

Department of Lands, National Land Management Authority

Land Issues Working Group (LIWG)

Draft Report

on

**Policy Overview on Community Land
Registration and Titling (CLRT)**

February, 2012

Table of Contents

| | | |
|--|---|---------------|
| 1 | Background | 1 |
| 2. | Clarification of the Purpose of the Overview | 1 |
| 3 | Key Definitions and Terms | 2 |
| 3.1 | Definitions | 2 |
| 3.2 | Important Terms | 3 |
| 3 | Documents Included in the Overview | 3 |
| 4 | Overview of Relevant Legal Documents | 4 |
| 4.1 | The Land Law, 2003 | 4 |
| 4.2 | Property Law, June 1990..... | 5 |
| 4.3 | Law on Local Administration of the Lao PDR, 2003 | 6 |
| 4.4 | The Forestry Law, December 2007 | 6 |
| 4.5 | Decree 88 on Implementation of the Land Law, June 2008 | 7 |
| 4.6 | Ministerial Direction No. 564/NLMA, August 2007..... | 7 |
| 4.7 | Instruction No. 1668/NLMA.CAB, April 2008 | 8 |
| 4.8 | Instruction No. 012/NLMA.CAB, March 2010 | 9 |
| 4.9 | Instruction No 3204/PMO.NLMA, December 2008 | 9 |
| 4.10 | Ministerial Approval/Decision No. 0054/MAF, Revised July 1998 | 9 |
| 5 | Summary of Policy Reviews | 10 |
| 5.1 | Summary of Legal Review on Communal Land Titling, 2007 | 11 |
| 5.2 | Legal Analysis of Communal Land and Communal Title in Lao PDR..... | 12 |
| 6 | Summary of Policy Studies and Briefs | 14 |
| 6.1 | Study on Communal Land Registration in Lao PDR, 2007 | 14 |
| 6.2 | Policy Brief: Collective Land and Collective Title in Lao PDR | 17 |
| 7 | Communal Titling Guidelines | 20 |
| 7.1 | Draft Guideline for Communal or Collective Land Titling-LMRP..... | 20 |
| 7.2 | Proposal for Communal Land Registration, NAFRI-IRD-CIFOR..... | 23 |
| 8. | Further Comments | 24 |
| 8.1 | Communal Land Use Rights | 25 |
| 8.2 | Relevant Reports on Communal Land Registration and Titling | 25 |
| Appendix 1: Summary of Issues and Recommendations Arising from Policy Overview February, 2012 | | 26 |

1 Background

The Land Issues Working Group (LIWG) is collaborating with the Department of Lands (DoL) in MoNRE and development projects to promote increased activity on community (or collective) land registration and titling (CLRT) in rural areas of the Lao PDR.

Discussions have been on-going prior to and since October 2011 when the LIWG organised a workshop at the Learning House in Vientiane to present case studies on CLRT activities that had already been undertaken. The focus of the workshop was on the Sangthong District case which aroused much interest about CLRT in the rural development community.

In 2011 the first communal land titles were issued for bamboo forest areas in Sangthong District in Vientiane Province. One of the obstacles to issuing communal land titles in other districts and provinces is that the format and detailed technical procedures are not yet fully developed. In March 2012 the LIWG will organize, in cooperation with relevant Governmental agencies and other relevant stakeholder organizations, a workshop to evaluate possibilities for replication of CLRT in other areas.

In addition to the LIWG activity, donor funded programs, IFIs and INGOs have been considering CLRT for some time and have produced various views, reviews and draft guidelines on CLRT with the aim of creating greater awareness of the definitions, procedures and methods that would be applied when implementing CLRT. For example, GIZ has produced a draft guideline for the DoL as a reference for the preparation of an instruction on implementing CLRT.

After consultation with the DoL and members of the technical committee, a short-term consultant was appointed by the LIWG to assist with an overview of current policy and legislation related to CLRT.

A timetable was agreed which provided for the policy overview to be appraised by a Technical Committee on the 15th February after which the key findings and priorities would be presented at a technical workshop of government and non-government stakeholders scheduled for the 1st and 2nd March 2012 or a date soon after.

This report contains an overview of the regulatory framework and various studies relevant to CLRT, identifies issues, and provides recommendations on ways to address them.

2. Clarification of the Purpose of the Overview

In recent years several policy and legislative reviews and policy briefs concerning land registration and titling have been undertaken and documents produced by various projects and organisations. The purpose of these has been to identify, interpret and explain the existing policy and legal instruments which regulate land titling. Among them are documents that focus on collective and communal land registration and titling.

In recognition of the fact that substantial information is available, this overview was intended to summarise the results of previous reviews and produce a document targeted at policy makers, technical staff and other personnel working on CLRT. It's aim was to present relevant

policies and legislation that regulate CLRT including, identify issues and recommend ways to address them. This information would be presented to a CLRT workshop of relevant government agency representatives and organisations currently studying or working on CLRT. In parallel with the overview, an analysis of case studies prepared by member organisations of the LIWG was undertaken which documented lessons, issues and questions arising from field implementation. Opinions were also sought from persons and organisations who are in the process of planning to undertake CLRT and organisations that have implemented participatory land use planning and zoning with an intention to continue with communal land titling.

3 Key Definitions and Terms

Before focussing on the over communal/collective land it is informative to make distinctions between the three types of land for which land titles are issued. Definitions for state, individual and communal land as defined in Ministerial Direction 564/NLMA on Adjudication of Land Occupation Right for Issue of Land Title, (August 2007) and Decree 88/PM, on the Implementation of the Land Law (June 2008) are therefore provided below.

3.1 Definitions

State Land: Decree 88/PM on the Implementation of the Land Law, Article 3: All land parcels, including natural resources in the territory of the Lao PDR, excluding land for which the state has already issued a land title. It includes land managed by the central, capital city, province, district and village level administrative authorities; public land; defence land; public security land; communication land; and other land that belongs to the state; land previously owned by people who fled abroad and land that the court has ruled is state land

Individual or Private Land: Ministerial Direction No. 564/PM/NLMA Paragraph 4.11: Land which is not state land for which the owner has acquired land use rights by one of five ways:

- 1 Having a complete set of land adjudication documents
- 2 Owner who occupies and uses the land who has incomplete adjudication documents and 10 years of peaceful occupation
- 3 Owner who occupies and uses the land following resettlement
- 4 Owner who occupies and uses the land by customary practice
- 5 Owner of land use right by peaceful and lawful occupation and development

Collective or Communal Land: Decree 88/PM on the Implementation of the Land Law, Article 3: All land including natural resources in the territory of the Lao PDR for which the state has granted the right to communal use by villagers, organisations and state organisations as specified in Article 59 of the Land Law.

Collective or communal land is further defined in Ministerial Direction No. 564/PM/NLMA as land belonging to co-operatives, communal organisations, village lands communally used by groups of people or ethnic groups in a village.

- Communal lands include, land allocated to households for undertaking seasonal agricultural production with no individual having definite ownership, village use forest (production

- forest), sacred forest, lands used for organising tradition or religious rites, common grassland (for grazing or other purposes) and other lands commonly used by the community
- Communal land is managed by the government but the collective title is issued to the co-operative, collective organisation, community, group of people, or ethnic group for the lands to be collectively used with no individual having definite land use right
 - Collective land can not be sold, transferred, leased, or allocated for a concession. It shall be used for the benefit of the community.

