

Three Cases Displaying Common Issued Related to Land and Natural Resources in Lao PDR



Community Awareness Raising during Coaching to PSNUA and PAFO\DAFO in Khammuane Province (Photo: Lenol Bounpheng)

A Case Study Compilation by the LIFE Project in Collaboration with LIWG

For the Bread for the World Project

Strengthening Land Rights of Communities in Lao PDR

Author: Lena Vilayphet

Co-Authors: Phaengxay Khakhamxay, Noudsavanh Pheuangsavanh, Lenol Bounpheng, Visouda Keomeuangthong

Reviewed by: Violaine Fourile – LIWG International Coordinator

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Brot
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1.1 Background on the BftW Project and the Cooperation between LIFE and LIWG

The **Land Information Working Group (LIWG)** is a civil society network that was founded in 2007. The LIWG consists primarily of international and local civil society organizations working on land issues in Lao PDR. The group has over 80 Core Members representing nearly 40 organizations, and over 180 individual supporting members. LIWG promotes awareness and understanding of the social, economic and environmental impacts of land-related projects, by gathering and disseminating information, facilitating dialogue, and carrying out studies. **The Land Learning Initiative for Food Security Enhancement Project (LIFE Project)** is a key project on legal awareness raising, initially created as an LIWG initiative and implemented by Village Focus International, one of the LIWG's members. LIFE acts as a training provider to interested organizations in the land and natural resources sector in Lao PDR. LIFE is currently funded by Bread for the World and UNDP. LIFE's partners include: CARE, CCL, CORD, FAO, GIZ, Helvetas, JVC, MCC, Oxfam, RRDPA, CASE and World Renew, most of them being LIWG members. The Department of Agricultural Land Management (DALaM) under the Ministry of Agriculture and Forestry is the project's main government counterpart. LIFE aims to LIFE seeks to incorporate land issues into the initiatives of the organizations that it partners with while simultaneously strengthening the long-term land tenure of local farmers. LIFE achieves this through capacity-building activities on key policies and legislation related to land and natural resources delivered to CSOs, development partners, government and private sector stakeholders



Training at village level in Khammuane by partner organisations that were trained by LIFE before and are now coached on-the-job (Photo: Noudsavanh Pheuangsavanh)

At the end of the eighties, Laos began the decentralization process to transition to an open market economy. About 20 years later at the 8th Party Congress, the government formalized a policy called “Turning Land Into Capital” which was concretized by the issuance of a first series of moratoria on land concessions¹. Since then, land and natural resource related tensions have been increasing, as is evidenced by numerous cases \ of land grabbing, environmental disasters following private and public investments in hydropower, and the rapid displacement of local communities due to increases in foreign investment. These issues highlight the extremely detrimental effects of this policy on vulnerable communities and their access to land. At the same time, more than 80 %² of the population relies on subsistence agriculture for a living.

LIWG and LIFE collaborated on a project entitled “Strengthening Rights of Communities in Lao PDR” with the goal of increasing and protecting the land tenure rights of rural communities. As a part of this project, LIFE joined LIWG’s legal calendar task force which develops annual training handbooks for a comprehensive legal calendar that explains pertinent issues in the land law sector. LIFE trained different LIWG members in topics related to land and natural resources law such as customary land rights, contract farming, or forest use. LIFE also partners with organizations to do on-the-job coaching sessions. For example LIFE supported several members, such as PSNUA and APEDC\CASE in Khammuane and Xiengkhuang to develop their own training content and also supported them during village trainings in 15 villages from 2020-2022. From these field visits, the team selected several common cases or problems that might be of interest for a broader community. This paper addresses issues commonly faced by rural communities and to proposes methods of solving them through current Lao laws and legislation.

1.2 Introduction to the Cases and the Target Villages

This study will introduce three common cases, all of which could possibly be replicated in other parts of the country. Two cases were observed in Khammuane Province, in central Lao PDR, and the third case occurred in Oudomxay Province in Northern Laos.

The first case takes place in a village with heavily forested areas that were recently designated as a national park – Nakai-Namteun National Park (Prime Ministerial Decree No. 36, 2019). The population of the village has been using the forest for generations according to traditional customs to collect food and non-timber forest products (NTFP) plants for their livelihoods. Just recently, several hectares of forest were cleared by the villagers to plant cassava to sell to a Vietnamese company to produce animal fodder. A government initiative has planned to relocate the village to a newly constructed area to use the former village land for international concessions. Villagers have refused to move as the new area is prone to flash floods caused by a proximate dam. Additionally, villagers have said that the proposed new “village” does not have sufficient land for livestock farming.

In regards to the second case, the land titling team from the District Office of Natural Resources and Environment came to measure the villagers’ land to begin the land titling process . The villagers paid for the measurement service, but, in the end, part of that land was selected to be given to a private company

¹ Miles Kenney-Lazar, Michael Dwyer, Cornelia Hett, Turning Land into Capital: Assessing a decade of policy in practice, Land Information Working Group, May 2018.

² <https://www.fao.org/laos/fao-in-laos/laos-at-a-glance/ru/>

for an investment project to make a rock quarry. The problem of this case was that part of area that granted to the company overlapped with the land belonging to the community members which they had already paid to have surveyed and measured. Throughout the entire process the villagers remained unaware of the pre-existing plan for their land.

The villagers are in danger to lose both their land and their investments for the measurement of the land, as compensation measures have not yet been introduced.

The third case took place in Oudomxay Province. Chinese investors came to the village to ask interested villagers to plant seasonal crops like beans and pumpkin. There was no written contract prepared and signed, all negotiations relied solely on oral agreements which set the selling price. At harvesting time, in some cases, the investor came to fetch the product but never paid the farmers. In other cases, investors did not show up at all or bought the product at a lower price than originally agreed upon.



