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Land and Forest Tenure in Laos: Baseline Overview 2016 with Options for Community Participation in Forest Management

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Author: Michael Dwyer

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Abbreviations

FOMACOP	Forest Management and Conservation Project
LFA	Land and Forest Allocation
MAF	Ministry of Agriculture and Forestry
MONRE	Ministry of Natural Resources and Environment
NAFRI	National Agriculture and Forestry Research Institute
NBCA	National Biodiversity Conservation Area
NPA	National Protected Area
NT2	Nam Theun II
PSFM	Participatory Sustainable Forest Management
REDD	Reducing Emissions from Deforestation and Degradation
SUFORD	Sustainable Forestry for Rural Development
TABI	The Agro-Biodiversity Project
UNFCCC	United Nations Framework Convention on Climate Change

Executive Summary

Tenure refers to the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how access is granted, and cover issues ranging from use to transfer to exclusion of others; depending on context, these different rules may be “bundled” in different ways based on a mix of tradition and formal law. In the Lao context, where rural communities depend heavily on a range of natural resources (forests, fisheries, land), and where instruments for formal recognition such as land titling and village forestry have relatively low coverage, tenure in practice varies significantly with local context.

This review describes seven sets of processes that influence this context, and therefore shape land and forest tenure in contemporary Laos. These include:

1. Macro-scale forest management,
2. Village-scale zoning and land-use planning,
3. Large-scale investment and infrastructure,
4. Individual land titling,
5. Smallholder cash cropping and contract farming,
6. Community-oriented forestry including but not limited to REDD+, and
7. Community-scale land titling and other forms of tenure recognition.

In summarizing these, this document seeks to provide a common basis for ongoing policy discussions in the land and forest sectors. Its goal is thus to find a middle ground between overly simplistic descriptions of tenure security, such as those based only on formal status, and the widely held but difficult-to-use acknowledgment that “it’s complicated.”

Part 1 summarizes the diversity of land and forest tenure security that exist in contemporary Laos. Using three illustrative examples, this introduction shows the variety of factors that shape communities’ access to reliable sources of land and resource-based livelihoods. Generalizing from the examples in the introduction, Part 2 describes the spatial approach to describing land and natural resource tenure that is used in the rest of the study. In doing so, it explains the conceptual framework implicit elsewhere in the study. Part 3 devotes about two pages each to the seven processes listed above. It is organized chronologically, and uses a mix of maps and figures to provide a historical overview of the key processes that continue to shape land and forest tenure in the present day.

Section 3.1 describes the progressive development and mapping of the Lao forest estate, often identified via the three administrative categories of Production, Conservation and Protection forests. A key focus here is the unevenness of the gazetting process through which the forest categories have been mapped. As elaborated in later sections, this continues to influence a range of governance and management processes in both the land and forest sectors, including the 2014 National Assembly notice on forest re-delineation.

Section 3.2 describes the Land and Forest Allocation (LFA or LUP/LA) process, which conducted village-scale zoning and (sometimes) plot-level land allocation in thousands of rural villages during the late 1990s and early 2000s. This section focuses on LFA’s legacy in establishing land-use planning as a development intervention aimed at the formalization of land use rights; and second, through its relationship with the macro-scale forest categories described in Section 3.1.

Section 3.3 summarizes the tenure-related conflicts that have emerged as a result of land concessions and infrastructure projects, both of which are often associated with the “turning land into capital”

policy. These highlight the tension between, and also the interplay of, formal and informal but locally recognized tenure institutions such as *din jap jong* (reserved land). This section thus focuses on the ways that concessions and infrastructure projects pose policy questions about both fair compensation and intra-community access to increasingly scarce natural resources.

Section 3.4 focuses on land titling, which began in the late 1990s and has continued since then through a combination of sporadic and more systematic approaches. This section highlights the issues of location and scale, and explains how and why titling activities have tended to focus on urban and peri-urban areas, and to operate at the scale of individual household titles rather than community titles for common lands. As a limited amount of titling has turned to rural areas and a policy conversation has begun about communal forms of tenure recognition (see Section 3.7 below), the history of titling in Laos is essential to understand.