3.2 Important Terms

Land Adjudication: Part 1, Ministerial Direction No. 564/PM/NLMA: Adjudication is the consideration of the details concerning land parcels including the location, size, type, rights and obligations of the land occupier provided in the land law and other relevant laws based on evidence, and laws and actual occupation and use. There are two types of adjudication, systematic and sporadic. Systematic adjudication is undertaken progressively for all land parcels in a village. Sporadic adjudication is an open and public process and commences when a person who occupies and uses a land parcel files an adjudication application.

Land Registration: Land Law (2003) Article 43: Is a certification of the legal land use right of an individual or organisation in order to avoid the falsification of land use rights and facilitate the management and protection of land in a uniform manner for the whole country

Land Title: Land Law (2003) Article 49: Is the only document which provides the main evidence of permanent land use right. One copy only is copied from the Land Register Book and handed over to the land owner who shall keep it until there is a change according to the conditions as prescribed in the law

3 Documents Included in the Overview

The following (policy) and regulatory documents, reviews and reports contain articles or references which have substantial relevance to communal land registration and titling.

| No | Document |
|--------------------|--|
| Legislation | |
| 1 | Land Law: No. 04/NA, October 2003 |
| 2 | Property Law, June 1990 |
| 3 | Law on Local Administration of the Lao PDR, October 2003 |
| 4 | Forestry Law: No 6/NA, December 2007 |
| 5 | Decree on the Implementation of the Land Law: No 88/PM, June 2008 |
| 6 | Ministerial Direction on Adjudication of Land Occupation Right for Issue of Land Title: No. 564/PM/NLMA, August 2007 |
| 7 | NLMA Instruction on the Use of New Formats of Land Titles and New Registration Book: No. 1668/NLMA.CAB, April 2008 |
| 8 | NLMA Instruction on the Use of New Formats of Land Titles and New Registration Book: No. 012/NLMA.CAB, April 2011 |
| 9 | Instruction on Collection of Fees and Service Charges by the Land Management Sector: No 3204/PMO.NLMA, December 2008 |
| 10 | Ministerial Approval/Decision on Customary Rights and Use of Forestry |

| No | Document |
|------------------------------------|--|
| Legislation | |
| | Resources: No. 0054/MAF, Revised July 1998 |
| Policy Reviews | |
| 11 | Legal Review on Customary Rights and Communal Land Titling in the Lao PDR; Oberndorf, Robert B., January 2007 |
| 12 | Legal Analysis of Communal Land and Communal Title in the Lao PDR; Rights Link, Liu and Segaty, July 2009 |
| Policy Studies and Briefs | |
| 13 | Study on Communal Land Registration in Lao PDR: Land Policy Study No 6, Lao Land Titling Project II, Lao-German Land Policy Development Project, February 2007 |
| 14 | Policy Brief: Collective Land and Collective Title in Lao PDR, January 2010 |
| Communal Titling Guidelines | |
| 15 | Draft Guideline for Titling of Communal or Collective Land, April 2011: Land Management and Registration Project (LMRP) |
| 16 | Handbook on Participatory Land Use Planning, Section 12, Proposal for Communal Land Registration, NAFRI-IRD-CIFOR, June 2011 |

4 Overview of Relevant Legal Documents

The following is a summary of articles relevant to CLRT in the each of the legal documents listed in the summary in Section 3 above.

4.1 *The Land Law, 2003*

Article 10: General Rights and Duties of Land Management Authorities; Paras. 1, 2, 3, 4, and 5

Article 11: Land Zoning and Land Categories; Para 2

Article 12: Determination of Boundaries for Each Land Category

Article 15: Agricultural Land; definition

Article 16: Management of Agricultural Land

Article 17: Para 3; Approval of agricultural land for organisations for production purposes...

Article 18: Grant of Right to Use Agricultural Land; (land certificates with three year validity)

Article 19: Forest Land; definition

Article 20: Management of Forest Land

Article 21: Para 2; permission for organisations to use forestry land...

Article 22: Grant of Right to Use Forestry Land; (land certificates for three year validity etc)

Article 23: Water Area Land; definition

Article 24: Management of Water Area Land

Article 26: Use of Water Area Land; allocation of land to individuals and organisations....

Article 33: Cultural Land; definition

Article 34: Management of Cultural Land; Ministry of Information and Culture

Article 43: Land Registration; definition

Article 44: Types of Land Registration; systematic and sporadic; note Para 2 re requests by organisations

Article 45: Application for Land Registration; note Item 2; land certificate for forestry land

Article 46: Examination of Application for Land Registration

Article 47: Land Register Book; definition

Article 48: Land Certificate; for temporary use of agricultural and forestry land by organisations; note Para 2 re rights of land certificate

Article 49: Land Title; definition

Article 54: Right to Possess the Land; organisations can possess land for a specific purpose

Article 59: Rights of State, Political, National Front, Mass and Socio-economic Organisations; only have the rights to protect and use the land

Article 60: Obligations of the Land User

Article 62: Loss of Land Use Right

Article 71: Compensation for Loss Caused by land Expropriation

Article 77: Inspection of Land Use

4.2 Property Law, June 1990

Chapter 1: General provisions

Article 2: Types of Property; Collective property is classified as belonging to co-operatives and other collective organisations

Chapter III: Collective Property

Article 9; Definition of property of co-operatives and other collective institutions

Article 10; Terms of property of co-operatives or and other collective institutions; defines the right of possession, use, usufruct and decisions over assets and the exercise of such rights

Article 12; Use of land under the right of collective organisations; states that collective organisations must make correct use of land under their control according to regulations on management and use of agricultural land

Chapter IV: Scope of Application of Ownership

Article 55: Right to use deteriorated forest land; gives the right co-operatives or collective organisations to use deteriorated forest land for restoration and development, or for cultivation and animal husbandry

4.3 Law on Local Administration of the Lao PDR, 2003

Part II, Chapter 3:

Article 13: Roles of Provincial Governors

Article 14: Authorities and Duties; No. 11: Create, abolish, merge, divide and delineate village boundaries

Article 20: Roles and Duties of the District Administration

Part V, Village Administration

Article 46: The village; definition

Article 50: Creation of villages

Article 53: Authority and Duties of Village Head: No. 3, motivate, promote the participation of mass and social organisations in the S-E development of the village

Article 56: Agenda of village administration meetings; No.4 Village rules

4.4 The Forestry Law, December 2007

Article 3: Explanations of terms; see No. 9, 10, 11, 12, 13, 16, 31

Article 4: Ownership of Forest Land

Article 5: Policy on Forest and Forest Land; see Para 2 re preservation and development

Article 7: Obligations in preserving and developing forest and forest land

Article 9: Forest Categories; protection, conservation, and production

Article 25: Preservation of Production Forest

Article 40: Utilisation of Forest and Forest Products for Village Public Benefits

Article 42: Customary Utilisation of Forest; see reference to management plans and village regulations

Article 49: Logging and Harvesting of Forest Products see reference to harvest and collection of forest products

Article 61: Preservation of Production Forest Land

Article 70: Conversion of Forest Land; see in Para 3 reference to compensation when forest land is converted

Article 74: Lease or Concession of Forest Land; see reference to only possible in degraded forest lands

Article 82: Forest and Forest Land Preserved and Developed by Village; see reference to land management and land and forest allocation plans at village level

Article 83: Endorsement of Forest and Forest Land Areas; see Para 3 regarding village level