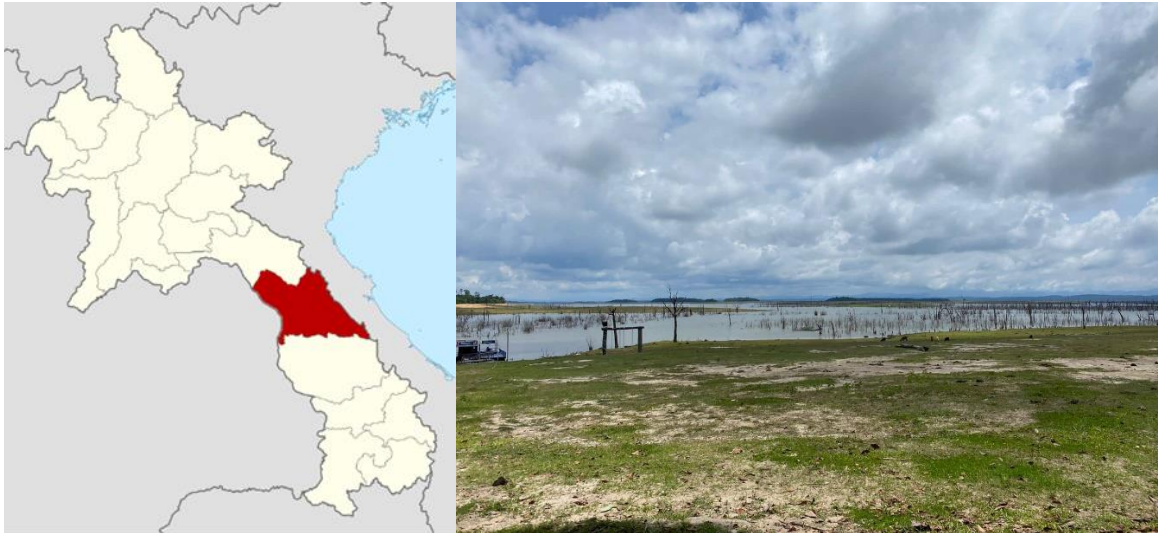
Pumpkin field produced under a Chinese Contractor in the Northern Province of Oudomxay (Photo: Dorn Bouthasing)

The target villages that were visited during the coachings were selected by LIFE's respective partner organisations (PSNUA and DALaM in Khammuane and CCL in Oudomxay) based on issues occurring in their project's target communities.

	Ban Natherth , Yommalath District, Khammuane Province	Ban Khamhae , Yommalath District, Khammuane Province	Ban Pangsa , Namor District, Khammuane Province
Founded in and ethnic group	Founded in 1953. Ethnic Group: Makong	Founded in 1976. Ethnic Group: Tai Yoy	Not known. Ethnic Group: Khmu, Lao Loum, Hmong
Population	357 people (188 women) 92 households	498 people (266 women) 129 households	729 people (female: 340), 123 Households
Livelihood	Main occupation: lowland paddy field and animal husbandry, cash crops like cassava Food source: relying on natural resources such as from forest, river. Livestock: buffalos, goats, cattle, pigs, chicken NTFPs: bamboo shoots, mushroom, rattan, Lady Palm, ບຸ້ນ (Boon, similar to rattan)	Main occupation: lowland paddy field, animal raising, cash crops (especially cassava) Food source: replying on natural resources such as forest and NTFPs Livestock: buffalos, goat, cattle and poultry NTFPs: ບຸ້ນ (Boon, similar to rattan), lady palm, rattan, mushroom, bamboo shoots	Main occupation: lowland paddy field and animal husbandry Food source: Rice, home grow vegetables, fish and NTFPs Livestock: cattle, buffalo, pig, duck and chicken NTFPs: bamboo shoots, Malabar bark, bamboo worm, mushrooms, broom grass, rattan shoots, fern, wild honey and cardamom
Village land area	The total area of the village is 1,961.71 ha The residential area: 10 ha Village land area: 2 ha Village forest area	The total area of the village is 791.14 ha The residential area: 41.58 ha. The agricultural land area: 198.49 ha The village land area: 5.74 ha. Village Forest Area	Village conservation forest, protected forest area, village consumption forest, restoration forest, cemetery area, and production area.
Village Infrastructure and Accessibility	Road (dirt road), school Tractor and motorcycle are the main vehicle as the road condition is not good especially in the rainy season Electricity: In the old village there is no electricity, as the local government has the plan to move them to a new place as the old village (which many still prefer to stay here) is close to the natural protected area and government want to move the people out, so that why the government does not give the electricity to those who resist to stay in the same place.	Road (dirt road), electricity, school, water supply Tractor and motorcycle are the main vehicle as the road condition is not so good	<ul style="list-style-type: none"> • EDL • Gravity water (in dry season there is a lack of water) • All families have latrines and free defecation has been eliminated. • Dirt road but can access to the village throughout the year.

2 CASE I- COMMUNAL LAND USE IN KHAMMUANE AND THE POTENTIAL TO PROTECT NATURAL RESOURCES AND FORESTS

2.1 Area



Map of Khammuane Province (Source: Wikipedia), Right: The Reservoir of the Nakai-Nam Theun Dam during Dry Season (Photo: Phaengxay Khakhamxay)

Khammuane Province lies in the center of Laos and is primarily comprised of forested mountainous terrain. It borders Vietnam in the East and Thailand in the West. Many rivers flow through the province to merge into the Mekong River, such as the Nam Theun, the Nam Hinboun and the Nam Xe Bang Fai Rivers. The vast forests of the Nakai-Nam Theun National Park are an important watershed that feed into many Mekong tributaries and form the catchment area for Nam Theun 2, the largest hydropower project in Laos. The National Park is also known as being one of the last and biggest forest areas and biodiversity hotspots of the former Indochine Region. Between the Mekong and the Annamite Range, the Khammouane Plateau features gorges, grottoes, jungles, limestone hills, and rivers. The province's forest areas consist of three reserve areas. These are the Nakai-Nam Theun National Park, which covers an area of 352,200 ha in the Annamite mountains and the adjacent Nakai Plateau in the provinces of Khammouane and Bolikhamxay, the Hin Namno National Park with an area of 86,229 ha, and the Phou Hin Boun National Biodiversity Conservation Area with an area of 150,000 ha. These forests have many natural caves. The population of the province was just over 400.000 people in the 2020 census.

2.2 Introduction to the Case



Left: Houses of Natherth Village between Coconut Trees, right: The fence behind the house marks the village border and the beginning of the National Park Nakai-Nam Teun (Photos: Noudsavanh Pheuangsavanh)

The village of Natherth, which lies in the Yommalath District, is one of 31 decades-old villages located in the Protected Forest Area Nakai-Nam Theun National Park. On 15.02.2019, the forest surrounding the village was declared to become the Nakai-Namtheun National Park by the Prime Ministerial Decree No 36. Still, the forest has been used as income source and food source for the villagers ever since by harvesting NTFPs and forest vegetables for sale and nutrition and cutting trees for building houses. The original village population survived with rather low amounts of income, as mostly everything was planted (food) or collected in the forest (vegetables, animals, wood). Recently, several hectares of the forest were logged to increase the agricultural area of the village to produce cassava. Cassava is bought by foreign companies, mostly Vietnamese, to produce animal feed. Often villagers make oral agreements with the company and produce on their own terms. Currently, the farmers tend to be quite content with their agreements. Cassava production is a solid income source for the village.