Section 3.5 then turns to the smallholder cash cropping and contract farming, which have proliferated in the last decade, and provided a degree of de facto tenure security to many rural farmers even in the absence of land titles. This section thus highlights the ways that de facto tenure security or insecurity can emerge even in areas where formal tenure recognition has not occurred yet.

Section 3.6 reviews efforts in the forest sector to accommodate a range of claims by both rural communities and state institutions on Laos's forests. Tracing the history of participatory forest management through the FOMACOP, SUFORD and NT2 models, this section then uses REDD+ to highlight the challenges of forest-landscape tenure in contemporary Laos: tenure insecurity is an ongoing cause of forest loss on the one hand, but direct community control over forests has long been seen as contrary to the state's forest management mandate.

Section 3.7 builds on this theme by summarizing a range of recent efforts to formalize community land and forest tenure in the current policy context. Reviewing the collective land titling efforts at Sangthong and Nakai, as well as non-title-based approaches to community land and natural resource tenure, this section brings Section 3 into the present day, and frames the issues discussed in Part 4.

Part 4 concludes the study by highlighting three areas for ongoing discussions. This section focuses on the forest sector due to the study's being commissioned under the FAO's global work on REDD+ and tenure, but it is equally relevant for "land"-related policy discussions. Discussing, both individually and in relation to each other, zoning, mapping and gazetting; ongoing efforts to enhance community tenure security; and the distinction between compensation and benefit-sharing, Part 4 addresses three ongoing policy processes: (1) The re-delineation of the Lao forest estate is an over-arching process, given its implications (both legal and otherwise) for other land and forest management processes; Section 4.1 discusses efforts to pilot this process so far, in light of current plans to continue the process. (2) Section 4.2 highlights the issue of sectoral (agriculture versus forestry) jurisdiction over village land. Reviewing lessons learned in Laos and elsewhere, this section highlights the importance of village territorial integrity as tenure recognition gets formalized downward to the village scale. (3) Section 4.3 discusses the difference between compensation and benefit-sharing, which have not only different temporalities (one-time versus ongoing), but also different implicit tenure models: alienation versus co-ownership. As debates about co-management and tenure formalization go forward, using and operationalizing these concepts consistently is essential.

1. Introduction: Tenure on the Ground

In central Laos, an older man explains the history of extraction from the protected area that surrounds his village. The wildlife trade started in the 1990s; logging began around 2000. Today the focus is high-value hardwoods; the rosewood will be gone in two to three years, while other species like *mai dou* and *mai deng* will last another decade. “But then it’s over,” he says. “I don’t know what we’ll do afterward.” Timber extraction forms a key part of many livelihoods in across rural Laos, where options are limited and the power to defend communal resources is scarce. In protected areas like this one, the logging is clearly illegal, and is often blamed on other villages even as the trade operates in plain sight. In other areas, the rules are more complicated and contingent. But foreign demand is high, and legal exceptions are frequent. Those involved have misgivings, but poverty and powerlessness leave them few options.¹

In a nearby district, communities negotiate compensation for land they are losing to foreign plantation concessions. The terms, processes and results vary from case to case: Some companies are proactive, while others only respond to problems. Communities differ as well in their organization and negotiating skills. But despite the minimal formalization of their land and forest tenure – neither the Land and Forest Allocation process nor systematic land titling have come to their part of the province – communities have sufficient tenure rights-in-practice to negotiate compensation from the private developers to whom their land has been allocated. The compensation is based on production estimates: paddy fields are worth more than swidden fields, and fallows don’t count at all. Negotiations are witnessed by local authorities, but ultimately come down to the terms agreed between companies and communities.²