Article 90: Allocation of Use Right to Forest and Forest Land; see Para 3

Articles 93, 94, 95, and 96: Rights of Forest and Forest Land Users

Article 97: Obligations of Forest and Forest Land Users

Article 98: Loss of Use Rights to Forest and Forest Land

4.5 Decree 88 on Implementation of the Land Law, June 2008

Article 3: Meaning of Terms in the Land Law; including Land Use Rights, Land Utilisation Rights, Land Certificate, State Land, Collective Land, Land Management, Protection of Land, Land Use

Article 5: Granting of Land Use Rights or Land Utilisation Rights

Article 7: Prohibition of Issuing a Certificate for Granting Land Use Rights or Land Utilisation Rights; see Para. 1 regarding protected forest, conservation forest and un-exploited forest land

Article 11: Rights and General Functions of the Land Management at Local Level; see No. 2, 3, and 4

Article 15; Land Registration and Registration of Land Documents

Article 16: Documents Attesting Land Use Rights and Land Utilisation Rights

Article 20: Transfer of Land Use Rights; organisations with land utilisation rights have only the right to protect and use the land

Article 26: Customary Land Utilisation Rights; recognition for an organisation or a village by the state

Article 28: Compensation for Losses

Article 31: Settlement of Land Disputes

4.6 Ministerial Direction No. 564/NLMA, August 2007.

This Direction relates to the: Adjudication of Land Use and Occupation Right for Issue of Land Title”

Part 1: General Principles

Section 2: Terms; refer mainly to; 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8, 1.2.9

Part II: Preparation and Notification

Section 2.1: Area of Systematic Adjudication Operation; all sub-sections

Part IV: Organisation, Role, Function and Rights of Adjudication Teams

Section 4.11. Category 2, Collective Land: Conclusion of Land Use Right and Land Utilisation Right, refer to Paras. 1 and 2

Part V: Functions of the Owner Who Occupies and Uses the Land

Sub-sections; 5.1.1, 5.1.2, and 5.1.3

Part VI: Publication of Decisions Taken by the Adjudication Teams

Sections 6.1, 6.2, 6.3, and 6.4

Part VII: Proceedings for Application for Re-consideration

Sections 7.1, 7.2, and 7.3

Part VIII: Land Title

Sections 8.1, and 8.2

4.7 Instruction No. 1668/NLMA.CAB, April 2008

This NLMA instruction when released in 2008 related to the use of new formats of land titles and a new registration book. The Instruction which is based on the Land Law 04/NA, 2003 was introduced to standardise the implementation of the new land title formats because different surveying approaches were being used.

Parts I, II, III and IV relate to **private land use rights** to individuals or legal entities, **state land use rights** to governmental, political organisations, Lao Front for National Construction, Mass Organisations, public economic organisations, collectives of government staff, army and police personnel.

Part V: Title for Communal Land; including 11 instructions for recording information on the title document as summarised below:

4. Issue to:

- **Name of the village** where the land is located;
- **Purpose of use:** such as: for construction of village office, school, hospital, temple, cemetery, sacred forest, market, village sports ground or park, rice production, horticulture, grazing etc., i.e., for mutual benefit of the whole village

5. Type of Land; Construction, agricultural, forest, water source, cultural, transportation, industrial, national protection etc.

Zone: Lowland, highland, mountainous areas and whether in urban or rural area

6. Registration Book No.

7. Sheet No.

8. Cadastral Map No., Parcel No., Area, and Scale

9. Place of Issue; Name of Province

10. Date of issue; date and signature of the Head of the PLMA

11. Head of the PLMA; only the Heads of PLMA/VCC in the LMA are authorised to sign;
Head of PLO; only the Heads of PLO/VCC of the Lands Office are authorised to sign

4.8 Instruction No. 012/NLMA.CAB, March 2010

This instruction replaced Instruction No. 1668 of 2008. With respect to Communal Land Title few changes were made to the instruction on recording information on the title document, which are described in Part V: Title for Communal Land in Instruction No. 1668/NLMA in Section 4.7 above. An English translation of this document was not available for review.

4.9 Instruction No 3204/PMO.NLMA, December 2008

This Instruction relates to the Collection of Fees and Charges by the Land Management Sector.

Part I: Steps in Collecting Fees and Service Charges:

1.1 Fees Consist of:

- Fees for land parcel registration and registration of land documents
- Fee for registration of transaction in the land parcel registration system
- Fee for granting land lease or concession
- Fee for land conversion from one purpose to another

1.2 Service Charges consist of:

- Fee for measuring construction land and agricultural land
- Fee for issuing the certificate for the rightness of the land title in order to get it's legitimacy testified by the notary office

Part 4: Exemption of Fees and Service Charges by the Land Management Sector

Article 98 of the Presidential Decree No. 03/PO, November 2008 allows fee and service charge exemptions for:

- Fees for issuing a land title for converting other types of land to **natural rehabilitation forests**
- Service charges for land measurement for issuing **land titles and land survey certificates** for state land use *and collective land* to state organisations, political organisations, Lao Front for National Construction, Mass Organisations, and State economic organisations as specified in the Land Law.

Question 1: Does this actually mean that it is only for collective State land, not village collectives or organisation land??

Question 2: What exemption are actually given when issuing village communal land titles

4.10 Ministerial Approval/Decision No. 0054/MAF, Revised July 1998

This ministerial approval/decision relates to customary rights and the use of forest resources.

Part 1: General Provisions.

Article 1: Purpose of the order; clarification on exercising customary rights regarding the use of forest land and forest products by the holders and uses of those rights, including part of Article 4 of Decree No. 169/PM which stipulates that “the State recognizes the right to use forests, forest land and forest products in accordance with the custom of villagers”

Article 2: Definition of customary rights; rights held by an individual, households or a group which have their root in custom and are accepted by law etc

Article 3: Definition of custom; the result of practices and usage which have four characteristics

Article 4: Customary rights are to be exercised freely.... Within the bounds of custom and law

Article 5: Customary transfer within community only

Article 6: Limitation or removal of customary right; three means only

Part II: Protection Against Encroachments and Settlement of Disputes

Article 7: Customary rights are respected in all dealings between users and third parties....

Article 8: Custom prevails in disputes; best resolved by reconciliation in the village ...

Article 9: Compensation in all cases; compensation will be provided in all cases where the means of livelihood of the users are affected

Article 10: Customary rights on the use of forest resources;

1. Right to harvest forest products for household needs....
2. Right to harvest for sale types of forest products specified in the district forest management contract....
3. Right to hunt non-protected animals and fish by legal means
4. Right to use degraded forest or barren land in areas where forest and forest land management inventory have been conducted.... with the agreement of the land and forest allocation committee etc

Part III: Final Provisions

Article 11: The village administrative committee has the right to formulate specific regulations according to this order (e.g., Village Agreement on Management and Use of Resources)

5 Summary of Policy Reviews

Two policy reviews regarding communal land titling are summarised

1. Legal Review on Customary Rights and Communal Land Titling in the Lao PDR; Oberndorf, Robert B., January 2007

2. Legal Analysis of Communal Land and Communal Title in the Lao PDR; Rights Link, Liu and Segaty, July 2009

5.1 Summary of Legal Review on Communal Land Titling, 2007

This review was undertaken to contribute to Land Policy Study No. 6, on Communal Land registration by the Land Policy and Development Project (LPDP) supported by GTZ.

