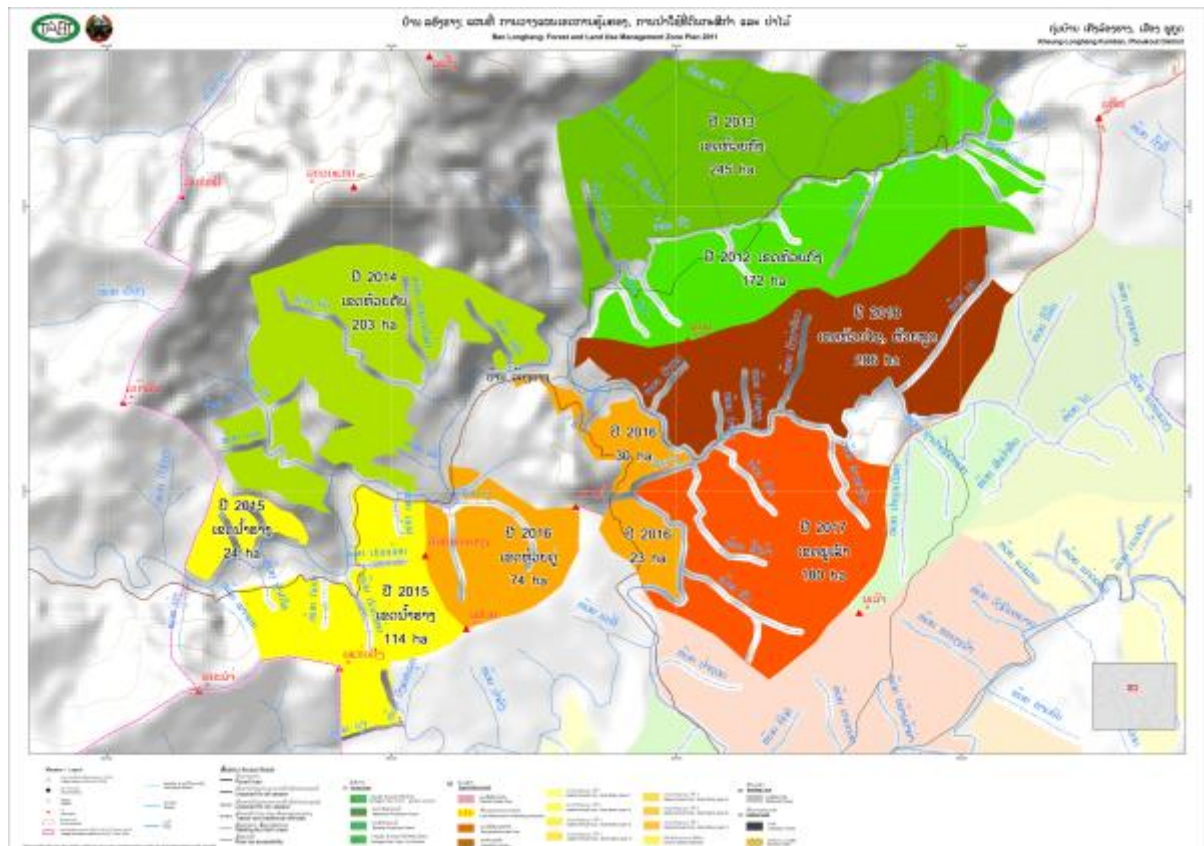
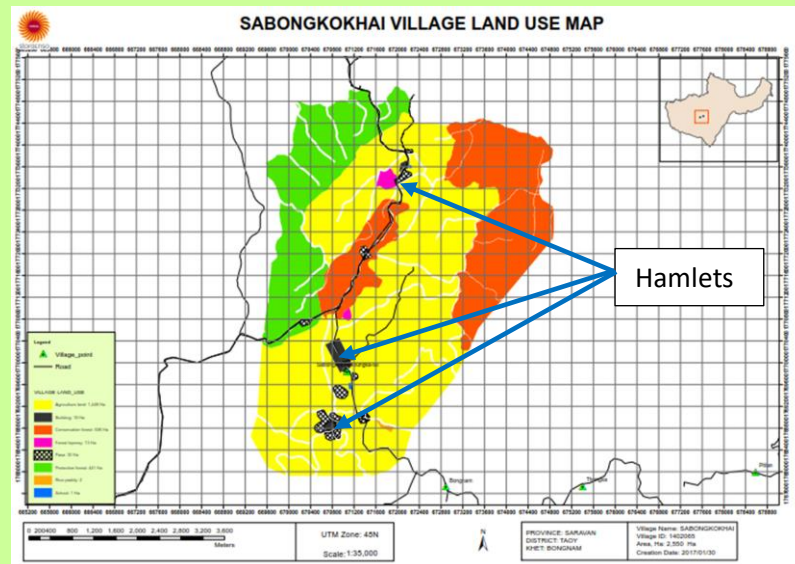


Figure 5: Planned 7 years rotation cycle for rice, Ban Long Hang, Phoukut District, Xieng Khouang (Source: TABI)

Small homogenous villages are likely to have a greater sense of ownership than larger, heterogeneous ones. In Salavan, there was a contrast between the ethnic Ta Oy village of Lapheung (45 households in one location), and Sabong Kokhai (77 households in 3 separate hamlets separated by several kilometres). The inhabitants of Lapheung were able to meet easily to discuss land and other development issues, while those of Sabong Kokhai were not. The situation in Sabong Kokhai was made more confusing by the existence of two LUP maps (Box 2).

# **Box 2: Which map should villagers own in Saphong Kokhai, Ta Oy district, Salavan?**

As part of its FPIC commitment, Stora Enso will rezone the village to ensure its plantations do not affect livelihood security, even if a previous LUP has been undertaken. In 2008, LUP was undertaken in each of the three hamlets of Sabong Kokhai. Villagers expressed a sense of ownership with this map, because the area planted is linked to the village development fund, which is renewed every seven years following tree harvest.



*The Stora Enso LUP map for Sabong Kokhai identified a village area of 2550 hectares including protection forest of 441 ha.*

Subsequently, the JICA supported Forest Sector Capacity Development Project (FSCAP) project made another LUP in about 2014.



*FSCAP's LUP in Sabong Kokhai village, showing a village area of 2,738 hectares including protection forest of 601 ha.*

Those in the small hamlet visited during this research (Tong hai) claimed to know nothing about the FSCAP map, as it was prepared only in the larger hamlet (Tiang hai).



While a LUP map alone may have little meaning, the sense of ownership increases with land registration and titling, as there is a perception of greater tenure security. This is addressed in the next section.

#### **4.4 Security of tenure, including communal tenure, as a result of LUP**

*Does the community perceive tenure as more secure when LUP is applied in their village? This includes communal tenure for whole village.*

*Identify examples of improved tenure security or tenure insecurity since LUP*

The communities visited were appreciative of the way that LUP was able to define the village boundaries, as this gives them a claim over the resources within these boundaries<sup>22</sup>. This is consistent with the findings of GIZ (2015) and World Renew (2015) which were cited in Section 2.

In theory, a well-developed LUP recognised by government could be considered to be a legal document, whereby village lands allocated to the community are protected, and paid compensation in the event of expropriation. The 2009 PLUP manual recognised this:

It is recommended that provincial and district authorities be bound to recognise village boundaries, village land use rights and land use zone maps when considering the allocation of land for agricultural development investors (p. 12).

As is well documented in the literature, however, this did not occur in practice. This led some CSO's to favour the 'formalisation fix', argument described by Dywer (2015:1), being "the proposition that property formalization constitutes a preferable front-line defence against land grabbing." In the online survey (Annex 3), five respondents gave 'Reduce the possibility of land being taken for land concessions' as a 'very important' reason to undertake LUP. The local NPA Maeying Huamchai Phattana (MHP), for example, has surveyed wild forest tea in three villages in Meung district, Bokeo, and made an agreement with the district that these zones will be managed by the community, to prevent them being given away as a concession to a Chinese company.

FALUPAM is considered by Dwyer and Devongsa (2017) to increase tenure security compared to other forms of LUP. They note that the spatial consolidation and predictability that occurs by allocating years to each zone (Figure 5), means that the district provides greater recognition (or 'buy in') in the absence of land titles. Additional benefits of this 'tidying up' from the district viewpoint are a reduced risk of forest fires (since burning is concentrated in one area) and easier monitoring of swidden farming outside the agreed zone.

Other responses were more doubtful:

PLUP is just a process – land can still be taken away at the whim of government even if incorporated into district plans (Vientiane, 6/12/17).

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<sup>22</sup> Historic French reports comment on the overlapping village boundaries and spontaneous village moves, so it is interesting to reflect whether the current need for clear boundaries is related to land pressures related to the rising value of land and its resources along with the policy of fixed villages.

We want to have a land title for each piece of land in our village. This will increase our confidence in ownership. It will reduce the household land conflicts and make it easy for us to collect village taxes (LUP committee, Namone, 2/2/17).