Cassava plantations of the village in the National Protected Forest area (Photo: Noudsavanh Pheuangsavanh)

As Natherth Village lies in the area of the National Park Nakai-Namtheun, a new village was built by the government in order to resettle Natherth village in a new location outside of the National Park. However, the new village lies in a lower area close to a dam and is under the constant threat of floods. Furthermore, the proposed land is only suitable for housing. There is no available area for animal husbandry and grazing which is another important income source for the village in addition to the cassava plantations.

Participants feared that in the future, companies could come to the village and enter into unfavorable contracts for the villagers which might lead to debts or other adverse ramifications. Besides, the villagers cleared new big areas in the National Park surrounding their village to plant cassava.

This case shall focus on the rights and obligations of villagers on forest use and management when they live in a National Protected Area.

2.4 Explanation of the legal background in Lao PDR

The villagers in Natherth Village face two major problems. On the one hand, their village lies in the National Park and is supposed to be resettled and on the other the villagers recently extended their agricultural area further for several hectares into the forest to plant cassava.

Article 71 of the updated forestry law explains the different forest zones. It states,

“The management of Conservation Forestland involves the zonation of Conservation Forestland into Totally Protected Zones, Controlled Use Zones, and Buffer Zones. Totally Protected Zones are forest areas with high biodiversity values, important habitats and areas for the reproduction of key aquatic and wildlife species, river headwater areas, riparian forests and other areas that are important for environmental protection. In these areas, it is prohibited to conduct any activities except those for scientific research or walking trails for ecotourism. Controlled Use Zones are forest areas which the State allocates to villages inside and adjacent to Conservation Forests to sustainably manage and protect biodiversity and thereby receive appropriate benefits. These areas can be used for eco-tourism, for harvesting NTFPs from the natural forest, for agriculture production and for planting trees and NTFPs. Controlled Use Zones are allocated by the State to support family income generation, but on the condition that the felling of naturally grown trees for commercial purposes is prohibited. Buffer zones are area with or without forest, which are part of Conservation Forestland or are areas around Conservation Forestland which the State allocates for villages to use and manage to prevent encroachment in and around Conservation Forests, and to prevent negative impacts on the forest ecosystem in Conservation Forest areas.”

Natherth Village lies in the buffer zone of Namtheun-Nakai National Park and therefore controlled use of land is allowed. Article 39 of the amended forestry law³ on village forestry management planning explains the role of the village in managing, preserving, and rehabilitating the forest that lies within the village area, which is either within or outside of the protection, conservation or production forest zones. Articles 47-48 explain the management and protection of protected forest and conservation forest zones. However, villages that fall in one of the forest zones prior to the declaration of the National Park (2019) and have a land use planning map for their village forest and land resources are allowed to use their resources and livelihoods as before but are not entitled to increase the area or further encroach the forest area (Article 64). Natherth village has a land use plan which clearly shows the different areas and

³ Law on Forestry, Nr. 08 NA, 13. June 2019 <https://data.laos.opendevlopmentmekong.net/en/dataset/e7a7f81f-db0f-4853-bbd4-6a32ff946577/resource/787e4a63-9888-4cf2-83c4-6306bc77036e/download/forest-law-revised-translition-full-file-1.pdf>

management practices, so the villagers have a legal right to stay in their village area and manage the land as described in the village management plan, but they are not allowed to expand the village area.

“At an inter-ministerial meeting in July 2021, the Ministry of Natural Resources and Environment (MoNRE) and the Ministry of Agriculture and Forestry (MAF) agreed to the general principle that Land Titles can be issued to landholders of permanent residential and agricultural land in villages that are located inside the three State Forestland categories, but existed already before the official declaration of the respective Forestland, while Land Use Certificates can be issued for non-permanent types of land uses. A regulation on this matter is yet to be developed.”⁴

2.5 Conclusions and Lessons Learned

The villagers of Natherth village are reluctant to move to away from their land to the newly built village for several reasons. The proposed village lies in an area close to a dam reservoir and is prone to flooding during storms during the rainy season. Additionally, the new village only provides land suitable for housing. There is no additional farmland for animal raising, which has been the primary income source for the villagers for generations. And lastly, the current village developed over several decades, and includes several fruit gardens, specifically producing coconuts, and the compensation for these old trees has not yet been provided. According to the existing regulations, the villagers are allowed to stay in their current village, but they are not allowed to increase the village area further to cassava plantation. Neither in the current village nor the proposed new village are there opportunities for alternative and sustainable methods of generating income. Currently, there is a lack of clarity on the recognition of tenure rights for people living in one of the three forest categories (Tenure Rights in State Forest Land, 2021). It concerns about 3000 villages⁵. Some fears exist that villages could be relocated from current forestland to meet the requirements from the existing policy of 70% forestland and possibly the policy on village consolidation in support of the socio-economic development of the country. However, the policy dialogue at the central level is helping to clarify the exact tenure rights that communities can have. A decree is being drafted at MoNRE and MAF at the moment with the support from various development partners.

⁴ Tenure Rights in State Forest Land, Briefing Note by the Land Information Working Group, 2021
https://laolandinfo.org/wp-content/uploads/2022/01/Briefing-Note-1_Tenure-in-Forestland-Laos.pdf

⁵ MRLG publications, Land tenure security in ‘70 percent forest land policy’ of the Lao PDR, 2019
<https://www.mrlg.org/publications/land-tenure-security-in-70-percent-forest-land-policy-of-the-lao-pdr-laotian/>

3 CASE II- PARTICIPATION OF VILLAGERS AND COMPENSATION IN THE CASE OF INVESTMENT PROJECTS IN KHAMMUANE

3.1 Area

The target village lies in the same area with Nathert Village in Yommalath District, Khammuane Province. Details are described in Chapter 2.

3.2 Introduction to the Case

In Khamhae village, Yommalath District, another village lying inside the Nakai-Nam Theun National Park, the issues initially identified by the LIFE projects' partner from DAFO Yommalath were: 1) entering in the National Protected Forest for logging, 2) collecting of NTFPs and wildlife hunting as well as 3) agricultural activities.

However another primary issue was reported to the LIFE team during their activities in the village. Indeed, some villagers did not yet have land titles for their land. There are two methods to receive land titles which are 1. waiting for the official measurement team from the district to perform a routine inspection of the village and asking them to measure the land when they come (this is a lengthy process which can take years) . 2. submitting a request to the district to come in the village. This was the case of Khamhae Village. The villagers requested the district land measurement team to come to their village outside of their regular schedule and paid extra fees for their time. When the LIFE project team came to the village, the measurement by the authorities had already taken place, the villagers had already paid the related costs for the official measurement and were waiting for their titles.