Introduction: The review focussed on the then legislative and regulatory framework relevant to conducting registration and titling of communal land rights with a view to understanding if there was scope for communal land registration (CLR) based on the Land, Property and Forestry Laws. Options are presented on what options could be taken to support CLRT

Explanation of Registration and Titling: Registration and titling convey a “land property right” to land owned by the State. Land registration is an official recognition of an existing property right, and formal land titles are issued following the detailed procedures for systematic and sporadic registration to verify land parcel ownership. With a land property right the owner has the right to possess and exclude others from the land parcel, and can use the land for personal benefit, with a basis for compensation if the land property right is taken away. The allocation of lands for “management and use to village authorities” under the land use planning program does not confer a property right; LRT provides greater tenure security.

What Types of Land can be Titled under the Existing Legal Framework: In 2003 the Land Law stated that agricultural land used for cultivation and animal husbandry and forestry land was eligible by “organisations”. The Forestry Law (2007) also declares degraded forest lands eligible. However at that time Village Use Forests were considered ineligible. Amendments would be needed to make other categories of rural land eligible.

What Types of Rights are Granted: This review identified five land property rights; possession, right to use, right to usufruct, right to transfer the right, and the right to inherit, of which the right to usufruct would be the one granted in a communal context.

Land and Forest Categories: The review found that the classification of land and the categorisation of forest land within village boundaries are relevant to communal titling, since they provide the basis for what lands can be allocated, registered and titled, e.g., rotational agricultural land. Temples would be categorised as *cultural lands*, and not be eligible for CLRT.

Amount of Land to be Registered and Titled: It was observed that the Land Law and the Forestry Law both indicated that “organisations” could be allocated land for agricultural, forestry and residential purposes according to the organisation’s ability to productively use and manage the land which for communal titling could be beneficial for the community is considered to be an organisation and therefore greater amounts of land might be titled.

Recognition of Customary Use: The recognition of customary rights supports the argument that communal registration and titling of land should be allowed within the government’s land management scheme (strategy), however the provisions in the current legislation were quite restrictive in terms of “customary use and occupation” leading to a land property right.

Land Dispute Conflict Resolution Procedures: It was concluded that while conflict resolution procedures exist, including those for land registration and titling process, they might not be adequate for handling disputes that are unique to the context of communal land titling.

Can Communal Land be Recognised in the Current Framework: No where in current law and regulation is the term “communal” used in relation to registration and titling of land property rights. It is argued that the term “organisation” which is found consistently throughout the legislation could be interpreted to include the concept of communal property rights. A government policy that clearly states that the term “organisation” includes the concept of “customary communal groups” would do much to clarify the definition.

Options for Supporting Communal Land Titling: Two options are presented for recognising the concept of registering and titling communal land property rights:

1. Include an interpretation of the term “organisations” as found in existing laws and regulations to include “customary communal arrangements”
2. Amending relevant provisions in both the Land Law and the Forestry Law to include specific provisions supporting the concept of registering and titling communal land property rights

The advantages and disadvantages of each option are presented.

Recognizing User Groups within Communal Title; Definition of Community: The review recommended that there needs to be a clear definition of what a communal group is, how it is defined, who can join the group and the size of the group. It could be an entire village, but not the Village Authority itself because it could be classified as State land. It could also cover more than one village, but it should reflect the needs and desires of the group itself

5.2 Legal Analysis of Communal Land and Communal Title in Lao PDR

This review was undertaken in 2009 by the Rights Link resource group associated with the INGO, Village Focus International.

Aims: The analysis comprised the following:

- A review and analysis of relevant collective property
- A definition of collective property
- Identification of major legal issues related to collective property
- Suggestions for addressing some of the major legal issues identified
- To compile a summary of relevant legislation

Definition of Communal Land: The review defined communal land based on Ministerial Instruction 564/NLMA, i.e., “communal land is land that the State grants to a group or collective; the group or collective has the right to protect and use the land; the group does not have the right to sell, transfer, lease, or use the land as collateral; the land must not be owned by an individual; each member of the collective or group has the right to use the land; the land must be zoned as a type of land that is approved as communal land”.

Types of Communal Land: This review identified the following types of land as communal: forests designated as village use forest land, land with cultural, religious, or community importance, communal agricultural and grazing land.

Who Qualifies for Communal Land: This review found the following entities may be eligible; co-operatives, collective organisations, communities, groups of persons, ethnic groups, state organisations, political organisations, the Lao National Front for Construction, mass organisations, and economic organisations of the State that have a right to use land, a village (being the lowest and smallest local level of local administration). There is uncertainty whether a group of private individuals in a village may form an organisation and be eligible and if a Kumban Organisation would be eligible. Villages appear to be the only group or organisation that are clearly eligible. Additional legislation is required to clarify which groups actually qualify.

Types of Land Eligible: The review raises questions about the types of land that would be eligible as communal land, 1) the concept of collective agricultural land may not exist in all villages because there are traditional and formal (LUP-LA) systems of allocating land parcels for seasonal and or longer term use individual use; 2) differing views or interpretations about the eligibility of village use forest, village protection forest and village conservation forest, the most common one being that the latter two types are not eligible; spirit or sacred forest zones are not specified as specific zones in the Forestry Law Article 82 could be ambiguous re spirit and cemetery forest being classified as “Conservation” and therefore not eligible, 3) conjecture about “other lands that have the characteristics to be collectively used” which may refer to schools, markets, temples and other structures that have collective use, and also water bodies including lakes which are a source of food for communities.

Rights Associated with Communal Land: The review findings were that the rights as defined in the Property Law and 564/NLMA in respect of collective land are clear and unambiguous, i.e., they are land utilisation rights, which are the rights to protect and use the land. In addition, collective or communal may not be sold, transferred, used as security, leased or given for concession.

Major Legal Issues: The following issues are identified and discussed:

1. Are village clusters eligible for communal land
2. Can individuals with land titles and temporary land certificates combine their land into collective land
3. How does collective land get titled
4. Can companies, such as logging companies form “economic organisations” to gain collective title
5. If the State requisitions collective land, does the collective receive compensation

Benefits and Disadvantages of Communal Title: These are presented in the table below

| Benefits | Disadvantages |
|---|--|
| Communal Land can not be sold by any member of the collective or by the management of the collective. | Communal Land can not be leased or used as collateral. |
| The State can not grant land use rights within communal land. | The State may requisition the land. |

| | |
|--|--|
| Communal Land encourages security and tenure of the village. | The management and use of Communal Land is determined by the collective and not by the individual. |
| | A collective may be dominated by some people who have more influence than others, resulting in possible injustice. |

6 Summary of Policy Studies and Briefs

Two policy studies and briefs regarding communal land titling are summarised:

1. Study on Communal Land Registration in Lao PDR: Land Policy Study No 6, Lao Land Titling Project II, Lao-German Land Policy Development Project, February 2007
2. Policy Brief: Collective Land and Collective Title in Lao PDR, January 2010

6.1 Study on Communal Land Registration in Lao PDR, 2007

Study Objectives:

- To identify and categorize land use areas currently under communal tenure
- To assess the need to register and title communal rights to land
- To recommend appropriate legal mechanisms and options for the registration of communal lands

Definitions and Terminology:

Customary tenure is the mode of holding rights in land that exists through customs and tradition. Due to the strong emphasis on the control and management responsibilities of the community, customary tenure arrangements are also often called **communal tenure systems**. **Communal land** under communal tenure systems is “the land property of a well-defined and demarcated group that uses the land communally according to known and mutually accepted rules. Non-members of the group are often excluded from use or have lesser rights” (GTZ 1998). It is important to note that although the tenure to land is group-based, land use is in the hand of individual families.