In Ta Oy district, Salavan, tenure security may have been enhanced had the LUP's (either from Stora Enso or FSCAP) been added into the National LUP database. From the villager perspective however, it probably would not have made a difference. Past experience of expropriation and rising land prices have meant that villagers have rushed to try and formalise their tenure security by 'claiming' ownership of village lands (termed *din jab jong*) previously in community ownership (Box 3).

**Box 3: LUP does not increase tenure security for the whole community, but privatising communal land does for a few**

The ethnic Ta Oy village of Lapheung is located only six kilometres from the centre of Ta Oy in Salavan province. When Stora Enso began their operations on 70 hectares in the village in 2008, "nobody claimed land, everyone just farmed as they could." Over the last few years, and particularly since the construction of a sealed road to Ta Oy in 2012, land prices have risen, and villagers have 'claimed' all the available agricultural land in the village. When asked why villagers wanted to claim the land, the committee stated that "we are scared if we don't claim it, then the government will take away. The obligation to paying land taxes to the government would legitimise its ownership." But not all villagers claimed land: "only those with '*panya*' (wisdom/foresight) actually did so."

The claimed land remained uncultivated, which means that claimants pay a penalty land tax of 50,000 kip/ha/year, compared to 15,000 kip/ha/year for land being used for agriculture. This willingness to pay suggests that for smarter villagers, there is an expectation that land prices are going to rise faster than the tax cost. Villagers explained, "Now the only way to get land will be to inherit it."

So the tenure security message since LUP is mixed – while allowing *din jab jong* has given greater security of tenure for particular individuals, the erosion of the community land base has resulted in greater insecurity for the wider population.

This situation is reflected throughout the country. One interviewee was pessimistic about the possibility of pursuing communal titling on a large scale:

When land is in short supply, everyone rushes to take their piece. There is nothing left for communal title (Vientiane, 6/12/16).

But simply disallowing villagers to 'claim' land has wider implications, since the higher taxes on claimed land may be a very important component of the village tax base. In the consolidated Khmu/Lao village of Ban Som in Luang Prabang 'claimed' lands generated between 28 and 35 million kip/year, although a proportion of this is contributed by fallow lands within a shifting cultivation system (Dwyer and Devongsa, 2017).

#### 4.5 Recognition of communal land and customary practices due to LUP

*Does LUP increase recognition of communal land & customary practices?*

Swidden agriculture is perhaps the most widespread customary practice for upland peoples in Lao PDR in which there is a mosaic of common and private ownership (Higashi, 2015). The National LUP database classifies swidden as agriculture, and claiming a large agriculture area tends to encourage district officials to convert some of it to forest, as the re-delineation exercise in Luang Prabang demonstrated (Figure 2). By contrast, FALUPAM classifies swidden as agroforestry under the FALUPAM system, which recognises its dual purpose of both agriculture and forestry.

With collective swidden lands already accurately mapped by FALUPAM (Figure 4), it would be a relatively easy step to formalise this area under a communal title. However, TABI has yet to prioritise this activity for two reasons. Firstly, it believes that the ‘social contract’ arising from managed swidden between villagers and the district is a “de-facto CLT in the minds of all stakeholders” (TABI, by email, 19/2/17). Secondly, when a trial CLT area was tested in Xieng Khouang, it proved more costly and time-consuming than had initially been envisaged, due to the complexity of demarcating privately owned land (including ‘claimed’ land) within the designated communal area. Due to more pressing priorities, CLT was not extended on a broader scale (TABI, 4/1/17).

For GIZ’s LMDP project, PLUP is a pre-requisite to communal registration and titling as part of its systematic land titling process in accordance with MONRE Instruction 6036. A summary of LMDP’s registration and titling statistics in Houaphan to the end of 2016 is given in Table 3.

*Table 4: Land Registration and titling statistics to end 2016, LMDP Houaphan.*

District	Kumban	No. Villages	Parcels Land Registered.	Title Issued	Private Land Parcels	Communal/ Collec. Land Parcels
SN	Kan	3	687	14	652	35
SN	Houaxiang	3	768	0	719	49
VX	Kang	2	588	0	542	44
VX	Xiengman	6	599	116	499	90
VX	Soy	11	852	593	738	112
<b>TOTAL</b>		<b>25</b>	<b>3,494</b>	<b>723</b>	<b>3,150</b>	<b>330</b>

**Source:** LMDP Houaphan, by email, 20/2/17.

The 330 plots of communal/collective land in Table 3 comprise either:

Registered communal plots with title: Schools, meeting halls, fishponds, temples, and cemetery/spirit forests are actually registered as communal but title is issued as collective in the absence of an approved communal title format in MONRE’s Lao Land Reg. system.

Registered communal plots without title: Communal lands registered (but not yet titled) include village use forests, grazing areas, and paddy fields – these areas are quite significant with many



being ‘hundreds of hectares’ in size (LMDP, Houaphan, 1/2/17). It is intended that these will be converted to titles when the new land law/legislation is clarified.

Regulations for village use forests were drawn up as part of the PLUP process, which is a prerequisite for them to be registered as communal under the Forest Law (2007). Village protection forest and conservation forests, however, remain registered with the State. Crucially, the complex nature of swidden, with its mosaic of plots with customary private ownership often spanning generations, means it also remains unregistered.

We have not been able to register swidden lands with communal title, as it is not accepted by farmers and would lead to internal conflict (LMDP, 22/2/17).

This finding suggests that the current methodology to ‘formalise’ communal title, which extends management rights to the whole community, may not be suitable for all forms of customary swidden, including those studied by Higashi (2015).

SUFORD (2015:3), in a draft paper on the management of village use forests within National Production Forests, explained the importance of PLUP as a precursor to their registration and communal titling:

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

However, the document has not proceeded beyond the draft stage and realistically will not be approved “as the government has no will to revisit the past” (SUFORD, 24/1/17). By this it is meant that the Lao government has no desire to repeat the FOMACOP<sup>23</sup> experience, in which forest management was handed over to local communities, and then rescinded due to disagreements over revenue sharing arrangements.

CIDSE Lao also considers its PLUP process as a prerequisite to obtaining CLT for 41.6 hectares of agricultural land in Talaknathin village since it clarified the village boundaries, ensured full participation and informed villagers of their rights (Figure 6). In this case, the communally titled land had customarily been managed as communal land: the chief role of CIDSE-Lao was then to document and formalize this pre-existing tenure arrangement, as recommended by the VGGT (Section 9.8).

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<sup>23</sup> The Finland/World Bank funded FOMACOP (Forest Management and Conservation Programme) ran from 1996 to 2000, and pushed for decentralised management of forests by the village in return for tax revenues.



Figure 6: Communal land title for Talak hamlet, Talaknathin village

The value of small parcels of communal title such as this one is controversial, “firstly because such areas are insufficient to secure village livelihoods, and secondly because remaining land may be regarded as available for development” (Vientiane, 26/1/17).

Like Rigg (2006), Bouttavong et al. (2016), and as already demonstrated in Box 3, finding viable areas of communal land is becoming increasingly difficult as market forces penetrate the countryside. The Tai Deng village of Namone had recently eliminated the customary practice of communally owned paddy, in which paddy land was reallocated within the community every three years (Box 4).

**Box 4: Agrarian transition and the pressure to convert communal paddy fields to private ownership in Ban Namone.**

In 2012, the 35 Tai Deng households of Namone abandoned their customary practice in which the village authorities rotate the use rights to communally owned paddy land (20.6 hectares) every three years. This rotation ensures that land is used efficiently according to household labour availability and that each household has an opportunity to use plots more favourably located or with better water access.

However, the majority of villagers felt that those who managed their paddy land well (such as maintaining the bunds and applying animal manure) should be rewarded by getting to use it for the following period, rather than it being redistributed. Villagers also wanted greater tenure security that would allow them to sell their land (paddy, gardens and bamboo) - the children from these relatively wealthy villages are leaving the land, and parents need money to send them to study or they wish to leave the village to stay with their children in Sam Neua or Vientiane. The decreasing population is reflected in the enrolment figures at the local primary school, where there are only 15 students.

The conversion to private ownership (recognised at village level) was done with the agreement of all villagers at a meeting at the beginning of 2016, at the end of the previous three-year cycle. All households received some paddy, with a variation based on the family size). Following 'privatisation', the 2016 harvest was much improved, and the typical household was no longer "short of rice for 3-4 months of the year." Now villagers want to receive permanent land titles from DONRE that will guarantee their tenure security.

**4.6 Integration of the village land management plans into district land management plans**

*How village land management plans are integrated into district land management plans?*

The value of integrating land management plans into district plans was recognised by local government.

The negotiating power of rural communities is weak. Therefore, land use plans should be integrated into district plans for better protection, but then this needs to be respected by higher levels of government. (PAFO, Houaphan, 1/2/17)

With the promulgation of the Ministerial Direction on land registration and titling (MONRE/6036, 2014), the government has signalled its intention to use LUP to complete the cadastral record throughout the country and have this information available for local authorities to access. LUP data has already contributed to the Land Master Plan for Lao PDR, which is presently in draft form awaiting approval by Cabinet.