Far to the north, land transactions between agribusiness firms and local farmers are increasingly common, challenging the model of state-managed investment arrangements that characterized the rubber boom of the mid-to-late 2000s. Previously, local authorities there brought in contract farming projects as a way to stem the tide of land transfers from poorer villages to local elites, attempting to create direct business cooperation between Chinese companies and upland smallholders. But many farmers sold their plantations, and as the rubber price has fallen, some have cut down their plantations in favor of other crops. Where state-managed land arrangements previously dominated, today the laws of the market increasingly shape local landholding patterns. As rubber gives way to bananas and other crops, local government’s power to dictate crop choice, growing arrangements, and associated land use decisions increasingly seems like a thing of the past.³

These sketches highlight the diversity of land and resource tenure that exist today across rural Laos. Their storylines illustrate the range of situations that residents and officials face in dealing with local conditions, development efforts, and policy processes. Tenure relations differ in each sketch: in the first, where a village elder links a bleak and uncertain future to a present-day inability to control forest extraction, tenure security is minimal. In the second, where villagers struggle to protect their limited entitlements on an *ad hoc* basis, their tenure security is better, but still hardly reliable. In the third, one commodity boom ushers in another, and the shift brings an increase in smallholder control over land use decisions; tenure security seems strongest here, but it is still largely *de facto*. In each case, the power to manage, access, trade and distribute land, natural resources and associated benefits is closely linked to ongoing changes in livelihood, governance and economic conditions. But the connections are

¹ Author’s primary data; also see Dwyer & Ingalls (2015: 36).

² Miles Kenney-Lazar, dissertation fieldwork (personal communication, 24 March 2016).

³ Summarized from Vongvisouk & Dwyer (2016).

diverse and unpredictable, and tenure security – defined as reliable access to land and natural resources via institutions that are recognized as legitimate – is precarious at best. In a context where rural livelihoods and food security depend heavily on direct access to land and natural resources, widespread tenure insecurity is a pressing policy issue.

“Tenure” comes from the Latin word *tenere*, meaning “to hold.” While sometimes equated with ownership, “tenure” is in fact a far broader concept, referring to not only literal “holders” of land such as owners or lease-holders, but also those who possess reliable and recognized *access* to resources even if these are technically owned by others (Thompson 1991; Ribot & Peluso 2003). Often, these locally legitimized uses and the institutions that support them reflect a mix of traditional practice and formal recognition, both of which build support for the legitimacy of livelihood practices and subsistence strategies such as fishing, hunting, grazing, shifting cultivation, and the collection of forest products. Tenure thus *includes* ownership, but its essential focus is on issues of reliable access, use, control and management; these are particularly relevant in contexts where ownership is contested, blurry, or limited by formal institutions. As elaborated below, Laos’s rural hinterland – legally owned by the national community, but used and managed in practice by a mix of formal and customary institutions – is one such context. Laos is typical of countries in the global south that have seen tenure insecurity reemerge in the last decade as a major policy issue, largely due to the rush of transnational agribusiness investment that often targeted lands where local tenure institutions were inadequately recognized in national laws.⁴ Highlighting this mismatch between de facto and de jure institutions, processes such as the one that created the Voluntary Guidelines on the Responsible Governance of Tenure (FAO 2012) have sought to raise awareness and dialogue around this issue.

For many decision-makers and development practitioners, it is the local and national versions of this issue that matter most, because this is where day-to-day governance occurs: which policies affect which laws (and vice versa); which projects have tried out which models; how to interpret local circumstances in broader contexts – and so on. This study proposes a way to help make sense of this complexity by offering a context-specific, spatially explicit framework for understanding the interactions that make up land and resource tenure in the Lao countryside (Part 2). It then presents an overview of the specific policies, programs, projects, and other interventions that ground this framework in practice (Part 3). Finally, it discusses options for community engagement in village land and forest management, both of which are current policy issues (Part 4). The analysis presented here seeks to provide a shared reference point for discussions among various actors involved in land and resource governance in contemporary Laos, including development partners, government officials and interested members of civil society.