Collective property or ‘*sit luam mou*’ is recognized in the Constitution of the Lao PDR (2003) and defined in the Property Law (1990) as “property belonging to a collective” that can be “co-operatives and other collective organizations”

Communal land registration and titling as used in this paper is the formal recognition of communal rights to land in statutory law.

Types of Communal Land Found in Study Villages:

| Agricultural Land | Forest Land | Cultural Land | Construction Land | |
|--|---|--|--|--|
| | | | Public Facilities | Residential Places |
| <ul style="list-style-type: none"> • Grazing areas • Upland fields • Reserve land | <ul style="list-style-type: none"> • Village use forest • Rehabilitation forest | <ul style="list-style-type: none"> • Temple areas • Cemeteries • Sacred forest* | <ul style="list-style-type: none"> • Schools • Markets • Recreation areas | <ul style="list-style-type: none"> • Reserve land for housing |

| | | | | |
|--------------------------------|--|--|------------------------------|--|
| for agriculture • Fishponds | • Protection forest • Conservation forest • Tree plantations • Sacred forest* | | • Health stations • Wells | |
|--------------------------------|--|--|------------------------------|--|

Role and Importance of Communal Lands:

In all villages studied communal lands play an essential role in the livelihoods of individual households and the social and economic well-being of the entire community. Rural households use communal lands for livestock raising, cultivation of staple and cash crops, as well as collecting firewood, medicine, food and construction materials.

Observations and Recommendations:

- Rethinking of priorities for land titling projects in the Lao PDR is needed to stop the current trend towards conversion of communal lands to other uses mainly agricultural and tree plantations.
- Instead of focusing exclusively on the registration of individual land holdings it is important to understand and recognize customary tenure systems that support both communal and individual use of land and natural resources.
- Across all ethnic groups in the Lao PDR communities use and manage communal lands. Types of lands often found to be under communal management include upland areas, grazing lands and village use and sacred forests.
- Communities and use groups have devised local rules for provision, management and appropriation of communal resources.
- Land held in common by a community or user group plays a crucial role for the social, economic and cultural well-being of rural communities. The recognition of communal land rights in statutory law is therefore well in line with national goals of poverty reduction and sustainable use of land and natural resources.
- The language in existing law and regulation does not clearly support the concept of registering communal land property rights. Two options should be considered: 1) extending the definition of the term “organization” found in current legislation to include communities and user groups or 2) make necessary amendments to the Land and Forestry Laws.
- Pilot activities testing the registration of communal lands would provide results to inform policy debate and help to make decisions about the two options suggested
- Valuable lessons for the process of recognizing communal land rights can also be drawn from two neighbouring countries including the Kingdom of Cambodia and the Socialist Republic of Vietnam which have adopted provisions of long-term statutory land use rights of community groups based on customary tenure systems.
- A comprehensive policy and legal framework is needed to support the successful implementation of communal land titling in the Lao PDR as it legally empowers communities to protect and manage their communal resource base.

Main Factors Leading to the Conversion of Communal Lands to Private Holdings.

State Forces: Introduction of state rules, Government policies & programs: eradication of shifting cultivation, village consolidation & relocation, land and forest allocation, granting of concessions on communal lands

Market Forces: Access to national and international markets, Commercialization of resources, Increase in land value, pressure for privatization, new production technologies

Demographic pressure: natural population growth and migration, weakening of traditional institutions due to changing values and belief systems, growing socio-economic stratification, growing need for cash income due to integration into market economy

Village Perceptions:

In general, people in all study villages responded positively to the idea of communal land titling. Regarding the perceived benefits of communal land titling, villagers unanimously mentioned the protection of their communal resources as the first priority.

Objectives of Communal Registration: The environmental, economic, social and cultural objectives for communal land registration were summarized as follows:

- To contribute to the goal of poverty reduction and full eradication of poverty by 2020
- To ensure equitable access to productive resources and food security
- To strengthen management authority of communities
- To ensure sustainable use of natural resources through improved tenure security
- To ensure effectiveness and acceptance of formal land registration by reducing the gap between customary and statutory systems

Risks involved in the registration of communal land were summarized as follows:

- Several communal tenure systems lack robustness or authority to provide sufficient tenure security to the members of the community, particularly towards outsiders.
- Formal registration restricts or freezes changes in communal tenure systems.
- Customary mechanisms for land allocation in communal tenure systems are not in line with government goals of gender equity and general principles of fairness.
- Demarcation of boundaries of communally held lands may create inter-community conflicts, particularly when members of the communities have different access to resources as well as bargaining power.
- Communal land is registered in a situation where communities lack common value and belief systems and/or a common history of land use and management, e.g. in relocated and merged villages.
- Multi-stakeholder policy development process related to communal land registration progresses slowly and involves high costs.
- Legal provisions regarding communal lands are not implemented since rights of local communities are subordinated to commercial development interests

Implementation of Communal Land Titling; several suggestions were made:

- Wherever possible mechanisms, government structures, personnel and procedures for registration of communal land property rights should be used that already exist for the registration of other forms of land property rights.
- For piloting titling procedures sporadic land registration can be used but full scale implementation should be based on a systematic land titling program.

- In the process of identification and demarcation of communal lands, improved land use planning procedures should be used and existing land use plans should be reviewed.
- Communal land titling programs should focus on rural areas with high demand for tenure security due to an increase in land value fuelled by investment options
- Securing of financial support for communal land titling program: this will most likely involve large donor organizations
- Investment in capacity building of local staff and technical equipment of implementing agencies

6.2 Policy Brief: Collective Land and Collective Title in Lao PDR

This document was produced in January 2010.

Legislation Relevant to Collective Land:

This report found that the legislative framework pertaining to collective land registration and the rights associated with collective land is provided by a combination of the following:

- Constitution of the Lao PDR (Revised 2003)
- Land Law (2003)
- Property Law (1990)
- Law on Local Administration of the Lao People’s Democratic Republic (2003)
- Forestry Law (2007)

Definition of Collective Land:

"Communal land" or "collective land" is not fully and adequately defined within the current legal framework. A separate directive or regulation on how to deal with collective and communal land is strongly recommended to avoid ambiguity and confusion in the law. As Instruction 564 is the more recent legislation that defines the term, this brief found that Instruction 564/NLMA, 2007 was the most appropriate, i.e.,

“Collective land is land that the State grants to a group or a collective. The group or collective has the right to protect and to use the land however, the group does not have the right to sell, transfer, lease, or use the land as collateral. The land must not be owned by an individual and the group or collective must consider the land communal land that each member of the group or collective may use. The land must be zoned as a type of land that is approved as communal land.¹¹

Comparison Between Individual Land and Collective Land:

The following table distinguishes between individual and collective land types:

| | Individual Land | Collective Land |
|----------------------|---|--|
| Who Qualifies | Individual Lao citizens. Joint ownership is possible. | Villages, Khumbans and Local Associations (i.e. Local Savings Groups and domestic companies) |
| Types of Land | Forests designated as degraded or | Forests designated as village use |

| | | |
|--------------------------|---|---|
| | barren forest land. Private agricultural or grazing land. | forest land. Land with cultural, religious, or community importance. Communal agricultural and grazing land. Other land (including water land that has been developed by using the collective use funding provided by the collective) |
| Associated Rights | To use, protect, usufruct, transfer the land, and to inherit the land | To protect and use only |