Of the CSO's examined in this study, including those that responded to the online survey, only one (CIDSE) could confirm that its LUP information had met the standards of, and been entered into, the National LUP database (Annex 3). The maps of Stora Enso, GRET and GAPE did not attempt to meet these standards, as their objective was not LUP per se, but to identify areas for plantation

establishment, bamboo forests and conservation respectively. While the integration of FALUPAM map into the system is still under discussion, their wide coverage means that they are reflected in district land use planning. The Luang Prabang authorities for example, reportedly used the Chomphet FALUPAM maps when considering the location of a new Special Economic Zone opposite the historic town (TABI, Vientiane, 4/1/17).

GIZ's LMDP, which is located within the Ministry of Planning and Investment, is deliberately designed to link PLUP with decentralised development planning and quality investment promotion at district level. The maps produced, called Physical Framework Development Plans (PFDP) indicate investment areas (light blue) within the land use categories that range from multiple use (yellow) to core zones (red) (Figure 7).

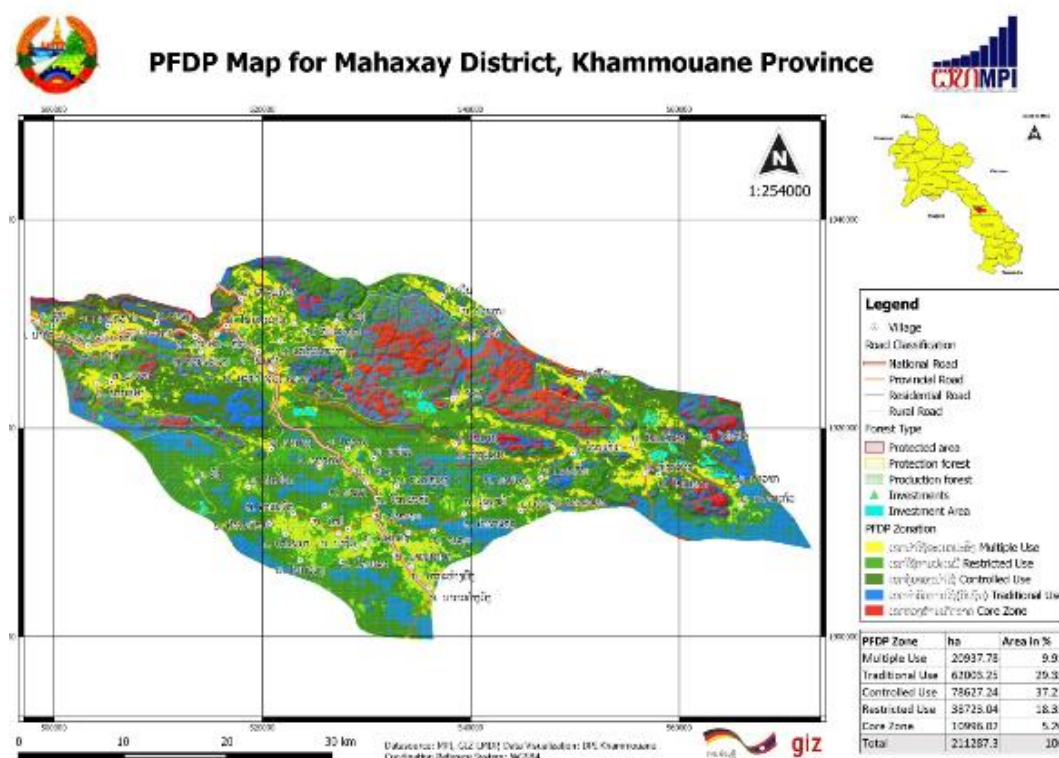


Figure 7: PFDP Map for Mahaxay District, Khammouane

Affecting the institutionalisation of LUP into district planning are the mixed mandates of MONRE and MAF (Annex 5). MAF has recently setting up its own system to register agricultural land on the justification that formal LUP was proceeding too slowly, thereby limiting the identification of land which could be allocated for commercial agriculture (PAFO, Houaphan, 1/2/17). Regular staff turnover, poor data management and insufficient budget were also reported to have affected the ability of the districts to properly utilise LUP.

LUP is unorganised. There are too many departments involved and we cannot co-ordinate effectively. There is a risk of making mistakes that will affect land tenure (DAFO, Viengxay, 2/2/17).

VFI undertook LUP in 2005 and 2006 in 9 villages in our district. But since they handed over their project to us, we haven't been able to monitor effectively. (DAFO, Ta Oy, 6/2/17).

A sectoral approach to CLT in which agricultural land and forest lands are registered separately by different departments (as distinct from the current territory-based recognition) could further erode the communal land base.

#### **4.7 Impact of concessions on LUP's**

*Do concessions respect land & forest management plans set up through LUP?*

The moratorium on concessions since 2012 in the mining and plantation sectors has reduced the opportunity to test this question. However, it would appear that a locally recognised LUP has little influence on tenure security for projects of national significance, such as the Xe Nam Noy/Xe Pian hydropower project, in Paksong district. Here land has been expropriated to build infrastructure in the villages of Houay Chot and Nongphanouan, where GAPE has supported community conservation areas. In Sabong Kokhai, Salavan, villagers had been given a map showing the impact on the farmlands of the proposed Houaysaly Hydropower Project – they were promised compensation even though this land had not been titled, but no details were available at the time of interview.

At district level, land investments remain welcome. Referring to the recent visit of a Vietnamese oil palm company, DONRE in Ta Oy stated:

When an investor comes to our district and wants land, we have to allow them to survey it.

This is part of the governments 'open door policy.' (8/2/17)

However, in a positive development, the company must now come to an agreement with farmers to procure land (as does Stora Enso), whereas prior to the 2012 moratorium such a company may have been allocated a land concession of thousands of hectares which would have to have been 'found' by local government. This anecdote reflects the significant role that government policies play in determining whether LUP is respected or not.

Concessions may have impacts outside the land that they expropriate. As noted in Section 4.3, a cement factory had been recently constructed on one hectare of land in Namone village since FALUPAM had been completed. The location of the lime extraction area to feed the factory had not yet been determined and was still under negotiation, but was expected to be confined to karst areas which were not otherwise used. Of concern to local farmers however, was the potential impact of water pollution, dust and noise on their livelihoods – a LUP in itself is not capable of dealing with such downstream impacts, which require an Environmental Impact Assessment to be completed.

#### **4.8 Impact of LUP on food security and livelihood**

*Has livelihood increased since LUP?*

*How has LUP impacted Food Security?*

The many variables involved with livelihood security make this a difficult question to assess. But there was a general agreement that a successful LUP should be the platform which can assist farmers to make the transition from current to future land use.

The LUP map alone doesn't mean anything – there needs to be a higher outcome (CIFOR, Vientiane, 4/1/17).

Higher LUP outcomes observed during this study which contributed to improved livelihoods include bamboo management and planting for GRET, livestock development and vegetable production for EFICAS and employment in eucalypt plantations for Stora Enso.

For Stora Enso, which seeks certification of its end products, it is important to ensure that food security is not compromised during the land acquisition process. The LUP determines whether this is the case.

The Stora Enso zoning survey demarcates village boundaries, and the areas of agriculture, forest and shifting cultivation using a GPS. We then need to calculate how much land is left over after the food needs of the population are satisfied, which could be used for plantations. (Stora Enso field staff, Ta Oy, 6/2/17)

The village recalled the process used by Stora Enso, and how their livelihoods had changed over time.

Twenty years ago, we were short of rice and relied on forest tubers to ensure our food sufficiency. From 2001 to 2005 Community Aid Abroad [Oxfam Australia] provided training, along with a rice bank and livestock revolving fund, and these are still in operation today. We started opening some paddy land which can also be irrigated in the dry season. The additional food security in the village meant that we could afford to handover 70 hectares of the 'poorer' agricultural land to Stora Enso in 2008 out of a total village area of 1,500 hectares (Village management committee, Lapheung, 7/2/17).

When asked if they gave away too much land, villagers replied that the amount was appropriate, but they don't have any additional land to give Stora Enso to expand its plantation at this stage, since it has all been claimed (Box 3). It is noteworthy that all 21 villages in Ta Oy were not prepared to provide more land to Stora Enso, and the company is now seeking additional land in Samuay district.

Existing land fragmentation due to poor roads and steep country is accentuated by land speculation, which makes it not worthwhile for responsible companies such as Stora Enso to invest. This restricts the livelihood options of local communities. (Consultant, Vientiane, 26/1/17)

The impact of *din jab jong* on agricultural investment was raised in all provinces visited, since genuine investors who follow due process are being outbid by speculators. The government has prioritised reform, with one suggestion being to drastically increase taxes on idle land (MONRE, Vientiane, 9/3/17). PONRE staff has been asked to collect data on its extent in targeted areas, and will consider annulling inappropriate claims.

LUP has been a prerequisite for communal land registration and titling in the Lao/Tai villages of Soy (Houaphan) and Talakanthin (Khammouane), which should benefit the poorest in the community by ensuring land is available in the future. In Talaknathin, women also reported the benefits of the communal land:

The communal land is important to us, because we can walk there quickly, leaving us time to complete our other household and family duties. We have tried growing vegetable gardens close to our houses, but they are always damaged by livestock. (LWU representative, Talaknathin, 24/11/16).