This study is referred to as a “tenure baseline” because it reviews tenure-related issues at a moment when land- and forest-sector reforms are being actively planned and discussed, and a shared overview of the current situation is therefore useful. Laos’s National Land Policy process, announced in 2012, entered a new phase in mid-2016 with the release of a draft Land Policy for comment (GO 2015); this document has since been taken up by the Lao Politburo, while a draft revision of the Land Law has also been circulated. Similar processes are taking place in the forest sector as well. This review attempts to provide a reference point at a time when land and forest tenure are an issue of active discussion, but

⁴ This literature is now substantial. For Laos, see (among others) Baird (2010, 2011); Barney (2007, 2009); Broegaard et al. (2017); Dwyer (2007, 2013a); Kenney-Lazar (2012); Hett et al. (2015); Laungaramsri (2012); McAllister (2014); Obein (2007); Phouthonsy (2006a, 2006b) and Suhardiman et al. (2015). For a broader discussion, see (among others) Alden Wiley (2012), Borras et al. (2012), White et al. (2012), and Lavers (2012).

also lingering confusion to many of the people most affected (KPL 2016b). It is intended as an input for ongoing discussions, as well as for future evaluations of the efforts currently underway.

2. Conceptual Framework: A Spatial Model of Land and Resource Tenure

In Laos today, a number of processes interact to influence land and resource tenure security. Land titling defines the legal standard on which the permanent ownership of land-use rights are based, yet it has only occurred in a small fraction of the country. Land and forest allocation has covered a broad swath of the rural population (roughly 5,000 villages), yet its coverage, as well as its implementation and follow-up at the village level, are highly uneven. Forests' administrative designations – production forests, conservation areas, and three sub-types of protection forest – have been declared over roughly 60 percent of the country. Yet these have had such varied and often problematic interactions with the villages located “inside” them that the Lao National Assembly in 2014 instructed the responsible ministries to redraw the boundaries to better match realities on the ground. These are just a few examples of the ways that land and resource tenure depend on location-specific interventions.

Tenure is often conceived as a bundle of rights, including the right to use, the right to derive benefits through others' use, the right to exclude others, and the right to transfer one's rights to others. Such a definition is only the beginning, however: it leaves open the question of how these various powers are distributed in various contexts. As the opening sketches above illustrate, tenure security in practice depends on a number of factors, some of which are highly localized and others of which are not. The approach taken here is designed to focus on this interaction between the local and the general, so that the picture of tenure that emerges is more in line with actual circumstances on the ground.

Figure 1 illustrates this context-dependent approach to tenure using a spatial model. If we think of *actual* tenure-in-practice – tenure *on the ground* rather than simply *tenure-in-theory* – as a function of various sets of circumstances (A, B and C), we can see that if these circumstances have different *spatial* distributions, then tenure will vary by location. In some areas, it will be a function of the interactions of A, B and C all together; in other locations it will depend merely on B and C; and in other areas still, it will depend only on C. In this conceptual model, C was the most general factor – a national law, for example – while A was the most localized factor, such as the presence or absence of systematic land titling. B, in this example, was an intermediate-scale factor, such as a forest zoning plan, a large infrastructure project, a provincial- or district-specific decree, or a set of cultural traditions that spans a number of villages.

The model shown in Figure 1 is highly simplified compared to the reality discussed below, but makes an essential point nonetheless: Tenure-in-practice is a function of social and land use relationships that cross-cut scales, institutions and landscapes, from households to villages, sub-districts to provinces, watersheds to nations, and so on. Various laws and decrees govern land and resource tenure, exerting power downward from state and local authorities, but a variety of other interactions are also involved. Some of these are lateral (between relative equals), such as the relations within communities that govern local land use norms, while others can be vertical but private, such as arrangements between companies and the communities where they invest. All of these shape tenure in important ways. A context-based approach to tenure allows us to see how these various factors – legal-administrative, social and economic – interact in particular circumstances to create the variability in tenure security that currently exists on the ground.