Residential Area in Khamhae Village, Yommalath District (Photo: Noudsavanh Pheuangsavanh)

After some time, a second land measurement team, from another division within the DoNRE, arrived in the village with drones to re-measure some of the land in the village. They retook the measurements without involving with the village.

After that, a private company came to the village and informed them that the measured land had been appointed to them by the district authorities to do a rock quarry. It became clear that the measured land for the investment project included all the land plots that the villagers had previously measured at their own costs. The measurement by the district which took place with drones was only for the investment project. Today, the company is in the early stages of implementing a feasibility study and will soon start to operate.

The villagers have not received any compensation yet or a detailed explanation about the upcoming investment. When the project team asked further about the documents that the villagers received from the measurement of their lands, the government representatives ignored them and refused to go further into their case.

3.3 Introduction to the Activities

As per the initial request submitted by the government as mentioned above, the legal awareness raising activity for the village was prepared on village forest management, responsibilities and obligations of all parties (villagers, district, province, other actors) in protecting and sustaining the forest, and on customary land rights (based on Article 130, of the updated land law, 2019).



Legal Awareness Raising Activity in Ban Khamhae (Photos: Noudsavanh Pheuangsavanh)

However, the activity was also enriched with specific questions from the villagers to address the issue mentioned above. The villagers used this opportunity to ask for legal advice from the LIFE team.

3.4 Explanation of the Legal Background in Lao PDR

The issues faced by the villagers are indicative of many multi-level issues experienced in villages throughout Laos. For example, the villagers hadn't been properly informed about the upcoming investment project nor had they been involved in the decision-making process. According to the Decree

84⁶ on compensation and resettlement management in development projects, Article 18, affected communities have the right to be informed upon the project, the benefits and effects, the plan and progress for compensation and to be part of consultation meetings. Internationally, this process is referred to as “Free, Prior and Informed Consent” (FPIC)⁷ and is part of the declaration on the rights of indigenous peoples. This right is further stated in the Decree on Environmental Impact Assessment⁸ (2019), Article 36-39, which explicitly explains the process in which villagers should be involved in the course of the establishment of a development project. Article 17 explains the rights and obligations of the project owner regarding the compensation of the impacted villagers. The obligations include conducting a social and environmental impact assessment according to the Lao laws. Further, to “make plans of compensation, resettlement and rehabilitation of livelihood of people in Lao language” and to “take direct responsibility for and undertake the implementation of the plans of compensation, resettlement and rehabilitation of the livelihood of people properly and strictly”. These obligations are further elaborated in the Law of Investment Promotion⁹, in Article 73-74 on social and environmental obligations.

The District Department of Natural Resources and Environment (DoNRE) assured the villagers that they would discuss this issue with the division responsible for land measurement. They also explained that the company would have a meeting with the district authorities again in the near future and invited the villagers to join and explain the situation and their requests. If the project were to be approved, the company would have to refund the villagers for the costs they ensued to when measuring the land before the company was granted the land concession for the rock quarry.

It remained unclear whether the villagers received any documents by the district for the initial measurement of the land to be used as proof of ownership. . Although if they didn’t have any documents from the measurement, they could have other possibilities to claim the land under Article 130 in the Updated Land Law, 2019, on customary land use rights. Still, if there was no proof of the actual amount paid for the measurements, it would be difficult to claim these costs.

3.5 Conclusions and Lessons Learned

The case shows that the process of consultation with villagers prior to and during the process of approving an investment project is unclear to both government and village officials and has yet to be properly implemented. . While the law is clearly written and enforceable, it is rarely implemented and the actual follow-up on the process of establishing an investment project by the authorities still missing in many cases. In this particular case, DoNRE technical staff promised to report the dispute to the responsible persons at the district level. A promise was also made to invite villagers to the next meeting with the company, but until now, there has been no progress on this whatsoever.

⁶ Decree on Compensation and Resettlement Management in Development Projects, No. 84, GoL, 05.April 2016 https://laolandinfo.org/wp-content/uploads/2019/10/Decree-84-on-compensation-2016_ENG.pdf

⁷ United Nations Declaration on the Rights of Indigenous Peoples <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

⁸ Decree on Environmental Impact Assessment, Nr. 21, GoL, 31. January 2019, https://laolandinfo.org/wp-content/uploads/2019/10/Decree-021-on-EIA-2019_Lao.pdf

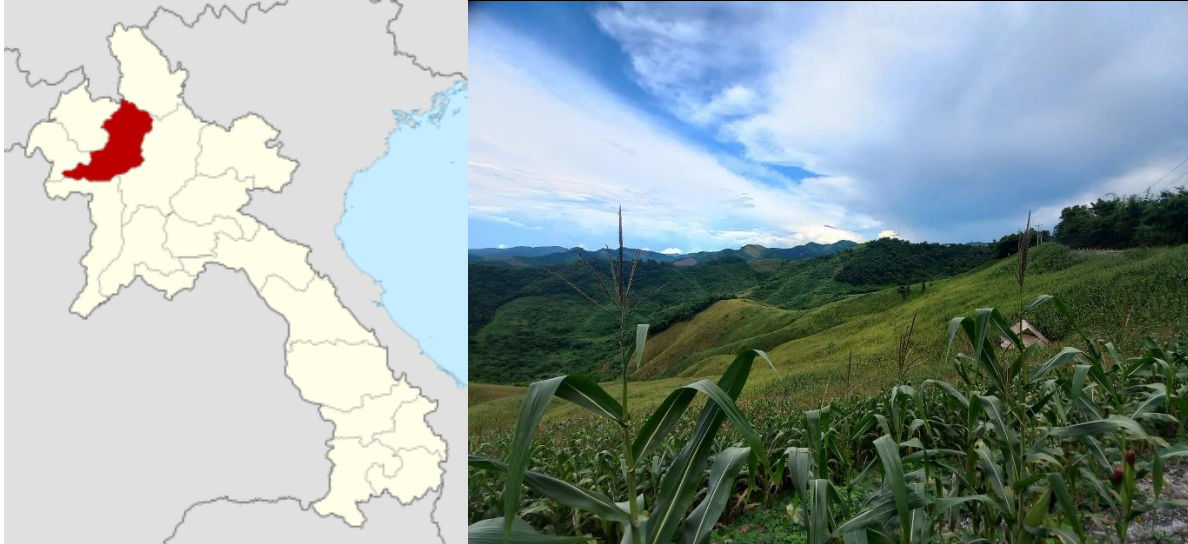
⁹ Law on Investment Promotion, Nr. 14, NA, 17. November 2016 https://laolandinfo.org/wp-content/uploads/2019/07/Law-on-Investment-Promotion-2016_ENG.pdf

DoNRE consists of several divisions, a division responsible for land measurement and another in charge of awareness raising. . Due to a lack of dialogue between the two divisions, their ability to coalesce their work was limited. Chapter 6 and 8 of the Decree Nr. 84 on Compensation and Resettlement state that the role of a committee of an investment project should include, within others, the provincial governor, district governors and heads of departments of respective offices. This committee should supervise the planning and the implementation of compensation (Article 20) and provide information to all affected parties of the investment.