LUP has a potentially greater impact on livelihoods in villages that rely on upland agriculture however, since generally, a larger area is needed to ensure food security<sup>24</sup>. For World Renew's villages in Xieng Khouang, the more rigorous FALUPAM approach ensured that sufficient area as allocated to food security (Box 5).

One reason put forward for the lack of "accurate land information" in Box 5 was a fear of land tax.

Villagers do not give us the correct information because they are scared to pay land tax, even though upland rice farmers should only have to pay for the current year. (DONRE, Viengxay, 2/2/17).

The lesson here is that a LUP which is based on the reported needs of villagers, rather than their actual needs, risks allocating insufficient agriculture land, and jeopardising food security.

The PLUP approach (used by NUDP, CIDSE) is less costly than FALUPAM, because it delegates greater responsibilities to local level, and is not monitored annually using satellite imagery. Decentralisation, while strengthening local capacity, leads to differing interpretations that may impact upon livelihoods:

Quality of governance becomes a factor in the success of PLUP. Some districts still wish to reduce shifting cultivation, and their PLUP maps reflect this. Even individual personalities can sabotage a potentially good process, resulting in insufficient land for farmers. TABI wouldn't take these risks, as they work towards a standard – they take the data away but then district officers don't understand the process. (LMDP, Vientiane, 5/1/17).

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<sup>24</sup> This statement is a generalisation. As GIZ (2015a) points out, in some cases a reduction in shifting cultivation reflects more intensive livelihood activities, such as having received better income from cash crop production or a transition to livestock. However, for poorer farmers who lack the capital or expertise to make this transition, sufficient swidden area remains critical.



**Box 5: FALUPAM ensures a sufficient area of upland fields for food security**

FALUPAM uses satellite imagery to accurately determine where rice and commercial agriculture has occurred in the past, and use this to calculate the annual area needed to ensure livelihood security when preparing the Current Land Use map. World Renew applied FALUPAM in six villages in Kham district, Xieng Khouang, including in Ban Phouhin (below).



*Satellite map showing upland maize plots (orange dots) and rice (green dots) in 2014*

In the Hmong village of Phouhin, farmers reported a total agricultural area of **104 ha** during the interview, but when the satellite image was digitised the total agricultural area was calculated to be **841 ha** taking into account for all land areas including upland rice, maize and upland annual rotational crop zone. Reinforcing the views of interviewees in this study, the Phouhin FALUPAM report stated “that local villagers may not willingly provide accurate land information” (World Renew, 2015b:5).

Dwyer and Devongsa (2017) examined the data from 26 FALUPAM villages, and observed a highly variable difference in percentage terms between current and planned areas of fixed agriculture and forest lands. This, they suggest, gives credence to TABI’s assertion that FALUPAM is not implemented according to a predetermined formula, but is based upon the actual food requirements of villagers. This allows the swidden rotation period to be somewhere between four and eight years, which is greater than the three-plot pattern often espoused by local officials. As noted in Section 4.4, this legitimacy is in part due to the clustering of shifting cultivation areas into ‘tidy’ zones, which allows for easy monitoring by district officials.

Overall, FALUPAM appears to be particularly effective at providing for the needs of swidden farmers, who largely represent the poorest and most food insecure segment of the Lao population. Its thoroughness does come at a cost however, and it has been criticised as not being scalable throughout the country. However, as Dwyer and Devongsa point out, FALUPAM is a “high-value type of land-use planning,” in which “quality costs more, but also delivers more.” (p.12)



#### **4.9 Impact of LUP on upland crops production**

*Does LUP has an impact on upland crops production (better land management, better productivity, positive impact on pest management)*

Clearly, upland systems with long rotations will be more productive than those with shorter rotations, which gives FALUPAM an advantage over a standard PLUP (Box 5). FALUPAM is also claimed to improve upland management:

Compared to scattered systems, grouping swidden areas within LUP makes it easier to reduce the risk of forest fires and control pest outbreaks (TABI, Vientiane, 4/1/17).

When land is in short supply or mountainous, however, long rotations and the protection of steep slopes cannot be achieved whichever LUP system is used.

We try to follow our regulations in the LUP to ensure community livelihoods. For example, maybe each household worker is entitled to three hectares of land, but it is not possible to allocate this amount without destroying the forest. Or we can provide this area on a map, but if the land is not high yielding then farmers don't want to use it, and they will cut somewhere else. We also cannot enforce the rule about clearing land on 35 degree slopes, as most of the land is mountainous (DAFO, Viengxay, 2/2/17).

Alternative livelihood activities can support the implementation of the LUP. In Soy, villagers stated that they had reduced upland maize not because of LUP (which attempted to limit cultivation on steep slopes), but because there are better returns from selling cucumbers (under contract to a Vietnamese buyer) and bamboo (GRET).

Better land management and productivity of the uplands is likely with greater tenure security, since farmers will have the confidence to invest in their lands, including with long term crops such as bamboo. As described in Box 3, the farmers interviewed did not believe that LUP alone would provide such security, and so they sought to gain legitimacy through the land 'claim' (*din jab jong*) process. In Houaphan and Khammouane, land registration and titling was highly regarded, which is consistent with the survey results of GIZ (2015a).

Overall, the relationship between LUP and improved upland cropping systems is difficult to assess in a short-term study. Poor farmers are constantly making decisions about their livelihoods based on the simple principle of profit maximisation within an expanding market economy. When large livestock prices are high, more land will be allocated by the village to grazing. When maize prices are high, farmers will switch from rice to maize. Where cheap herbicides are available, the area of commercial cropping will increase. Where there is effective monitoring (by either government or through social pressure at village level), and fear of retribution, then villagers will pay more attention to the land use plan. For this reason, the FALUPAM system, which incorporates regular monitoring and thereby reinforces positive behaviour, is more likely to result in improved management of the uplands.

#### **4.10 Conservation and LUP**

*How effectively are natural resources (forests, rivers, water sources) protected through LUPs?*

This study reinforced the challenge faced by LUP in striking the balance between conservation and agricultural production, as described by Broegaard et al. (2016). As the re-delineation exercise in Luang Prabang showed (Figure 2), LUP allocates too much land to forestry, which means that it is not respected by food insecure villagers, who often have the sympathy of local officials. Having demonstrated its ineffectiveness, from this point it is easy for LUP to be interpreted selectively by all stakeholders, which opens up the opportunity for land speculation, land degradation and the loss of natural resources.

The protection of natural resources also requires a second trade-off, between the level of local ownership and the achievement of national conservation goals. Should communities have the right to revise their LUP, even if there are environmental consequences to other stakeholders?

It is not just up to the villagers to decide what they wish to do with their land. There are other stakeholders who need to have an input for environmental protection, and sometimes compromises are required. A National Protected Area, or a wildlife corridor, may have higher values than commercial agriculture. (LMDP, Vientiane, 5/1/17).

As road construction and trade opportunities have tipped this balance in favour of commercial agriculture, sustainably managed NTFP's are regarded as a means of boosting both incomes and conserving forests. The online survey of Lao CSO's showed that the 'Protection of watersheds or wildlife' and 'Encourage sustainable management of NTFP's by villagers' were two of the top three objectives for doing LUP (Table 1). In Houaphan, GRET has developed bamboo management plans to ensure its sustainable harvest (Box 6).

**Box 6: Increased demand for bamboo has contributed to sustainable harvesting**



Forest management planning in Ban Phounmai (Credit: GRET)

In the past, there was no commercial market for bamboo, and villagers just cut it as much as they needed when they needed it. As economic development reached rural areas and the bamboo value chain was developed, Vietnamese traders started buying large amounts, which increased farmer income but led to pressure to overharvest. To ensure sustainable harvesting, GRET introduced bamboo management plans, and trained farmer representatives to carry out annual pre-and post harvesting inventories. The management plan included seasonal restrictions to provide sufficient time for the bamboo to regenerate: '*kuan*' bamboo, for example, cannot be harvested between July and October.

The harvesting restrictions interfered with the Vietnamese business model, because they wanted a stable supply all year round. They then requested a forest concession from the province, but so far this has been denied in accordance with the Order PM15 that prohibits the export of unprocessed forest products.

Box 6 is also significant for its observation on the link between government policy and conservation. Without an enabling policy framework that encourages farmers to manage their land and resources sustainably, LUP is ineffective.

In Salavan, Stora Enso ensures that only degraded forest (as defined in the 2007 Forest Law<sup>25</sup>) or agricultural areas can be zoned for tree planting, thereby protecting natural forests. This policy was well-regarded by the local community:

We have five distinct plots in our village, because the streams within the plantation area are protected by buffers of natural vegetation, with 50 m for large permanent streams and between 10 and 30 metres for smaller ones. Stora Enso only uses fertiliser on the plantation. There are no chemical sprays used, and so our water remains clean. (Village committee, Lapheung, 7/2/17)

Rivers and streams have been inadequately protected by LUP throughout Laos, as their banks typically fall under private ownership. Aquatic life is destroyed by chemical runoff from commercial crops. The Stora Enso LUP provides a positive example of how this can be addressed.