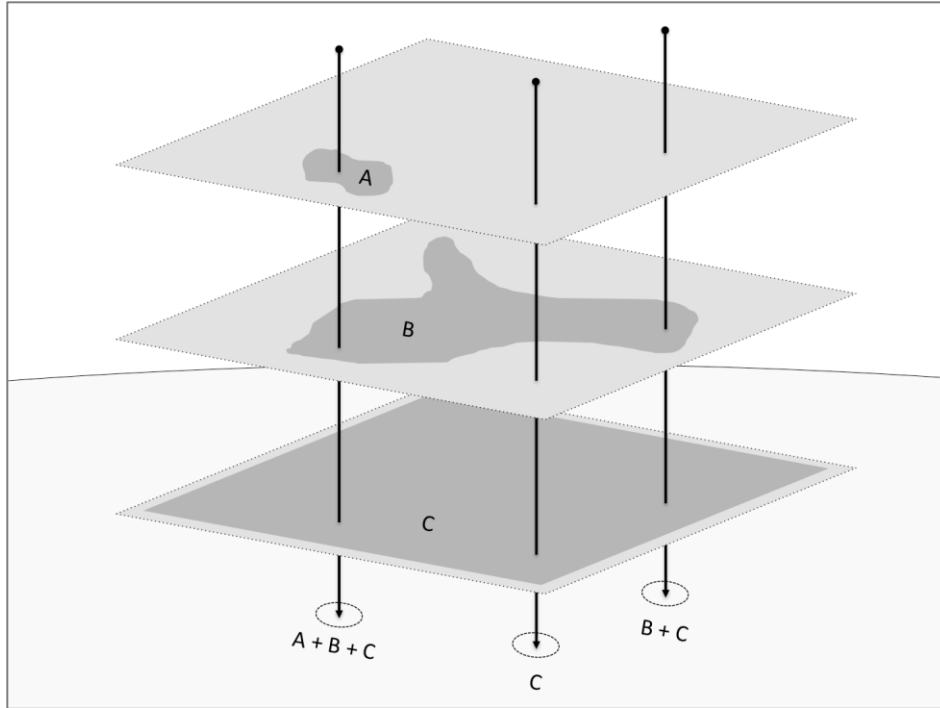


Figure 1. Spatial model (schematic) of land and resource tenure in Laos

Source: author.

3. Land and Resource Tenure in Laos: Key Building Blocks

The processes and events discussed in this section interact to create a diversity of land and forest tenure relations. This section is divided thematically into seven parts; these are presented in roughly chronological order, although the processes and events described necessarily overlap.

3.1. The Lao Forest Estate: Development Before Boundaries

A central theme in contemporary discussions about land and resource tenure both in Laos and elsewhere is the shortage of clear and consistent boundaries, maps, documents and so on. Some observers suggest putting development on hold while better and more precise systems of resource management are created (while maps are made, management agreements signed, land titles issued, etc.), but these sorts of approaches tend to be the exception. State leaders have issued moratoria on various types of activities from time to time, but in many cases development is seen as too important to put on hold while institutions are strengthened or built from scratch. Development projects are thus often the leading edge of actions on the ground, while the creation of maps, management plans, tenure documents and formalized gazettement, often follow later, if at all.

This pattern has its origins in the history of Laos's forest estate, the development of which began in the late 1970s. This was the time of early nation building for the Lao PDR, when economic development and national security were both urgent matters. Forests were involved in both of these: They were essential sources of economic wealth, both for domestic use and for export, but they were also important social

landscapes. Many people displaced during the conflicts of the 1970s had moved into forested areas such as those in the lowlands of central Laos near the Mekong, Nam Ngum, Nam San and Nam Ngiep; there they had taken up whatever livelihoods were available. Shifting cultivation was a pillar of this transition; as one early study by the Lao-Swedish Forestry Project found, upland rice cultivation was not limited to ethnic minority groups or mountainous areas, and was “a precondition for survival” for much of the population (Thongphachanh & Birgegard 1982: 3, in Dwyer 2011).

In such a context, forest inventories were an ongoing challenge (Persson 1983), and had implications for not just technical forestry operations, but also for efforts to manage and alleviate the tension between economic development for the nation (as operationalized through State Forest Enterprises (SFEs)), and local livelihoods and small-scale agricultural production. Geographic details mattered for managers – where were forests still good? where had they already been degraded? – but this type of information was often in short supply. Forest officials and development partners knew where the good forests were located *in general*, but local, stand-level data needed for management was often difficult to generate. Unlike the Land and Forest Allocation program that would follow a decade later (see next subsection), locally precise data about human settlement, land use and forest quality was limited due to the lack of village-by-village surveys. Area-based plans were thus relatively crude: State Forest Enterprises had zones of mandated activity, but these were very general (Figure 2, left), and lacked the specificity that came when protected areas were gazetted over a decade later (Figure 2, right).