Advantages and Disadvantages of Collective Title:

The benefits and challenges of collective title include:

| Benefits | Challenges |
|--|---|
| <i>1. Collective land can be registered at no cost to the village.</i> | <i>1. A collective may be dominated by some people who have more influence than others, resulting in possible injustice</i> |
| <i>2. Collective land cannot be sold by any member of the collective or by management of the collective.</i> This is beneficial because it preserves the collective land as part of the community. Companies seeking large plots of land will not be able to purchase all of the land within a collective from a single person. | <i>2. Collective land cannot be sold, leased or used as collateral</i> Individuals who have more land will not be able to sell their land, nor will they be able to generate a temporary income from a temporary transaction related to the land. Collective title holders cannot mortgage the collective land for any loans. The only way to profit from collective land is to produce a crop or product that could be used or sold for profit. |
| <i>3. The State cannot grant land use rights within collective land.</i> This is beneficial because villagers can easily understand that once they have established collective land, no one can get a grant from the government to use the same land. With this knowledge, the villagers are empowered and can protect themselves from illegal evictions. | <i>3. The State may requisition the land</i> Currently, it has not been determined whether a requisition of collective land by the State would result in compensation to the collective for the land that has been seized. |
| <i>4. Collective land encourages security and tenure of the village.</i> By collectivizing land, the individual villagers will not have to worry that their neighbours may be tempted to sell their land to a company. Villagers feel more secure, and are more secure, with regards to the tenure of the village. | <i>4. The State may requisition the land</i> Currently, it has not been determined whether a requisition of collective land by the State would result in compensation to the collective for the land that has been seized. |

Legal Issues:

1. Who Is Eligible To Receive Collective Title To Land?

Villages: This is supported by the concept that the village is not just a community of individuals who live in a common area, but it is also an administrative organization that forms the smallest local level of government administration.

Associations: Associations are entitled to land rights, but PM Decree 115 on Associations (2009) Article 46, does not explicitly indicate that this land would qualify as collective land. However, because an association does not qualify for State land or for individual private land title, the likely interpretation is that these associations are eligible for collective title. These associations can be smaller than a village and can also be a collection of villages.

Village Clusters (Kumbans): While it is clear that villages may acquire collective title, and associations may qualify by meeting the requirements in Decree 115, it is not clear whether village clusters (Kumbans) may qualify for collective title.

Recommendation: Clarify the exact types of organizations that are eligible to receive collective title. Kumbans and associations are not explicitly included in ‘organizations and state organization’ as listed under Article 59 of the Land Law (2003). A clarification of the organisations that are listed or a specific definition stating the types of groups eligible under article 59 is desirable for greater clarity on this issue.

Alternative Recommendation: If Kumbans are considered an administrative body, like a village, and Decree 88 is adjusted to include Kumbans, then a Kumban would automatically qualify as a collective.

2) Types of Land that Qualify for Communal Title and Recommendations

Agricultural Land: “Land that the population has allocated to households for use for agricultural production during the growing season with nobody being the owner of the use right of the land” There is no ambiguity with this definition and the eligibility of the land for communal registration. It is unclear however whether an individual temporary land use certificate (TLUC) holder may choose to relinquish their individual claim to the plots in order to combine their agricultural plot into a larger collective plot of agricultural land. It is probable that individuals will choose not to relinquish the possibility for individual title to establish collective title.

Production Forests or Village Use Forests: “The forest for use, the production forest” can be interpreted two ways. The first interpretation is that collective land only applies to forests that are designated as Production Forests and are zoned as village use forest. The second interpretation is that collective land applies to any forests that are zoned as village use forest (including Protection and Conservation Forests) and to any forests that are designated Production Forest. However, Article 7 of Decree 88 states that land use rights or land utilization rights can not be issued to individuals or organizations for protected forest, preserved (conservation) forest and un-exploited forest land;...” However, the Forestry Law (2007) indicates that villagers are entitled to gather NTFP's in "Controlled Use Zones" of Protection and Conservation Forests. This conflict within the legal framework of collective land therefore is an important issue to be addressed.

Recommendation: Expand the category of collective title to include Protection and Conservation forests for Village Use

Spirit Forests and Sacred Forests: Presently, the Forestry Law (2007) does not provide for Spirit or Sacred forest zones. Article 82 of the FL states that village conservation forests include spirit and cemetery forest. Decree 88/PM, Article 7 excludes conservation and protection forest from eligible communal categories. This means that villages are unable to acquire collective title to their Sacred or Spirit forests unless they are zoned as a Village Use Production Forest

Recommendation: Reinstate Spirit and Sacred Forest zones within the Forestry Law This will overcome the shortcoming of the current legal framework in recognizing the non-productive value of Spirit and Sacred forests to villages and communities.

Water Bodies: The GOL has indicated that if a collective makes a financial investment to develop a water body then they might qualify for collective title. This is analysed on a case by case basis and requires that the collective invest from their own resources to try to develop the water body land. This means that the collectives will have to take on a financial burden without the certainty that their efforts will result in the acquisition of collective title.

Recommendation: Develop legislation or regulations to clarify rights and responsibilities relating to collectively used bodies of water. In particular, clarify whether a village that has received collective title to a natural or unnatural body of water can prevent another village from using the water.

7 Communal Titling Guidelines

Two communal titling guidelines are summarised:

1. Draft Guideline for Titling of Communal or Collective Land, April 2011: Land Management and Registration Project (LMRP)
2. Handbook on Participatory Land Use Planning, Section 12, Proposal for Communal Land Registration, NAFRI-IRD-CIFOR, June 2011

7.1 Draft Guideline for Communal or Collective Land Titling-LMRP

This draft guide was produced in April 2008 by the Land Management and Registration Project (LMRP) of GIZ during the implementation of land use planning and land registration activities in Luang Namtha Province. It was presented to the NLMA with the hope that it be officially recognised and contribute to the development of a government instruction or guideline on communal or collective land registration and titling.

The document contains 10 sections which are summarised below.

1. Definitions:

Communal land; All lands within village territories that is not individually used for permanent production or permanent occupation and to which at least basic communal or joint management rules exist. Communal land is in principle state land for which permanent use rights, protection

rights and management responsibilities have been transferred to an entire community (village), an association or unit or to several villages together. Use rights are acquired by customs and traditions in the specific areas or villages.

Collective land; Land that was collectivised during the Lao Revolution and that has since been used collectively without individual land use rights being issued

2. Objectives of Titling Communal or Collective Land:

- To contribute to the goal of poverty reduction and full eradication of poverty by 2020
- To contribute to the achievement of the NSEDP target of issuing one million land titles by 2015
- To ensure equitable access to productive resources and food security
- To strengthen management authority of communities
- To ensure sustainable use of natural resources through improved tenure security
- To allow for gradual adaptation to a changing environment
- To maintain and promote cultural diversity
- To ensure effectiveness and acceptance of formal land registration by reducing the gap between customary and statutory systems

3. Adjudication of Communal/Collective Land:

Communal/collective land can only be adjudicated, using the systematic adjudication system, after a land classification, land zoning and land use planning exercise has been conducted in the area not longer than five years ago. Adjudication can only be done in areas where communal management, use and protection has been established for at least three years, for either the entire village, specific sub-groups (cooperatives, user groups) or several villages together.