In Houaphan, Namone villagers believe that FALUPAM is solving the problem of forest encroachment by the neighbouring village of Nakhao, since the annual monitoring process provides the mechanism to bring these issues to the attention of authorities. This was confirmed by PAFO in Houaphan.

Land use planning has led to a reduction in the cutting of illegal wood. It is easy to monitor this in TABI villages, but more difficult in GIZ villages (1/2/17).

Reportedly due to a lack of budget, PAFO Houaphan do not monitor swidden agriculture in GIZ's NUDP villages. In theory, they have the means to do so, since they can also download the relevant satellite image and overlay it on the PLUP map just as they do with the FALUPAM map.

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<sup>25</sup> Degraded forest are the forest areas that have been heavily damaged such as land without forest or barren forestland, which are allocated for tree replanting, agriculture- trees products, permanent animal husbandry areas or using land for other purposes in accordance with the socio-economic development plan.

## 5. Conclusions

This study has been commissioned by the Land Information Working Group in order to determine the extent to which Land Use Planning has alleviated poverty in, and strengthened the rights of, rural communities in Lao PDR, and how the positive impacts can be enhanced. The literature review, online survey, interviews and field visits examined this question according to the four key themes of participation, land tenure security, food and livelihood security and conservation.

### The positive impacts of LUP to rural communities according to the four key themes

#### **Participation**

The level of participation within the community in LUP was found to vary according to the village size and homogeneity (in terms of economic conditions, social affinity), the quality of facilitation, and the level of follow-up activities and monitoring. Good facilitation, which ensures the engagement and interest of all groups of villagers (poorest, women), is particularly important in large and heterogeneous villages, where land conflicts are likely. There is a trade-off between making an intense effort to encourage participation in a few villages (such as CIDSE-Lao) or aiming for greater coverage and a lower level of participation (GRET). For ethnic minorities, participation was enhanced by having native speakers as facilitators (Stora Enso, GAPE) and by taking a staggered approach over several sessions.

For the community, repetition and reinforcement of the LUP enhances its ownership, so that follow-up activities (e.g. extension, titling) and monitoring become critical to participation success. The approach of FALUPAM, which schedules annual follow-up meetings to review the LUP, was understood by the community more than one-off approaches (Micro LUP and NUDP).

#### **Tenure security**

LUP was found to play only a minor role in contributing to tenure security. Due to past experience in which land was expropriated, local communities are conditioned to require a much stronger tenure (land title) before they can consider themselves tenure secure. The rush to secure land has led to a rapid increase in *din jab jong*, which along with land claims for commercial agriculture, has resulted in a decrease in the area of communal lands which can potentially be secured under a LUP. This mentality will be extremely difficult to overcome. The areas of communal land registered following LUP (by CIDSE, LMDP) were small-scale and uncontested, which didn't threaten existing power structures or development plans.

For the most vulnerable rural group, upland farmers, it appears unacceptable under the current interpretation of CLT to override the customary private tenure of swidden plots with a formal community title, which would then extend rights to the whole community<sup>26</sup>. An interim alternative is needed that provides tenure security without such a title. The FALUPAM maps with managed shifting cultivation zones (even if eventually not followed in all cases) enhance its legitimacy by local officials, who are under pressure to reduce it. While entering into interim paper agreements with the district to conserve resources (MHP, GAPE) may be useful at a local level, a more secure option

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<sup>26</sup> In theory, a formal CLT could allow for a management model which would continue the same user rights and groups noted in the LUP. It appears that more research is needed to find a practical solution acceptable to farmers.

is to enter the data into the National LUP database, as government decision-makers are unable to rely on having their technical staff find and analyse paper maps.

Where CSO's provided good legal knowledge as part of the LUP process, the tenure rights of communities were enhanced to some extent, even though this may not be initially obvious. It appears to be an anomaly however, that while the Lao constitution is very clear about land rights, only those who can read, understand and advocate for these rights can actually receive them. The onus should be on government to provide these rights.

### ***Livelihood and food security***

Livelihood and food security was enhanced by ensuring access to sufficient agricultural land during LUP. The FALUPAM process, which mapped and verified actual land needs prior to LUP, had a higher probability of increasing food security of upland farmers because future swidden fields were factored into the LUP (Figure 5). The tendency to underreport land needs in order to save on taxes meant that less rigorous LUP approaches risked leaving farmers with either insufficient agricultural land, or having a somewhat meaningless LUP as they continue to cultivate as before.

Livelihoods are also enhanced through targeted activities following the LUP by the various projects, but long-term sustainability following the end of a project remains an issue. Communal agricultural lands, which guarantee livelihood security for the poorest households, are dwindling steadily under the combined influence of commercial agriculture (since those with influence, labour and capital can convert it to private title) and land speculation. In an expanding market economy, socially responsible investments can enhance livelihoods (with markets, employment), but again land speculation needs to be addressed.

### ***Conservation***

While land use planners typically try to protect forests in the LUP, this may prove counterproductive if farmers are food insecure, and the LUP is not respected. The LUP must reflect actual livelihood needs before considering conservation. This is a difficult balance, and as well documented in the literature, there is an ongoing tension between commercial agriculture and conservation, which is leading to the decline of natural resources. The models of GRET (which adds value to forest products) and Stora Enso (which uses buffers to prevent watercourse degradation) are positive examples of LUP protecting natural resources.

### **The link between government policy and successful LUP**

In summary, while development agencies have been able to deliver participation (over which they have full control), they have been less successful at delivering tenure and livelihood security. This partially reflects the way in which LUP is regarded as a tool for land management and regulation, rather than as a tool for community ownership. Until local authorities give additional weight to ownership, it is unlikely that LUP can fully meet tenure and livelihood goals given the limited budget and timeframe with which CSO's work. This conundrum is not new, and has been raised by many reviews of LUP in Lao PDR.

There are two fundamental policy decisions to be made by the Lao government which will impact upon future LUP. The first is the extent to which it is prepared to extend tenure rights to local

communities on a broad scale, and avoid the time and expense of securing tenure one parcel at a time. The second is whether it will continue to enforce two recent decisions that have enhanced the tenure and livelihood security of rural communities. The moratorium on plantation and mining concessions, and the reduction in illegal logging under PM15, will encourage them to manage and conserve their land. In short, good LUP cannot counter bad policy.

The recommendations which follow here, which aim to strengthen the positive impacts of LUP, assume that the policy environment is also positive. If, this is not the case, then CSO's and other development partners will have to be satisfied with lesser goals, which will include prioritising the most vulnerable communities and continuing property formalization measures to protect against illegal land expropriation.

## 6. Recommendations

This section is divided according to the two expected outcomes of this study (Section 1).

### 6.1 Recommendations related to the revision of the Land and Forest Laws

#### Recommendation 1: Recognise the constitutional rights of the people as the objective of the Land Law

The most idealistic purpose of legislation is to provide guidance to citizens about their rights and duties. The objective of the 2003 Land Law did not refer to these rights and duties, but was focussed on national socio-economic development, environmental protection and border security,<sup>27</sup> and as such citizen's rights were not at the forefront for those charged with implementing the law.

As the revised Lao constitution makes clear, the role of the State is to protect and promote all forms of property rights (Articles 16 and 17). This should be reflected in the Objective (Article 1) of the revised Land Law, thereby providing guidance to citizens on claiming their rights, and reminding governments at all levels about their obligation to provide these rights.

**Article 16:** The State protects and promotes all forms of property rights: State, collective, private domestic and foreign investment in the Lao People's Democratic Republic.

**Article 17:** The State protects the property rights (such as the rights of possession, use, usufruct and disposition) and the inheritance rights of organisations and individuals. Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws.

#### Recommendation 2a: Link land zoning and tenure security together as one process, and make the LUP legally binding

In the current PLUP manual, LUP is undertaken in two stages, with land zoning being a prerequisite to tenure security (land registration and titling).<sup>28</sup> Even if land registration is completed, it is often done several years later, by which time circumstances have often changed and land needs to be re-measured resulting in inefficiencies and duplication. Currently, land zoning alone does not guarantee tenure security (actual or perceived) despite the signature of the district, resulting in land being give away to investors, bought illegally by outsiders, or subjected to 'claims' (*din jab jong*) by its inhabitants.

Land zoning needs to provide a tenure which is legally binding, so avoiding the additional time and expense of formalising tenure parcel by parcel (as is currently required under Article 18 of the 2003 Land Law). An agriculture zone, for example, may have private land, customary owned land or

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<sup>27</sup> The full English text of Article 1 of the 2003 Land Law is:

"The objectives of the Land Law are to determine the regime on the management, protection and use of land in order to ensure efficiency and conformity with [land-use] objectives and with laws and regulations [,] and to contribute to national socio-economic development as well as to the protection of the environment and national borders of the Lao People's Democratic Republic.