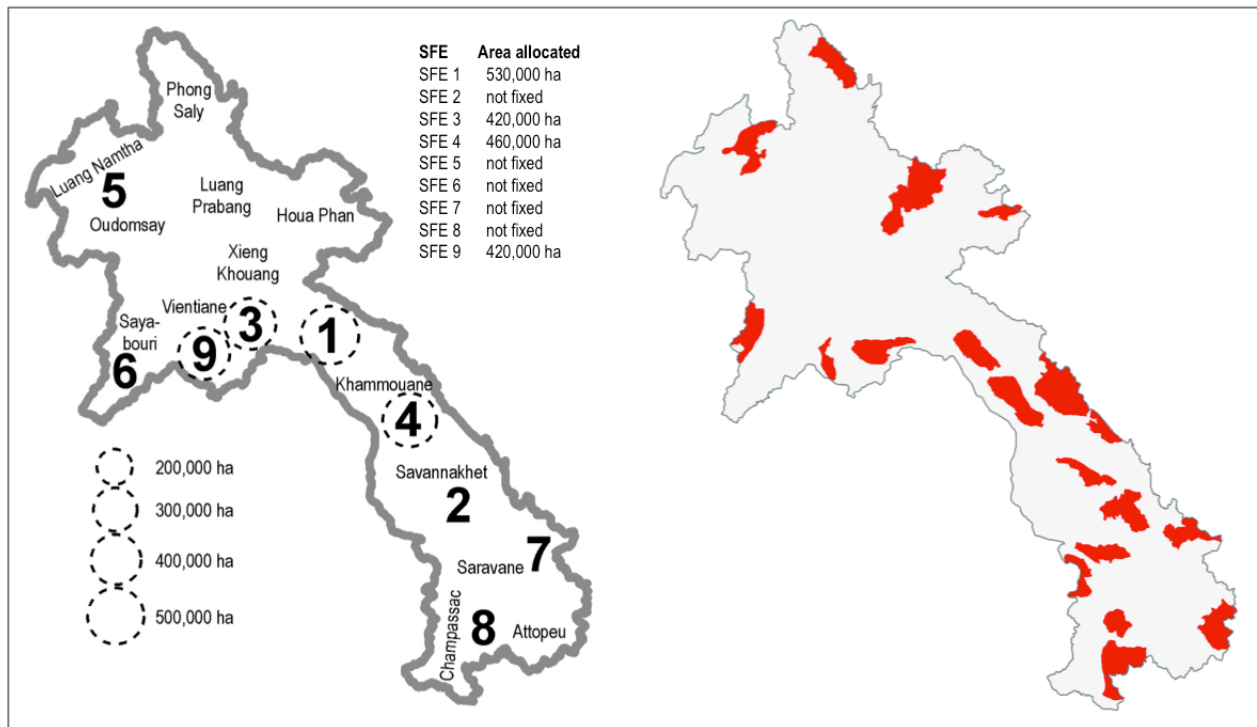


Figure 2. Early National forests in Laos: State Forest Enterprise locations in the early 1980s (left), and National Protected Areas gazetted in 1993 (right).

Source: author, left side reconstructed from Persson (1983), originally in Dwyer (2011)⁵

⁵ Province names and spellings follow Persson (1983) and reflect the situation in 1983.

In such a context, forest managers and state officials in the 1980s faced the challenge of reconciling the national-level interests represented by SFEs with, as one Lao-Swedish Forestry Project study put it, “the legitimate interests of the local population to satisfy their basic needs for food” (Thongphachanh & Birgegard 1982: 20). Practices of landscape management that are still in use today, including village resettlement and the development of “focal sites” where services could be concentrated and land use intensified (Baird & Shoemaker 2007), were developed in this period (Dwyer 2011). The urgencies of the time dictated that they did not always proceed on the basis of precise data. Rather than being the building blocks of management planning, locally specific maps were often produced after the fact.