It is important that all stakeholders understand their roles, rights and obligations, and ensure proper implementation and monitoring.

4 CASE III- CONTRACT FARMING IN OUDOMXAY

4.1 Area



Map of Oudomxay Province (Source: Wikipedia) Landscape in Oudomxay Province on the road to Namor District (Photo: Lena Vilayphet)

Oudomxay lies in the Northern Part of Laos and borders to China in the North. The topography of Oudomxay is mountainous, between 300–1,800 m above sea level. Oudomxay has deposits of salt, bronze, zinc, antimony, brown coal, kaolin and iron. In Oudomxay province, most of the population still practices subsistence agriculture. Predominantly "slash-and-burn"-agriculture is used, due to the province's mountainous topography. Besides rice, important crops are corn, soybeans, fruits, vegetables, cassava, sugarcane, tobacco, cotton wool, tea and peanuts. The vegetation in Oudomxay is rich by virtue of the monsoon climate. Several kinds of bamboo and a broad range of plants (for example orchids) are found in the region. Hardwoods like teak and mahogany trees grow in Oudomxay and are important sources of income for the population. There are more than 14 ethnic groups in the province, accounting for 75% of the population, mainly Khmu. In the 2020 census, there were roughly 345.000 people living in this province. Due to bordering to China, the province has become of interest for investors and companies from China, mainly for big infrastructure and agricultural projects.

4.2 Introduction to the Case

Pangsa village in Namor district entered into an oral agreement with a Chinese company to grow seasonal crops such as beans or pumpkin. The investor had initially reached out to the village head to lease liaise with the villagers. The contract scheme was 2+3. This means that the villagers would use their land and labor and the investor would give seeds, fertilizer and would be responsible for the marketing. The investor agreed to pay a price of 2,000 LAK/kg for pumpkin. No document was signed, it only was an oral contract. The investor gave fertilizers to the village head to distribute to the producer families which made the product whither in the field. The villagers anticipated that it was poisonous, as the investor did not

want to come and buy the produce anymore. Nevertheless, not all families used the fertilizer. Some families used the fertilizer and their plants died. Therefore other families refrained from using it as well, so that there were still products available. In the harvesting season, the problems arising were manifold. The investor bought the pumpkin only for a price of 500 LAK/kg; pumpkins that did not fulfil the criteria were not bought at all, although before, specific criteria had never been mentioned.



Residential Area of Pangsa Village, Namor District (Photos: Noudsavanh Pheuangsavanh)

In other producer families, the company still fetched the products but until now never paid for it. This case was reported in 2021 and fell in the time of the strict COVID-19 restrictions in both China and Laos. The Chinese company left the country in that year and never came back.



Agricultural Area in Pangsa Village (Photo: Noudsavanh Pheuangsavanh)

When the villagers asked the District Office of Justice for help, they were turned down as the district hadn't been involved in this contract from the beginning onwards and didn't know about the details of the company either. Therefore, no one was there to support the villagers in their claim to the company.

4.3 Introduction to the Activities

The case described above was shared by training participants of LIFE's long-term partner CCL. Between 2020 to 2022, LIFE supported CCL and its government partners from the Provincial Office of Agriculture and Forestry (PAFO), the District Office of Agriculture and Forestry (DAFO), the Provincial Office of Natural Resources and Environment (PoNRE), the District Office of Natural Resources and Environment (DoNRE), the District Women's Union (LWU Namor) and the District Department of Planning and Investment (DDPI) through 4 coaching sessions. In 2020, participants were trained in basic contract farming, which focuses on how to develop a correct contract. In 2021 and 2022, LIFE trained the partners on the LIWG Legal Calendar¹⁰ that included Articles from the Civil Code (Civil Code, NA, Nr.5, 6.12.2018) on contract management. In June 2022, CCL and its partners were trained on advanced contract farming that concentrates on conflict resolution and ways of access to justice. During the coachings, LIFE supported the participants two times through coachings on the jobs available at Pangsa Village. After every four trainings, the participants did legal awareness raising by themselves in the CCL target villages, which also includes Pangsa Village.



Legal Awareness Raising Activity in Pangsa Village by the LIFE team and CCL (Photos: Phaengxay Khakhamxay)

During the awareness raising activities at village level, the development of a contract, important figures which need to be included in a contract, as well as conflict resolution mechanisms were explained to the villagers. At the end of the activities, the villagers said that they understood the content of the law but didn't know how it would help them to improve their current situation.

4.4 Explanation of the Legal Background in Lao PDR

The issues raised by the villagers of Pangsa Village highlight the multi-dimensional nature of many land related conflicts. On the one hand, a decent, written contract was missing to help to clearly outline the rights and obligations of the different contractual parties. Moreover, after the agreement failed, the villagers did not know how to solve the conflict. When they raised the issue at the District Office of Justice,

¹⁰ LIWG Legal Calendar from 2022 on Contract Farming <https://laolandinfo.org/en/resource/legal-calendar/%e0%ba%aa%e0%ba%b1%e0%ba%99%e0%ba%8d%e0%ba%b2%e0%ba%81%e0%ba%b0%e0%ba%aa%e0%ba%b4%e0%ba%81%e0%ba%b3-%e0%ba%9b%e0%ba%b0%e0%ba%95%e0%ba%b4%e0%ba%97%e0%ba%b4%e0%ba%99%e0%ba%81%e0%ba%bb%e0%ba%94%e0%bb%9d/>

the officials felt they were not responsible to resolve the situation as they hadn't been involved in the contract process. The Civil Code¹¹ regulates all contract development in Lao PDR, regardless of contract type. Important articles for the villagers in this case are the Articles 370, 378, 388 and 391-393 that deal with: the correct content of contracts (Article 370), the implementation of a contract (Article 378), measures to ensure contract performance (Article 388), and contract breach and enforcement (Article 391-393). The civil code is also available in English and therefore should be accessible for foreign investors.

The contract that the villagers entered into with the Chinese investor might have been an oral contract (or (Lao) ສັນຍາປາກເປົ້າ, Sunja Bark Bao)) but according to the Lao Law, both written and oral contracts are to be handled equally (Civil Code, Article 21) although in reality it might be difficult to find a solution without written documents as proof or witnesses.