<sup>28</sup> For example, LMDP only completes registration once LUP maps have been completed.



communal land, all of which must receive basic legal protection (Recommendation 1). The same recommendation was made in the 2009 PLUP Manual.

It is recommended that the GoL take measures to officially recognise and legalise village agriculture and forest land use zones delineated, and agriculture and forest land management agreements from PLUP, in order to protect the forest and land use rights of rural villagers. It is recommended that provincial and district authorities be bound to recognise village boundaries, village land use rights and land use zone maps when considering the allocation of land for agricultural development (p. 12).

Recommendation 2b: Recognise that all non –State and non-individually owned land in the village LUP is customarily owned, rather than unowned, until formal land titling may be completed.

Recommendation 2b also reflects the quotation above, in that it aims to ensure that villages, under the direction of the district, have the right to manage non-titled land within village boundary (or territory) in accordance with the law<sup>29</sup>. It is impractical to consider it unowned until formal titling can be completed at some point in the distant future (Article 18 of the Land Law). Decentralisation will allow the village to distribute land and collect taxes according to labour force and customary ownership (thereby removing the need for land limits under Section 17 of the Land Law).

A village rights approach to tenure security, rather than a titling approach, provides additional protection to communal lands, which are being encroached on by local elites and outsiders who are taking advantage of its ‘unowned’ status. Using this broader definition of ‘customarily owned’ village lands as the default position, rather than communal lands<sup>30</sup> overcomes some of past limitations of scaling up the registration of communal land, which include:

- swidden farmers not accepting of a CLT model overlaying their customary private land which gives additional ownership rights to the village as a whole
- the cost and time of attempting to ‘measure out’ private lands
- loss of tax revenue if the communal title is tax exempt
- the compensation cost of revoking CLT, which makes government reluctant to upscale it, particularly given uncertainty over the location of future development projects (including trains and highways).

This recommendation should be regarded as an interim approach to protect village lands until formal registration and titling (such as currently practised by LMDP), can be completed.

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

Due to their development priorities, most CSO’s are unable to complete the minimum requirements for PLUP in accordance with the 2009 manual. The communal forest zones developed by GRET, MHP and GAPE for example, while recognised at district level, are not entered into the National LUP database. This reduces the level of tenure security.

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<sup>29</sup> It cannot be sold to a Third Party, or rented to unauthorised investors, for example.

<sup>30</sup> As advocated by NAFRI in Viengkham District, Luang Prabang (2012:34) and endorsed by LIWG (2012b).

In any case, it is unreasonable that communities do not have the same right to register and title communal land on demand as private individuals. The new legal framework should acknowledge that a full PLUP may be avoided as a prerequisite to registration/titling in situations in which the proposed area is not claimed by a neighbouring village,<sup>31</sup> is endorsed by the village authorities, and where the district can certify that the customary tenure is still strongly recognized by all inhabitants.

Recommendation 4: Include a compulsory review period for monitoring the LUP of at least one year before it is finalised

A trial period, whereby the LUP made can be reviewed in subsequent years, was found to be particularly effective in vulnerable upland communities, in which agricultural land requirements are consistently underreported by villagers wary of paying land taxes.<sup>32</sup>

A trial period of at least one year needs to become a formal part of the LUP process, in which all stakeholders can re-negotiate the LUP before it becomes a legally binding document. This monitoring period needs to be factored into the cost of LUP and recognised in the LUP Common Principles now under development.<sup>33</sup>

Recommendation 5: Introduce a new category of land in the National LUP database to recognise bush fallows, and ensure it is taxed at a low rate

The current land categories in the LUP database recognise land as either agriculture or forest, which discriminates against swidden farmers who rely on a mosaic of fields and forests to sustain their livelihoods. They either have to pay extra land taxes (since they need a larger land base with which to support themselves) or taxes on non-timber forest products which require fallows. As well as food security, bush fallows generate environmental services to the wider community such as biodiversity and carbon which should be rewarded, rather than penalised.

A new category of land is needed to recognise bush fallow, which needs to be defined within the revised Land and Forest Laws. Dwyer and Devongsa, (2017:27) suggest that a low rate of tax (rather than no tax at all) on bush fallow land would “give villagers an economic and legal claim on the land, rather than simply a moral and cultural one.”

Recommendation 6: Increase land taxes on unused land to penalise land speculators and benefit investors

The area of available lands which could be registered as communal within the village LUP is steadily declining with economic development, as savvy farmers, often in collusion with outside interests, ‘claim’ land for the purpose of speculation. As well as denying poorer farmers the chance to use this land, the associated fragmentation denies genuine investors, such as Stora Enso, the right to rent this land on a basis which benefits the community.

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<sup>31</sup> The delineation of village boundaries is Stage 3 of the PLUP Manual (2009).

<sup>32</sup> FALUPAM provides for a two-year monitoring and review period before the LUP is finalised to overcome this problem.

<sup>33</sup> Their full title is “Common Principles as a guiding framework for Land Use Planning in rural areas.”

The land tax system needs to be overhauled to limit the spread of *din jab jong* and protect common land<sup>34</sup>. To ensure fairness, the current flat rate system (e.g. 50,000 LAK/hectare as occurs in Ta Oy) needs to be replaced with a progressive system, in which the amount of tax paid is proportionate to its land value.

## **6.2 Guidelines to CSOs to design LUP strategies more beneficial to rural communities**

### **1. Carefully consider the need for a full LUP**

LUP is often requested of projects undertaking NRM activities by government, but unless it is accompanied by supplementary activities, and monitored properly, it may not achieve the desired tenure and livelihood objectives –particularly given the current situation in which zoning has little connection to tenure (hopefully to be rectified by Recommendation 2). A lack of experience in LUP and reliance on district officials may lead to insufficient land being allocated for agriculture. As FALUPAM shows, quality LUP costs money – there may be cheaper approaches that still support the rights of the vulnerable communities which are targeted by CSO's.

The impact of GRET, which built awareness and gained de facto registration agreements in small areas in numerous villages, was more cost effective than the approach of those projects which invested a great deal completing a full LUP but then were unable to support the sorts of follow-up activities which are critical to its success.

### **2. Follow the common principles now being developed to attain a quality standard in LUP**

Many CSO's in Laos lack specific experience in LUP, due to the level of technical expertise necessary in mapping and because LUP is a stepping stone to reaching higher objectives. The current LUP principles being developed by the Land Subsector Working Group (LSSWG) and its partners sets a minimum standard for CSO's to aim towards, and CSO's choosing to implement LUP may need to either upgrade their skills or outsource the work to more professional agencies to ensure a quality outcome

Of particular value are the efforts made to encourage the participation of women and ethnic minorities through the use of local languages. Most government counterparts are male and from the Lao Loum ethnic group, which needs to be overcome if the LUP is to have relevance for the local community.

### **3. Seek to register (and title) parcels of communal land without the prerequisite of a full LUP**

Communal and collective land resources are steadily dwindling as economic development brings land privatisation (loss of the 'commons'). For additional tenure security, communities should have the right to register and title communal land in the same manner as private land owners (Recommendation 8).

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<sup>34</sup> It is acknowledged in making this recommendation the challenge between claiming land for future generations, and claiming land for purely speculative purposes.

CSO's should actively inform local communities of their collective/communal titling rights, including the benefits and the processes to achieve them, so that CLT is also "demand driven" not just "donor driven".

4. Seek communal title to protect productive lands close to the village with water access

Well-watered land close to the village that was previously a communal resource for food production, are favourable for commercial agriculture. Local elites, through their influence on village committees, have often decided to rent out such lands to investors without full community consultation. Women are particularly affected, since they take a greater responsibility for gathering and producing nutritious food for the household, as well as looking after children.

Within an agriculture zone, CSO's should seek social justice for the most vulnerable inhabitants, by identifying suitable productive agricultural areas for collective or communal titling as a safety net for poorer households, and develop regulations for its members. An example of a communal vegetable garden, with individually managed plots and a common quality fence, reduces the risk of animal damage (Figure 8).



*Figure 8: Communal vegetable garden, in which plots are allocated according to need.*

5: Identification of significant streams for protection and regeneration.

Rivers and streams have been inadequately protected throughout Laos, as their banks typically fall under private ownership, and commercial agriculture has brought with it dangerous chemicals that are destroying aquatic life and putting nutrition at risk. The prevalence of natural disasters such as flooding is increasing with climate change.

The LUP process is an ideal time to introduce buffer zones along significant streams within their land use map, in a similar fashion to Stora Enso. These buffers need to be demarcated and managed, and ideally registered and titled to ensure their long-term protection.

## 6. Investigate partnerships with private companies

The work done by VFI and Stora Enso to fully inform communities about LUP has been successful in engaging with communities, and has enhanced mutual understanding about the role that companies and civil society can play together in rural development.

The lessons learnt from this partnership could be scaled up to other private sector actors who are investing in rural Laos. This may seem challenging for some CSO's who view business as putting profits before the needs of farmers. It remains true however, that no company wishes to get into a fight with villagers – indeed, most rely upon them to provide the raw materials they need.