4. Surveying of Communal/Collective Land:

Communal/collective land parcels can be surveyed by handheld GPS (with continuous readings or extended measurements at corner points), by referential GPS and by Total Station, depending on the available equipment. The surveying has to be conducted on the ground and cannot be measured from aerial photography, balloon or unmanned aircraft photos or satellite images.

According to Presidential Decree No.03 the communities or user groups are exempt from paying a Technical Survey Fee for the surveying of the communal/collective land parcel by the District Land Registration Team.

5. Types of Communal/Collective Land: Eleven (11) types of land are eligible:

- Use forest for communal use;
- Cemetery forests;
- Sacred forest or spirit forest
- Land where people hold rituals;
- Land for cattle or buffalo grazing;
- Communal ponds or small lakes;
- Wetlands;
- Communal tree plantation areas;

- Village meeting halls or any other buildings (built entirely by the community) and land used by the entire community;
- Reserved house construction land ;
- Reserved agricultural production land;
- Communal agricultural production land; land that the population has allocated to households for use for agricultural production on a seasonal and rotational basis with no individual being the owner of the land use right
- All other lands that have characteristics of collective use by the villagers.

Usually school grounds fall under the responsibility of the Ministry of Education, health stations under the Ministry of Public Health and religious sites under the Ministry of Information and Culture and are therefore classified as state land. Pagodas and temples built entirely by the community may be titled as communal property.

The village authorities may give written permission for individual use rights and titles to be acquired in three categories of communal/collective land.

- Reserved land for house construction;
- Reserved land for agricultural production;
- Land that the population has allocated to households for use for agricultural production on a seasonal and rotational basis with no individual being the owner of the land use right

6. Communal/Collective Land Title Formats:

Only the official form for communal/collective titles issued by NLMA and the corresponding additional forms required to establish the full land parcel file can be used in the process of titling communal/collective land parcels.

Only the official form for communal/collective titles issued by NLMA and the corresponding additional forms required to establish the full land parcel file can be used in the process of titling communal/collective land parcels.

7. Rights and Restrictions to Communal/Collective Land:

A communal/collective title issued by NLMA through the District Land Registration Team provides for the following rights to the community or users:

- the right to protect the land (exclude others)
- use the land in a sustainable way and manage the resources in the interests of the collective/communal group
- develop land for individual and personal use according to the potentiality and suitability of that land

Restrictions:

Collective/communal land cannot;

- be sold;
- be transferred;
- be used as security for a loan; and,
- be leased or given for concession.

8. Registration of Communal Lands:

Communities and groups eligible for communal titles, as well as their legal representation need to be defined and recognised in statutory law. As the village is the lowest administrative unit defined in the Law on Local Administration (47/NA, October 2003) the registration of communal lands is recommended in the name of the village.

In the case of a user group, any other sub-group or association, the group has to be officially recognised by Nai Ban and the local community. The names of all members should appear on the title and any changes should be reported to the district authorities.

The communal/collective land titles must be registered in the land register book, and the cadastral map and separate land files must be established for each parcel.

9. Land Tax Payment

Communal/collective land and state land are exempted from land tax payment according to the current regulations (PD 03 and PM Decree on Land Tax Collection).

10. Cancellation of Communal/Collective Titles

The collective/village land cannot be expropriated for the purpose of giving the land as concession or lease. For other purposes e.g. projects in the public interest and infrastructure development, expropriation should be avoided as much as possible, but if unavoidable appropriate compensation must be paid. Compensation payments must aim at providing the communities with the possibility to at least maintain their current living standards or improve their lives.

The communal/collective title can only be cancelled and the land returned to the State Land category under the following circumstances:

- a. The cooperative, collective organization, community or group of people have illegally sold or transferred parts or the entire land covered by the communal/collective land title;
- b. The cooperative, collective organization, community or group of people have leased or conceded more than 50% of the area covered by the collective/communal land title.
- c. Encroachment into State Land Areas: After an improved participatory land use planning exercise and after individual and communal land registration activities, **no agricultural land use should take place outside these registered parcels and areas.**
- d. In case evidence is found that communal land use has been expanded into protected areas and if this concerns areas **larger than 10%** of the originally registered communal/collective land area, the communal/collective land title can be withdrawn and cancelled by the Land Management Authorities and the land will thereby revert to State Land.

7.2 Proposal for Communal Land Registration, NAFRI-IRD-CIFOR

This proposal was prepared by the NAFRI-IRD-CIFOR, Landscape Mosaics Project in June 2011, following applied research activity on PLUP in Viengkham District of Luang Prabang Province.

Rationale:

- Land allocation is the logical next step after land use planning as described in the PLUP manual (MAF/NLMA, 2010).
- Securing land tenure is an important step towards sustainable natural resource management in the uplands of Lao PDR.

Constraints to Land Registration:

a) Agency Constraints

- The DLMA in Viengkham which is the only agency authorized to proceed with land registration and to deliver land titles, has not registered any land yet because of limited expertise and staff resources.
- The agency has limited capacity to service new projects especially systematic land use planning and land allocation of all villages in Viengkham planned by DLMA in 2011

b) Villager Constraints

- Most subsistence farmers cannot afford the cost of *individual plot registration*
- Current land use types are not eligible for land registration and titling, e.g., land under rotational crops, however, this land use type represents most of the area classified as agricultural land
- Villagers have access to very limited areas of paddy land
- Risks of land grabbing of communally used land by external investors

Proposal for a ‘Nested Land Registration System’:

- A nested land registration system is proposed which means registering all plots delineated during the land zoning activity as communal land.
- The different zones would be officially recognized as managed by the village under the authority of the VLMC and village head.
- The land management rules and grievance mechanisms would be those described in both the PLUP agreement and in the communal land registration form.
- Individual households willing to register individual land, would then have to show that:
 - the plot is cropped permanently (in accordance with the land law),
 - it belongs to the village territory,
 - it is used in accordance with the land management rules of the land use zone to which it belongs indicated in the PLUP agreement.

Purpose of the Proposal:

- To promote discussion on these proposals by other practitioners and relevant agencies
- To produce clear guidelines related to land registration which can be provided to the district staffs and village communities.

The proposal includes examples of the following forms:

1. Proposed Communal Registration Form
2. Communal Land Registration Map

8. Further Comments

8.1 Communal Land Use Rights

While there are numerous uncertainties raised in the various documents regarding communal registration and titling, policy, and regulatory framework, the rights associated with communal land are clear, as expressed in the Legal Analysis by Rights Link in 2009, which concluded that the rights as defined in the Property Law and MD 564/NLMA in respect of collective land are clear and unambiguous, i.e., the rights are land utilisation rights, which are the rights to protect and use the land. In addition, collective or communal may not be sold, transferred, used as security, leased or given for concession.

8.2 Relevant Reports on Communal Land Registration and Titling

While this is not a comprehensive list, the following reports from various projects provide further information on CLRT in areas where pilots have been implemented or where the activity is being considered.