Once the contract failed, all parties of the contract had the right to initiate a process of conflict resolution (Law for Processing of Civil Cases, Article 166)¹². In the Law of Mitigation of Conflicts¹³, the steps of Access to Justice in Lao PDR are explained in more detail. Article 17 explains the three steps of mediation (village level, district/provincial level and court) while Article 23 shows the steps to prepare to file a case in court, and Article 26 elaborates how to file a complaint to the assemblies (first step: Provincial Assembly, second step: National Assembly).

Even though the district officials told the villagers that they could not help them and refused to receive their complaint, they are obligated by law to open an investigation of the complaint even though they were not contacted at the inception of the contract (Civil Code). In order to prevent similar discrepancies from occurring in the future, LIFE clearly explained this aspect of the law in its trainings to its respective government partners. In the end, a good outcome for the villagers in this case is very unlikely, as the Chinese investor used the time of the COVID-19 lockdown restrictions to leave the country and never came back.

Nevertheless, if there had been a written contract, which would have included legal information on the investor, the approval letter to take on business in Lao PDR, and the approval letter number, it would have been legally possible to enter a conflict resolution process under international law. A resolution could be possible by entering the International Economic Dispute Resolution Center (Arbitration). When the parties have an economic dispute, both parties can agree to go to the International Economic Dispute Resolution Center, such as Singapore International Economic Dispute Resolution Center or Vietnam International Economic Dispute Resolution Center for the region. After receiving the decision from the international organization, to implement the decision in Lao PDR implicated parties must do the following: Lao PDR recognizes and implements the foreign court decision or the decision of the foreign commissioner

¹¹ Civil Code of the Lao PDR, NA, Nr. 55, 06.12.2018

https://www.jica.go.jp/activities/issues/governance/portal/laos/ku57pq00002khhw3-att/civil_code_03.pdf

¹² Law for Processing of Civil Cases, NA, Nr. 13, 04. July 2012

<http://laoofficialgazette.gov.la/kcfinder/upload/files/Civil%20Procedure%20Law%20.pdf>

¹³ Law of Mitigation of Conflicts, NA, Nr. 5, 09. November 2016

<http://laoofficialgazette.gov.la/kcfinder/upload/files/%E0%BA%81%E0%BA%BB%E0%BA%94%E2%80%8B%E0%BB%9D%E0%BA%B2%E0%BA%8D%20%E0%BA%A7%E0%BB%88%E0%BA%B2%E2%80%8B%E0%BA%94%E0%BA%A7%E0%BA%8D%E2%80%8B%E0%BA%81%E0%BA%B2%E0%BA%99%E2%80%8B%E0%BB%81%E0%BA%81%E0%BB%89%E2%80%8B%E0%BB%84%E0%BA%82%E2%80%8B%E0%BA%84%E0%BA%B3%E2%80%8B%E0%BA%AE%E0%BB%89%E0%BA%AD%E0%BA%87%E2%80%8B%E0%BA%97%E0%BA%B8%E0%BA%81.pdf>

through the embassy, consulate or foreign agency of Lao PDR abroad and has it translated into Lao language. Requests for consideration must be submitted through the Ministry of Foreign Affairs to be presented to the Ministry of Justice for consideration before being presented to the People's Court to be sent to the competent court for consideration according to law. Upon receiving the request, the relevant court of Lao PDR must bring the documents to compile the case, file a lawsuit, and give it to the judge as a researcher. The research must be completed within 30 days. After the court considers and finds that it is valid according to the laws of the Lao PDR, it will issue a decision recognizing the decision of the foreign court or the decision of the foreign commission, which the parties have the right to appeal or oppose (According to the Law on Civil Procedure, No. 13/NPC, dated July 4, 2013, Articles 362, 363, 365, 367, 368). Upon completion of all steps according to the laws of the Lao PDR, the international document will be effective according to the laws of the Lao PDR and implemented according to the Law on the Implementation of Court Decisions in 2021.

The villagers would need the support of the respective government offices at district level, but also sufficient documentation of the economic activities with the Chinese company to be able to begin the claims process at the international level.

4.5 Conclusions and Lessons Learned

Until today, the conflict of between the villagers and the investor has not been resolved. The main reason is that the Chinese Company left the country and cannot be reached. Still, the villagers understand the law better now as well as the importance of a written contract. They requested a good example of a contract file to be stored at the village office. The government partners from DoJ understood that, even if they were not involved in the contract negotiations, it is their obligation to support the Lao citizens when a conflict arises. The main partner in developing a contract and for conflict resolution should be the District Office of Justice. Their role is to invite other government offices, such as the District Office of Planning and Investment (DDPI), the District Office of Agriculture and Forestry (DAFO), and the District Office of Natural Resources and Environment (DoNRE) to check the content of the contract according to whether it aligns with respective development strategies (such as 5-Year Socio-Economic Development Plan) and is possible to implement. The specific roles are explained in the table below.

Government Office	Role
District Office of Justice	<ul style="list-style-type: none"> To check whether the contract has been developed according to Lao Law and Regulations (Labour law, Investment law, Environmental law etc) To check whether the contract is complete
District Office of Planning and Investment	<ul style="list-style-type: none"> Check the data of the respective company and if it is correctly registered in Lao PDR Check documents from the company such as registration number Check whether contract fulfills conditions according to relevant laws
District Office of Agriculture and Forestry	<ul style="list-style-type: none"> Check whether products in the contract can be produced under the set conditions Check prices agreed upon in the contract Check if fertilizers, pesticides mentioned in the contract are suitable for the crop and the area
District Office of Natural Resources and Environment	<ul style="list-style-type: none"> Check whether production does not harm the environment (water, land, air)

- Check what measures are anticipated to protect the environment and mitigate environmental effects

Table: Roles of different government offices in contract development

The table below identifies the rights and obligations of the different parties in this case and what they should pay attention to in the future:

	District Office of Justice (Government)	Investor	Villagers
Rights		Investors can go to the villagers directly to discuss a contract, they do not have to go to the district first	Villagers have the right to make the contract with investors directly If villagers are not sure how to make the contract they have the right to ask the district office for help
Obligations	The District Office of Justice has the obligation to support conflict resolution also if they have not been involved in the contract development. The office is entitled to do the necessary paper work if any of the contractual parties comes to ask for help.	The contract needs to be done according to the Lao Laws: this applies for all laws, including the Labour Law, the Environmental Law, the Investment Promotion Law and all others that might be involved The company (either foreign or Lao) needs to be registered correctly in the Lao PDR (for small investments: at Province Level (Law of Investment Promotion ¹⁴) Everything needs to be implemented exactly as stipulated in the contract (price, amount of produce, labour etc), if not, there are measures to re-negotiate the contract or for conflict resolution (Civil Code)	The contract needs to be done according to the Lao Laws: this applies for all laws, including the Labour Law, the Environmental Law, the Investment Promotion Law and all others that might be involved Everything needs to be implemented exactly as stipulated in the contract (price, amount of produce, labour etc), if not, there are measures to re-negotiate the contract or for conflict resolution (Civil Code)
Pay attention to (not obligatory but highly advised)		Show the final contract that has been negotiated to the District Office of Justice for them to give advice and, if the contract is correct, for them to certify it. This makes sure that the district knows what contracts are currently implemented in the area.	Show the final contract that has been negotiated to the District Office of Justice for them to give advice and, if the contract is correct, for them to certify it. This makes sure that the district knows what contracts are currently implemented in the area.