## 7. Accept the law of diminishing returns when it comes to participation

As the market economy develops, farmers are increasingly weighing up the benefits of attending and contributing to meetings, whether in land use planning or other village activities. They are putting their faith in their elected representatives. It is not possible to expect participation by all members of the community for long periods of time, particularly when there is no immediate threat to their lands – any conclusion that seeks to invest even more efforts in participation (as some literature suggested) risks misallocating resources that could be better spent elsewhere (such as broadening the overall coverage of LUP or related activities). This is the law of diminishing returns (Figure 9).

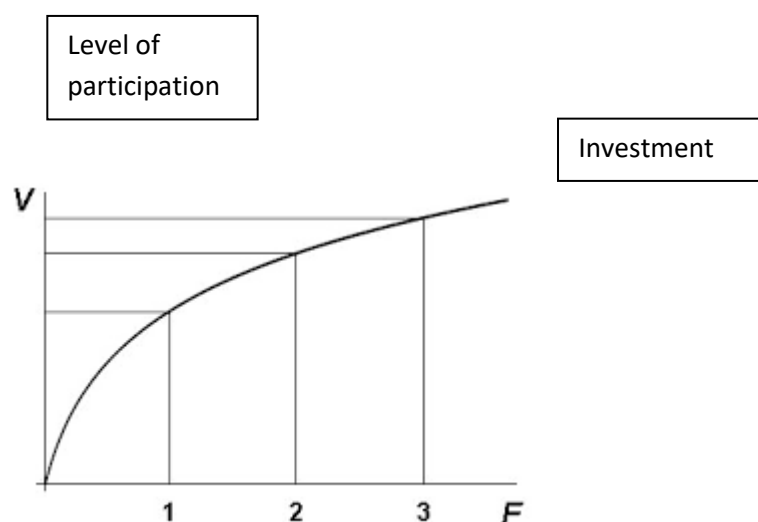


Figure 9: Law of diminishing returns

Consideration should be given to how to measure participation. It is very easy to measure the number of participants, but more difficult to measure their quality of involvement. A long-term commitment is needed to measure any tenure or livelihoods changes as a result of participation in PLUP, thereby giving weight to the argument given in Suggestion 1 – if there are not the resources to provide for a long-term support and monitoring, then reconsider the need for a full PLUP.

## 8. Critically analyse the proposed LUP from a human rights perspective

LUP requires a careful consideration of ethical issues which may lead to conflict with the stated human rights objectives of the CSO. For example, should a CSO support LUP in a forced

resettlement area for example, in which there is clearly insufficient land for the community? Suggestions for CSO's facing the prospect of working with internally resettled villages are given in Baird and Shoemaker (2005), who write:

Improving the response of aid agencies to these issues requires better critical research and analysis, better addressing ethnic and cultural issues and staffing, and the willingness of agencies to hold themselves more accountable to local communities.

In a critical analysis of the work of development agencies undertaking tenure security activities in Cambodia, Biddulph (2010) determined that their interventions were far removed from the problems they had intended to address. His conclusion leaves the reader with a sobering thought:

It is concluded that there may be little point in the development industry trying to extend rights to places where national governments are not prepared to enforce those rights (p. iii).

## **Annexes**

### ***Annex 1: Terms of Reference (December 2016)***

Mission: Land Use Planning Review and Improvement Initiatives.

#### **Background and context of the study**

The Land Information Working Group is a network of civil society organizations concerned about land issues in Laos. The LIWG supports open information sharing, and participatory and transparent decision-making processes related to land and natural resource use management. The LIWG operates under the umbrella of the iNGO Network (network of international NGOs in Laos) and nearly 40 different organizations, INGOs and NPAs, are represented in its Core Membership.

Managing complex landscapes in Laos often requires addressing conflicting objectives and managing trade-offs between maintaining biodiversity, ecological functions and improving livelihood. Many rural villages in Laos depend on agriculture and natural resources for their subsistence and the Government of Laos has used land-use planning (LUP) as a core policy and planning instrument for development and resource protection. LUP has been implemented at various levels by a variety of stakeholders for very different objectives in Laos during the last two decades. It can be a powerful tool to help villagers to better manage and plan their own natural resources and to strengthen villagers' decision-making power over forests and developing projects. It can strengthen Land Tenure Security when communities are well involved through a participatory process and when communities are informed about their rights. This implicitly aims as well to lead to a reduction of conflicts. Over the years a large range of different LUP approaches have been developed and tested in the country. LUP approaches differ for the different stakeholders, particularly Government, Private Sector and NGOs. Despite, that "Participatory" land-use planning (PLUP) became one of the flagships of donor-supported programs in Laos more recently, also here the implementation differs from one to another agency, as commonly agreed methodological standards are lacking. However, rigorous assessments of the positive and negative outcomes of different LUP approaches used within differing local contexts are still missing.

Recently members of the LIWG expressed the need to conduct a study reviewing current and past Land Use Planning projects and activities within the country. There are currently some initiatives including review on LUP going on. The TABI project is under review. The Focal Group on LUP under the LSSWG (involving inter alias CIRAD, GIZ, TABI, SUFORD) has been working on developing common standards for LUP aiming to provide technical guidance beyond the different technical approaches developed. Some more initiatives by CIRAD and IWMI aiming to promote dialogue and strengthen LUP might take place next year as well. Discussions and connections with these stakeholders are highly recommended.

#### **1. Main Objectives and Key Questions**

Goal: How much has Land Use Planning been contributing to alleviate poverty in and strengthen the rights of rural communities in Lao PDR and what can be done to strengthen the positive impacts?

Firstly, the study will define key recommendations relevant to advocacy related to the land and forest laws in Laos. This process aims to look into the effectiveness of Land Use Planning from a

human rights angle in particular the rights for land tenure (access to land) and the rights for the participation of rural communities where LUP is implemented. The study will also investigate the correlation between LUP, land tenure security and the impact on food security and on livelihoods for rural communities.

Secondly the study will outline guidance for CSOs working on LUP based on an investigation of the correlation between LUP, land tenure security and the impact on food security and on livelihoods for rural communities, in order to design strategies on LUP more beneficial for rural communities.

In this regards, the LUP study will be conducted under a specific lens looking at how LUP benefits to the communities under land tenure security, participation of communities to the process, food security and livelihood and conservation aspects.

- Participation –
  - What is the perception/understanding of participatory approach of the communities?
  - How is LUP understood from the different concerned parties (communities, local authorities, CSOs)?
  - How are/were the communities involved before and after LUP (in terms of livelihood planning, production's land management, forest land management, in rivers protection...)?
  - What is their perception of ownership of the LUP process?
- Land tenure security –
  - Does the community perceive tenure as more secure when LUP is applied in their village? This includes communal tenure for whole village.
  - Does LUP increase recognition of communal land & customary practices?
  - How village land management plans are integrated into district land management plans?
  - Do concessions respect land & forest management plans set up through LUP?
  - Identify examples of improved tenure security or tenure insecurity since LUP
- Food security and livelihood
  - Has livelihood increased since LUP?
  - How has LUP impacted in Food Security?
  - Does LUP has an impact on upland crops production (better land management, better productivity, positive impact on pest management)
  - Can we make a link between the perception of tenure security and food security?
- Conservation
  - How effectively are natural resources (forests, rivers, water sources) protected through LUPs?

## **2. Expected outcomes of the study**

The expected outcomes are:



- The effectiveness of LUP at achieving its intended goals is critically examined and discussed;
- CSOs are better equipped to improve the design of their Land Use Planning strategy;
- The Ministry involved in the Land and Forestry Laws revision (MoNRE and MAF) understands and accepts the recommendations during their process of the laws revision;
- A “post-study strategy” such as a multi-stakeholders platform involving government/university/private sector is designed aiming create a Community of Practice on LUP in order to examine how the recommendations and main findings can be implemented and monitored.

### **3. Study Framework and Methodology**

Duration: The mission is estimated to represent an estimated 28 full work days planned for the first quarter of 2017. A first draft of the report will be submitted 3 days after a workshop aiming to present the result of the stakeholders’ analysis and the field assessment. A final version of the report will be submitted 2 days after having received the LUP sub-committee’s comments.

Location: Preparatory meetings with the LUP sub-committee and various stakeholders involved in LUP in Vientiane Capital. Field visits to various locations where LUP has been implemented by different stakeholders.

Steering committee:

A LUP sub-committee composed of LIWG members with clear roles defined will be set up with the responsibility to monitor the progress of the study, provide guidance to the consultant and editorial backing.