This began to change in the early 1990s, in response to the economic upheavals of the mid-to-late 1980s. At that time, declining aid from socialist allies like the Soviet Union spurred the adoption of increased market-based production under the policy heading of the New Economic Mechanism. The Lao forestry sector was especially successful in its efforts to decentralize management control and adopt market-based production; the late 1980s and early 1990s are now remembered as one of Laos’s first major logging booms (Anonymous 2000; Walker 1999). As a response to this, however, Lao officials stepped up forest zoning and management efforts in the early 1990s, first with the World Bank-funded Tropical Forestry Action Plan, which in turn led to the creation of National Biodiversity Conservation Areas (NBCAs, later renamed National Protection Areas, or NPAs); and second with the Land and Forest Allocation program. The NBCAs/NPAs (Figure 2, right) complemented the existing landscape of production forests (Figure 2, left) but this time laid down a more spatially precise network of forest zoning polygons. Yet despite their precision at national scale, the newly gazetted protected areas included multiple land use types locally, including many non-forest categories. If we zoom in to the local scale where these polygons resolve into mountain ranges, watersheds, villages and land cover categories, polygons such as those in Figure 2 (right) are but a first-order approximation. The Land and Forest Allocation program was created in the mid-1990s as a way to engage this more complex local terrain, both in and out of the forest categories that existed at the time.⁶

3.2. Village-Scale Zoning: The Land and Forest Allocation Program

Land and Forest Allocation (LFA) was an attempt to take forest mapping and zoning down to the village scale, and thus make local land use rights and practices more formally accountable to government.⁷ While the LFA program had mixed results – some of the plans it created were highly disruptive to village livelihoods (ADB 1999; Vandergeest 2003; Baird & Shoemaker 2007), while others were later ignored or quietly abandoned due to lack of feasibility – its legacies are significant nonetheless. This section reviews the history and practice of LFA, and highlights the larger question of multi-scale zoning and regulation highlighted by its implementation and various follow-up efforts.

In practice, LFA involved at least two, and sometimes three, sets of steps: (1) mapping the outlines of village territories with representatives from villages and their neighbors; (2) internal zoning of these village territories into forest, agricultural and other land use categories; and (3) formally allocating agricultural land at the plot scale to village households. LFA exercises were accompanied by various documents, including maps and land use contracts for village-scale zoning, and Temporary Land Use

⁶ Today’s trio of forest categories (conservation, production and protection) was not mapped until the 2000s, as discussed below.

⁷ Officially, LFA was called Land Use Planning and Land Allocation, often abbreviated LUP/LA; my use of the term and acronym “LFA” reflects popular usage in both English and Lao.

Certificates (*Bai sit nam-sai thi din sua-khao*) for household plot-level rights. Implementation varied significantly; a common distinction was that between villages that had the “full” program including plot-scale land allocation, and villages that only had the “partial” program of village-scale zoning (Figure 3).

A key tension was reflected in the terminology commonly used to refer to LFA in the Lao language: *Mop Din, Mop Pa* – “offering” land and forest – versus *Beng Din, Beng Pa* – “dividing” [agricultural] land from forest. These two sets of terms carry different connotations, the former implying an offering of rights that did not previously exist, the latter implying recognition of what is already there. This reflected the fact that, on the one hand, LFA was often seen as a way to grant recognition for *some* customary forms of land use, while on the other hand bringing these uses into line with official policy. In doing so, LFA offered formal recognition of land-use rights in some places, but made this recognition conditional on the spatial separation of agriculture from forests, as well as on the intensification and contraction of land use. This was made explicit in the various maps and documents produced under the program (see e.g. Figure 3), which often highlighted the incompatibility between traditional land and forest uses and the recognition framework that LFA represented. Like other processes of conditional tenure formalization, LFA was thus often a mixed blessing (at best) for those communities that received it (Vandergeest 2003).