Table: Rights and Obligations of the Contractual Parties

Although the Civil Code is a good guiding tool for developing contracts, it is not specific to agricultural contracts, but it applies for all general contracts that are signed in Lao PDR, whether they are for renting houses, buying motorbikes, or selling construction material. The Lao Law on Agriculture does not cover the topic of contract farming. In the 2nd Multi-Stakeholder Dialogue on Responsible Agricultural Investment from 15.-16. September 2022 in Vientiane, the Ministry of Agriculture and Forestry presented

¹⁴ Law of Investment Promotion, NA, Nr. 14, 17. November 2016
[http://laoofficialgazette.gov.la/kcfinder/upload/files/Investment%20Promotion%20Law%20\(Amended\).pdf](http://laoofficialgazette.gov.la/kcfinder/upload/files/Investment%20Promotion%20Law%20(Amended).pdf)

the current state of the development of legislation related to land and natural resources law. The Instruction on Investment Approval and Land Management Mechanism for Leasing or Concession to Cultivate Crops¹⁵ (MPI, 2019) “is to implement the Law on Investment Promotion and the Decree of the Prime Minister on controlled businesses and concession activities in Lao PDR, and to identify the principles, rules and measures on investment approval considerations and land management mechanisms for leasing or concession to cultivate crops, which use the state land or the land owned by Lao citizens”. This instruction refers to the investment promotion law but also includes valuable inputs towards security deposits to restore land towards the original conditions before the investment took place, with at least 100 USD\ha for annual crops and at least 750 USD\ha for perennial crops as well as the investment approval process. Furthermore, there are various other essential topics that should be incorporated into agricultural contracts such as: I: the criteria and quality of products and price range. However, these topics are not covered in the current contract framework. Therefore, the instruction on contract farming which is currently under development at the Ministry of Agriculture and Forestry is urgently needed.

¹⁵ Instruction on Investment Approval and Land Management Mechanism for Leasing or Concession to Cultivate Crops , MPI, Nr. 0457, 27.February 2019
<https://data.opendevlopmentmekong.net/en/dataset/6deee671-0e06-46b8-a2dc-0b7fcb1c483c/resource/306aa6b9-8bee-4ff1-9031-5d3ed4464ee9/download/mpi-instruction-on-cultivation-investment-land-management-lease-or-concession.pdf>

5 CONCLUSION

Land remains an essential for the livelihoods of more than 80% of the Lao population (FAO), mostly for food production and the family's nutrition, and, in some cases, small-scale income generation. When looking at the issues described in this case study, large areas of land and billions of Kip are not being called into question. Most of the villagers in the cases described fear losing the small amounts of land that they rely on for food, income and housing. Most of the small-scale farmers referred to in this study earn a humble income of 1000-5000 USD per year, often less, from sales of agricultural produce.

Villagers live in a village for generations, Villagers have been using the same forests for decades, but recently, their village became one out of more than 3000 villages that lie in one of the forest categories and are supposed to be relocated. In the second case, villagers measured their land, at their own cost in accordance with the law. They hoped to honor their generational use of the land by securing their future access to it. After months of hard work, they just were told that that land would be used for a development project. And in the final case, villagers agreed to produce agricultural crops for a foreign company and either where not paid or were paid less than had been agreed upon before.

In all three cases, villagers lacked knowledge and understanding about their rights but also their responsibilities regarding the use of land and natural resources. In all three cases, the authorities involved also lacked knowledge about the law which rendered them unable to help the villagers. In some cases they neglected important regulations and their own responsibilities towards the communities. All parties did not know where to turn to ask for support and nor where to look information up.

The current world-wide economic crisis and global warming have increased the pressure put on environmental resources, especially in developing countries, where lockdowns led to unemployment and loss in income. These issues drove those who were hit the hardest to return to their rural villages and to rely more on resources from the surrounding environment (land and forest) for their livelihoods. Additionally, many developing countries, including Laos, have accumulated high debts with foreign partners, especially China, and tend to use natural resource assets to pay back outstanding debts whenever there is a lack of hard currency. Mining or logging concessions are approved, vast areas of land are selected for foreign investors to develop factories and other commercial areas, putting the environment more at risk, as well as communities who often lose their land without proper compensation.

Legal awareness raising is crucial to provide access to information, explain unclear content, and finally empower communities to achieve better access to land as well as to include the communities themselves in the protection of tenure and natural resources. Legal education is also crucial for the authorities to make sure that they understand their role and responsibilities in the protection of land and natural resources. Legal awareness raising on both sides of the conflict will prevent future land-related conflicts from occurring. In Laos, the government cannot provide an reliable system for legal awareness raising, due to the low educational level of government employees, insufficient financial resources, and lack of a systematic approach. There is also a general lack of value placed on the importance of legal awareness raising at a higher level. At present, the work of CSOs and international organizations in legal awareness raising is essential to support the goal of the government to make Laos a state of rule of law (2017).¹⁶ The

¹⁶ Master Plan on Development of the Rule of Law in the Lao PDR towards 2020, 2017, Ministry of Justice <https://data.laos.opendevlopmentmekong.net/en/dataset/caf2c512-803e-45d7-a553-bf94c3f1d4d5>

LIFE project and LIWG are two partners in the bigger network of organizations working on natural resources in Laos that are essential to supporting the development of a vast group of knowledgeable trainers (LIFE) and to provide a platform to share information regarding land and natural resources laws and regulations (LIWG).

6 RECOMMENDATIONS

Arising from the three cases explained in this document, there are several recommendations.

1. Development of policies and legislation through cooperation on all levels

Currently, the development of new policies follows a top-to-bottom approach. It is crucial to ensure that district and provincial levels, as well as civil society are consulted in the process of developing new legal frameworks to feed their experience and knowledge from implementation at the local level into the process. This will ensure that new policies are practical and easier to implement.