Methods:

1. Stakeholder analysis: Literature review (i.e. evaluations already undertaken and comparative analysis of the main aspects of LUP methodologies studied in terms of their effectiveness in leading to enhanced land tenure security, food security, income levels and natural resource conservation. This will involve a review and an update of the existing mapping of actors involved in LUP.
2. Legislative documents analysis (e.g. Land Law and Forest Law)
3. Individual interviews and focal group discussion to identify lessons learned, including with researchers and organization staff who have been involved doing LUP as well as with government officials
4. Survey among the LIWG to know who is doing LUP, where, and with which objectives.
5. Field visits to villages where LUP was implemented ideally (will be identified after the stakeholders’ mapping).
6. Identification of lessons learnt and recommendations for the implementers.
7. Identification of channels within the government to influence
8. Definition of key recommendations for the Land and Forest Laws (based on the literature reviews and interviews).
9. Plan and facilitate a workshop with all those have been involved in Land Use Planning for feed-backs and agreement on recommendations.
10. Report Writing

#### 4. Consultancy Team

At least one Consultant should be assigned to carry out the mission. Priority is placed on the evaluator having expertise on Land Use Planning. Strong analytical and strategy development skills are also required. The consultant(s) must have primary knowledge and understanding of the Lao context.

#### 5. Main stakeholders to contact

- CIRAD: Jean-Christophe Castella and Guillaume Lestrellin
- GIZ: Julian Derbridge
- FCPF REDD+ Readiness Project: Trithep L. Panich
- TABI project: Mike Dwyer, Brice Xavier Pletsers, Chris Flint
- MAF DALAM (Vanida to check with Hongthong)
- MoNRE: DoLA (R.H will give the contact)
- Stora Enso: Vanida to give the contact
- LIWG members: Mekong Watch, VFI, World Renew, CIDSE, GAPE, JVC, CCL, CARE, HELVETAS
- Richard Hackman
- SUFORD: Edwin Payun
- EcoLao: R.H.
- FoF: Dr Thoumthone

#### 6. Study Report and Any Other Products

The responsibility for the contents of the final evaluation report lies with the evaluator. The evaluation report will address the following aspects:

- Provide recommendations on how to engage in advocacy related to the legislative documents alongside with information on channels to influence.
- Provide guidance for implementers in order to improve the effectiveness of their work on LUP especially towards improvement of rights for rural communities.

Outline of the Study Report: The report should not exceed 30 pages (excluding annexes). The report should contain the different elements mentioned below. All parts should be clearly distinguished from each other and be of sufficient quality.

- Cover page
- Table of Contents
- An executive summary that can be used as a document in its own right. It should include the major findings of the study and summarise conclusions and recommendations.
- The objectives of the study
- The main questions and derived sub-questions.
- A justification of the methods and techniques used (including relevant underlying values and assumptions, theories) with a justification of the selections made (of persons interviewed, agencies or sites visited).
- Eventual limitations of the study.
- A presentation of the findings and the analysis thereof (including unexpected, but relevant findings). All research questions should be addressed, paying attention to gender issues.
- Conclusions, which will analyse the various questions. Conclusions should be derived from the findings and the analysis thereof.

- Recommendations should be clearly related to conclusions but presented separately. Recommendations should be practical and if necessary divided up for various actors or stakeholders.
- Report annexes that include:
  - Terms of Reference;
  - The technique used for data collection (including the people interviewed and locations visited; the list of questions used or 'interview guide' or topic list (also for possible group discussions);
  - The programme adhered to (data and main features of the activities carried out).
  - Concepts and list of abbreviations.
  - List of documents and bibliography.
- The reporting style should be clear and accessible. References to sources used, such as interviews, literature, reports, etc. must be given.

## **7. Expression of interest and budget**

If you are interested in carrying out this evaluation, please send a Curriculum Vitae and a tender including the following elements:

1. Evaluation proposal (3 pages maximum) including the methodology proposed to comply with the requirements of the evaluation.
  2. Detailed calendar of the evaluation (based on the work plan).
  3. Full budget presenting the costs for the evaluation.
  4. The Curriculum Vitae and the Tender have to be sent by email by the 5 September 2016 at the latest to the following address: [phetdalay@laolandinfo.org](mailto:phetdalay@laolandinfo.org)
- 

### **Organization:**

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### **Contact Person:**

Violaine Fourile  
LIWG International Coordinator  
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- Forestry Law, National Assembly, No. 06/2007 (under revision)
- Instruction on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling, National Land Management Authority (NLMA) 564/2007
- Decree on the Implementation of the Land Law, Prime Minister, No.88/2008
- Participatory Agriculture and Forest Land Use Planning (PLUP) at Village and Village Cluster Level, issued by MAF and NLMA, 2010.
- Decree on Service Charges, Office of the President, 003 2012
- Ministerial Directive on Cadastral Surveying and Cadastral Mapping, MoNRE 6035/2014
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- Decree on Compensation and Resettlement of People Affected by Development Projects, 84/PM (2016).

**Annex 3: Results of the survey of LIWG members**

Note: To protect the identities of the eight organisations that responded to the online survey, organisation names and work locations have been removed.

Organisation	A	B	C	D	E	F	G	H	Average
1. Name of the District/Province where your organisation works									
2. In how many villages have you completed PLUP since 2009?	20	6	13	4	14	14	10	3	
3. How many days, on average, do you spend on PLUP in each village?	10	45	21	25		42		14	
4. Did you identify customary land during the LUP process? How many villages?	no	yes	no	no	yes, 14	yes	no	yes, 3	
5. Did you register any communal land during the PLUP process? How many villages?	no		no	yes, 4	yes, 5	yes, 2	yes, 10	yes, 3	
6. Have the PLUP results been digitised and uploaded to the Land Registration System (PONRE)?	no	no	no	no	no	yes	no	not sure	
7. What are your objectives for doing PLUP, and how important are they? 1=Very important, 2=Quite Important, 3=Not very important 4=Not relevant to our work									
· Reduce land disputes between villages	1	1	2	1	3	2	3	2	1.9
· Identify land available for investment by private companies	4	3	2	4	4	3	3	3	3.3
· Provide individual titles to marginalised families who can't otherwise afford them	3	3	4	1	4	4	4	4	3.4
· Ensure local communities would receive fair compensation if they lose their land involuntarily	1	2	3	1	2	1	1	4	1.9
· Stabilise shifting cultivation and increase forest cover	2	2	2	2	4	3	4	4	2.9

Organisation	A	B	C	D	E	F	G	H	Average
· Identify land suitable for communal title	3	2	2	1	2	1	2	4	2.1
· Protection of watersheds or wildlife	1	1	1	1	1	1	2	1	1.1
· Redistribute land to marginalised members of the community	3	2	3	1	2	1	2	4	2.3
· Reduce the possibility of land being taken for land concessions	3	1	3	3	1	1	1	2	1.9
· Encourage sustainable management of NTFP's by villagers	1	1	2	1	1	1	1	1	1.1
· Assess the suitability of village land for different agricultural purposes	1	2	1	1	3	2	2	2	1.8
· Foster community control over land, forest and natural resources	1	1	1	1	1	1	1	1	1.0
· Other: Ensure sufficient land for shifting agriculture								1	
8. To what extent have your objectives been achieved? 1=Fully achieved, 2= Mostly achieved, 3=Partially achieved, 4=Not achieved, 5=Don't know. Reasons?	2	5, Too early to tell	2	2	3	3, Too many staff changes	3, CLT never issued	2, Sufficient ag. Land secured	



#### **Annex 4: Schedule of interviews**

**Note:** Names and positions of those interviewed have been omitted to protect their identities.

<b>Date</b>	<b>Organisation</b>
23/11/16	Land titling section, PONRE Khammouane
23/11/16	LMDP Project, Khammouane
24/11/16	PLUP committee and community leaders, Talak hamlet, Gnommalath District, Khammouane
25/11/16	CIDSE Rural Community Land Project, Gnommalath and Mahaxay Districts, Khammouane
6/12/16	Agro-forestry Development Consultants
3/1/17	CDE, Berne (Skype)
4/1/17	CIFOR and IRD, Vientiane
4/1/17	TABI Project, Vientiane
5/1/17	LMDP, GIZ, Vientiane
6/1/17	Forestry Department, Nuol, Vientiane
24/1/17	SUFORD, Vientiane
25/1/17	Village Focus International, Vientiane
26/1/17	Mekong River Land Governance (MRLG), Vientiane
26/1/17	Stora Enso, Vientiane
31/1/17	GRET Office, Houaphan
1/2/17	Land Section, PAFO Houaphan
1/2/17	LMDP Project, GIZ Houaphan
2/2/17	DONRE, Viengxay
2/2/17	DAFO Viengxay
2/2/17	Village land management committee, Ban Namone, Viengxay, Houaphan
3/2/17	Village land management committee, Ban Soy, Viengxay, Houaphan
6/2/17	Land Officer, Stora Enso, Ta Oy, Salavan
6/2/17	DAFO, Ta Oy, Salavan
7/2/17	Village land management committee, Ban Lapheung, Ta Oy, Salavan
7/2/17	Village land management committee Ban Laphong Kokhai, Ta Oy, Salavan
8/2/17	Land section, DONRE, Ta Oy, Salavan
9/2/17	Lands Section, PAFO, Champassak
9/2/17	Land Administration Section, PONRE, Champassak
9/2/17	GAPE
10/2/17	Village land management committee, Ban Nongphanouan, Paksong District, Champassak
22/2/17	MHP, Bokeo
9/3/17	Land Use Planning and Development Department, MONRE