1. Towards Communal Land Titles in Sangthong District; Participatory Development of a Format for Communal Land Titles in Four Villages in Sangthong District, Greater Vientiane Capital City Area, 2011; SNV, GDG, GEF.
2. Towards Communal Land Titles in Sangthong District; Sustainable Women Empowerment Project, Sangthong District; Lounthong Bounemany, Chief of DLMA, Sangthong District, October 2011
3. Assessment of Risks and Benefits to Villagers and the Government of Individual, Communal and State Land Titling in Rural Villages after Land Use Zoning during PLUP: Annex 5, of Report on PLUP Consolidation, Land Management and Registration Project (LMRP), March 2011.
4. Land Use Zoning, Land Management Plans and Land Registration-Titling: The Agro-biodiversity Initiative (TABI), March 2011

Appendix 1: Summary of Issues and Recommendations Arising from Policy Overview, February 2012

| Questions and Issues | Recommendations |
|---|---|
| 1. The “entities” that qualify or may qualify for communal land registration are discussed in most documents, e.g., village, farming groups, ethnic groups, kumbans, collectives, various organisations, (socio-economic, political, commercial etc) | 1. Prepare a list and description of all “entities” that qualify for CLRT so that there is no doubt what they are. |
| 2. The Legal Analysis, 2009 raised the following legal issues: - Are village clusters eligible for communal land - Can individuals with land titles and temporary land certificates combine their land into collective land - Can companies, such as logging companies form “economic organisations” to gain collective title - If the State requisitions collective land, does the collective receive compensation | 2. Clarification on these issues should be sought from the relevant government agencies |
| 3. The NAFRI/IRD proposal for communal registration, June 2011, proposes that a “nested approach” to communal registration be adopted where all land parcels (zones) delineated during the land zoning activity of PLUP are registered as communal land. (Further details are provided in Section 7.2 of the Policy Overview Report) | 3. While the current legislation, Article 7, Decree 88, would place restrictions on such an approach, management conditions and rules might be applied under the authority of the VLMC, the Village Authorities, and the village community which would be recorded on the communal land registration form, to make such an approach feasible and acceptable. The proposal should therefore be further considered by the Land Authorities. |
| 4. The definitions of various type of communal land vary in the various documents | 4. Prepare a list of clear definitions for each eligible type of communal land so there is no confusion in the minds of field implementers |
| 5. There are different interpretations about “cultural” land in the various regulations and review documents; some say it is communal land; others refer to it as State land for which the Ministry of Information and Culture has responsibility | 5. Identify and name very clearly all possible types of communal land; (the types listed in the GIZ Guideline for Tilted Communal Land would be a good starting point) |
| 6. The legislation and other documents appear to totally exclude village conservation and protection forests as eligible communal areas, while one review recommended that these categories be recognized as eligible | 6. A confirmation/verification on this question is required so there is no doubt in the minds of implementers. (See further discussion in 6. below) |
| 7. The Forestry Law Article 82 stipulates three categories of village forest and states that “spirit” and “cemetery” forest should be | 7. This needs amendment or further explanation; consideration should be given to reinstating the two categories |

| | |
|---|---|
| <p>included in the conservation category. This would effectively remove these two types of land from communal land eligibility. It may arise because the common practice during LUP-LA land zoning was to include these two forest types under the “conservation” category</p> | <p>in the Forestry Law to avoid ambiguity and conflict with what is stated in MD/654/NLMA</p> |
| <p>8. The Policy Brief of 2010 observes that the current legal framework offers little guidance for resolving conflicts involving bodies of water.</p> | <p>8. Develop legislation or regulations to clarify rights and responsibilities relating to collectively used bodies of water. In particular, clarify whether a village that has received collective title to a natural or unnatural body of water can prevent another village from using the water.</p> |
| <p>9. Article 98 of the Presidential Decree No. 03/PO, November 2008 allows fee and service charge exemptions for:</p> <ul style="list-style-type: none"> - Fees for issuing a land title for converting other types of land to natural rehabilitation forests - Service charges for land measurement for issuing land titles and land survey certificates for state land use <i>and collective land</i> to state organisations, political organisations, Lao Front for National Construction, Mass Organisations, and State economic organisations as specified in the Land Law. | <p>9. Clarification is required on how these exemptions are/would be applied; are they only for collective State land, not village collective or organisation land and secondly, what fees and service charge exemptions are actually given when issuing village communal land titles:</p> <ul style="list-style-type: none"> - Fee for land parcel registration? - Fee for land registration documents? - Fee for measuring agricultural land or forest land parcels or other communal land parcels? |
| <p>10. The Legal Review, 2007 concluded that while conflict resolution procedures exist, including those for land registration and titling process, they might not be adequate for handling disputes that are unique to the context of communal land titling</p> | <p>10. Consideration should be given to developing conflict resolution procedures that adequately handle disputes that may be encountered when undertaking communal land titling</p> |
| <p>11. The Legal Review, 2007 found that no where in current law and regulation is the term “communal” used in relation to registration and titling of land property rights. (A government policy that clearly states that the term “organisation” includes the concept of “customary communal groups” would do much to clarify the definition).</p> | <p>11. Consider the two options that are presented for recognising the concept of registering and titling communal land property rights:</p> <ol style="list-style-type: none"> 1. Include an interpretation of the term “organisations” as found in <u>existing</u> laws and regulations to include “customary communal arrangements” 2. Amending relevant provisions in both the Land Law and the Forestry Law to include specific provisions supporting the concept of registering and titling communal land property rights |
| <p>12. The Policy Study on Communal Land Registration, 2007 raised the following issues:</p> <ul style="list-style-type: none"> - There is a the current trend towards conversion of communal lands to other uses mainly agricultural and tree plantations; | <p>12. The following recommendations were proposed:</p> <ul style="list-style-type: none"> - A re-think of priorities for land titling projects in the Lao PDR is needed including an understanding and recognition of |

| | |
|--|---|
| <p>there is an exclusive focus on the registration of individual land holdings</p> <p>- The language in existing law and regulation does not clearly support the concept of registering communal land property rights.</p> | <p>customary tenure systems that support both communal and individual use of land and natural resources.</p> <p>- Pilot activities testing the registration of communal lands are needed to provide results to inform policy debate.</p> <p>(Lessons for the process of recognizing communal land rights can be drawn from the Kingdom of Cambodia and the Socialist Republic of Vietnam which have adopted provisions of long-term statutory land use rights of community groups based on customary tenure systems).</p> |
| <p>13. The Policy Study on Communal Land Registration, 2007 identified several risks involved in the registration of communal lands. These are presented in the Policy Overview</p> | <p>13. The various risks identified should receive consideration during the process of developing policy and the regulatory framework.</p> |
| <p>14. Guidelines on Titling of Communal or Collective Lands are required to interpret the current policy and legislative framework. (Draft Guidelines were produced in April 2011 by the LMRP of GIZ with a view to assisting the Land agencies with the development of communal land policy and implementation guidelines)</p> | <p>14. The Department of Lands should review the draft GIZ guideline and consider ways to incorporate information contained in the document into an instruction on the identification and management of communal lands which would complement and expand on MD 654/NLMA (which has a focus on adjudication). <i>Note: The Department has signalled it's intention to prepare such a document.</i></p> |
| <p>15. The policy/regulatory overview, including the NAFRI/IRD proposal for communal registration, June 2011, has identified significant provincial and district staff land agency constraints regarding knowledge and experience in communal registration and titling of communal lands</p> | <p>15. A concerted effort should be made by the various government and non-government stake-holders to comprehensively inform the persons responsible for communal registration and titling of the procedures and methods required to build on the limited pilot activities, experiences and knowledge currently available</p> |