2. Strategic Collection of data at local level to verify and justify that policies meet the actual situation on the ground

Currently, the issues at district or village level are often unknown or misunderstood at the National level where policies (i.e. the distribution of different areas into the three forest categories) or decisions regarding big investment projects (>150 ha, Part II, Decree 0457, 2019¹⁷) are made. Data should be collected strategically at local level to make sure that decisions and policies developed correspond with the actual situation on the ground. Collected data should be fed into a system that could be easily accessible by all involved parties and government sectors.

3. Development of a ministry over-arching legal capacity-building framework and methodology

Currently, legal capacity building for government officials at all levels nationwide lies in the hands of the Department of Law Dissemination under the Ministry of Justice. Also, other ministries have departments that are responsible for law dissemination in the respective fields of the ministry. Mostly, law dissemination translates into a half-day meeting with the respective provincial offices to introduce new decrees, instructions, or laws. However, these meetings usually do not include a deeper analysis of the respective legal documents nor detailed technical training on how to implement the documents. The provincial officials are then responsible to further distribute the legal framework at district level, and the district level then implements awareness raising sessions at village level. Each ministry and department decide about training methods and timeframe themselves, often restricted by government budgets.

A strategic ministry over-arching legal capacity–building framework and a set methodology including practical training for the respective employees would result in more strategic capacity-building at local level with a more standardized quality of contents.

4. Development of a National Concept and budget for legal awareness raising at local level

Currently, the legal awareness raising activities lie in the hands of the respective ministries and are not standardized or regularly scheduled, so awareness raising takes place scattered and changes in quality. There are also no fixed budgets available for legal awareness raising, but provinces and districts are

¹⁷ Instruction on Investment Approval and Land Management Mechanism for Leasing or Concession to Cultivate Crops , MPI, Nr. 0457, 27.February 2019 <https://data.opendevlopmentmekong.net/en/dataset/6deee671-0e06-46b8-a2dc-0b7fcb1c483c/resource/306aa6b9-8bee-4ff1-9031-5d3ed4464ee9/download/mpi-instruction-on-cultivation-investment-land-management-lease-or-concession.pdf>

supposed to include these into their annual budget plans which would then be approved at National level by the respective ministry.

It is advised to develop a national concept for legal awareness raising including detailed budgets to make sure that legal awareness raising can take place regularly and of standardized quality and that sufficient budgets are available.

5. Development of ministry-overarching monitoring system with clear steps for all parties

In the Law on Dissolving Complaints (2016), the steps on how to access to justice are clearly defined in Article 17-18¹⁸. Conflicts should be solved in a bottom-up approach from village, to district, to province, to government level (province courts, national court, Provincial Assemblies, National Assembly).

Currently, the highest organ to monitor the implementation of the law is the National Assembly.¹⁹ “The National Assembly has the following legislative rights and obligations:

- To consider and adopt the Constitution and laws;
- To consider and adopt legislation and law amendment plan throughout the term of its office;”
(...)

“The National Assembly has the following monitoring rights and obligations:

- To oversee the observance and implementation of the Constitution, laws, the resolution of the meeting of the National Assembly, the resolution of the National Assembly Standing Committee, Socio-economic Development Plan, National State Budget Plan, and national projects and projects of large scale impacting social and environmental conditions; (...).”

In case of investment projects, the Ministry of Planning and Investment (MPI) has introduced the “One-Door”-Strategy (ຫ້ອງການບໍລິການປະຕູດຽວ) as part of the updated investment law 2016 already, which means that all conflicts should be entering the same mediation process and same steps at provincial and/or National level to simplify the process of monitoring and mediation. The Ministry of Agriculture and Forestry currently works on integrating their procedures into the ‘One-Door’-Strategy of MPI (Multi-stakeholder Dialogue on Responsible Agricultural Investment 15-16.September 2022) to simplify the process in case of agricultural investments.

In general, nearly all laws include a chapter on conflict resolution and the roles of the different parties. These chapters also explain who would be responsible to monitor implementation, to follow-up, and to mediate in case conflicts arose.

However, all three cases in this paper show the weaknesses of the current system. The roles of each government representative are not clear and their duties are so unspecific (i.e. case 2 on the stone quarry, one division within a department does the measurement, another the legal awareness raising, another the mediation) that the process of mediation involves many steps, many people, and nearly no one in the

¹⁸ Law on Dissolving Complaints, Nr. 5, NA, 9. November 2016

¹⁹ Legal System of the Lao PDR, by Aristotle T. David & Novah Rose S. De Leon-David, Updated by Tuchakorn Kitcharoen, <https://www.nyulawglobal.org/globalex/Laos1.html>

system dares to take over responsibility, also due to limited knowledge of processes (see recommendation Nr. 3) by the government officials.

A simplified process for all ministries with clear job descriptions for all involved, including distinct hierarchies and roles, would help to untangle the ambiguity of the current processes and enable the responsible officials act more confidently and efficiently.

6. National Strategy for alternative income measures for villagers

As mentioned before in Case I, more than 3000 villages located in forestland have unclear tenure rights and are at risk for various issues related to their lack of land tenure. . They face also more restrictions in terms of extending their production area (including rice fields, gardens etc.). For these villages, it is crucial to have a detailed National strategy for alternative income generation measures, in case they either (a). cannot increase their production area or (b). are relocated to another area that either does not have any agricultural area or the area is too small. Currently, there are existing projects, i.e., by GIZ (German Development Cooperation) to support villages in buffer zones to become part of the National Park protection system (through patrolling the area for a salary, i.e. Hin Nam No Nationalpark, Khammuane) or through involving them in ecotourism activities (i.e. Nam Et Phou Leu, Houaphan Province). Those pilot projects could be an excellent reference for scaling them up in the design of a national strategy.

It is vital to generate sufficient data, and to research potential alternative income measures, including the costs (i.e. trainings, education programs, materials, loans for villagers etc.) to implement them according to the different situations and backgrounds that arise in the more than 3000 villages located in forestland, and to develop a National strategy and indicators to categorize the villages and support them in their transition.

7. Clear cooperation and communication between different offices

Many cases cannot be solved by one government office alone. An example is case 3, where in the best possible outcome, four different offices under four ministries should have worked together (DAFO-MAF, DONRE-MoNRE, DDJ-MoJ, DDPI-MPI) to ensure the feasibility of the contract with the villagers. Responsibilities and obligations are often unclear and misunderstood .

It is suggested to develop flow-charts, organigrams, or other visibility tools to emphasize the different obligations between ministries and show where to work together. Responsibilities should be visualized in charts, and there should be descriptions of procedures for the different categories of occurring cases. Wherever possible, cooperation and communication between different government offices should be simplified.