Figure 3. Sample LFA maps with (left) and without (right) plot-scale recognition of agricultural land
Source: author’s data.

LFA’s key years of implementation were the mid-1990s to the early 2000s. During this period, the program was first piloted on a small scale and then expanded around the country; ultimately it was implemented in upward of 5,400 villages, or roughly half of the villages in Laos, depending on estimates (Soulivanh et al. 2004; cf. Badenoch 1999). Reflecting the processes and objectives noted above, LFA aimed to stabilize shifting cultivation through the development of more intensive, fixed-field agriculture, often geared toward market-based production rather than household subsistence. But it also sought to make village-scale land use legible – that is, spatially referenced, quantifiable and accountable to

particular actors (Scott 1998) – especially to state officials and technical staff who were responsible for larger-scale planning for projects such as roads, hydropower dams and, later, large-scale concessions of land for agribusiness. These larger projects all required various degrees of territorial planning, whether for purposes of resettlement or attempting to calculate how much “extra” land was available. In practice, both agricultural intensification and landscape-scale planning proved to be more difficult than originally anticipated: intensification of existing agricultural systems was often more difficult than planned, while landscape-scale planning often required even *more* detailed and accurate information than LFA was able to provide. Nonetheless, the impetus to formally map village-scale land use in the form of “land use planning” has persisted long after the LFA program was officially suspended in 2003 (Lestrelin et al. 2012).

The end of the LFA program saw the uptake of land-use planning by a variety of donor and private-sector projects (GTZ 2004; Barney 2009; Lestrelin et al. 2012; Ling forthcoming), although its relationship with the latter is complicated (see next section). One criticism of LFA had been that it was too “top-down”: although the initial step of village territory demarcation was often participatory in a meaningful way, the subsequent steps – in particular the internal zoning process – was often dictated to villagers by government technicians, who often felt pressure to classify upland agricultural land (swidden fallows in particular) as various types of forest; this left insufficient land for ongoing agricultural production, and in many cases contributed to the shortening of upland fallow periods (ADB 1999; Rigg 2005). After many of these initial LFA plans proved to be un-implementable, later land-use planning efforts made a more explicit effort to involve local communities. This created follow-up programs such as Participatory Land Use Planning (PLUP) – an amended version of the LFA process piloted through a number of GIZ projects – that were intended to create more meaningful community involvement, and thereby increase the usability of land-use planning to those most affected by it.

Despite some successes, however, two important effects of devoting more attention to land-use planning at the village level, and more generally of doing land-use planning in specific donor projects rather than as general government policy, have been (a) lower rates of coverage, and (b) the rise of different methodologies. This has meant that even as land-use planning got more precise and involved in some places, landscapes as a whole became increasingly fragmented in terms of the management regimes and planning processes involved (Barney 2009; Broegaard et al. 2017). This has had serious impacts on the government’s ability to plan, implement and regulate development projects, as well as to coordinate village-scale land-use planning with larger “national-level” production and protection forest categories that were provisionally mapped in mid-to-late 2000s (Figure 4, main map). Many of the land governance problems that followed stemmed in part from this lack of systematic coverage, the technical challenges of coordinating maps with different methodologies and meanings across different scales, and the political challenges created by multiple sets of administrative authority.⁸

The inset map in Figure 4 gestures to some of the difficulties involved in governing this “patchwork frontier” landscape (Barney 2009) by showing a number of village-scale LFA maps from northwestern Laos overlaid with the three national forest categories. (The geography of national forest categories shown in Figure 4 is taken from Sawathvong (2010); some more recent maps show protection forests as

⁸ The last of these includes conflicts between central and provincial authorities, as well as conflicts between civilian and military authorities. See, among others, Moore et al. (2011), Dwyer & Ingalls (2015) and Dwyer et al. (2016) on the impacts of competing state authority on REDD+ efforts to date; as well as the recent reform efforts surrounding 2015’s Prime Ministerial Decree 15 (Vientiane Times 2015a, 2016).

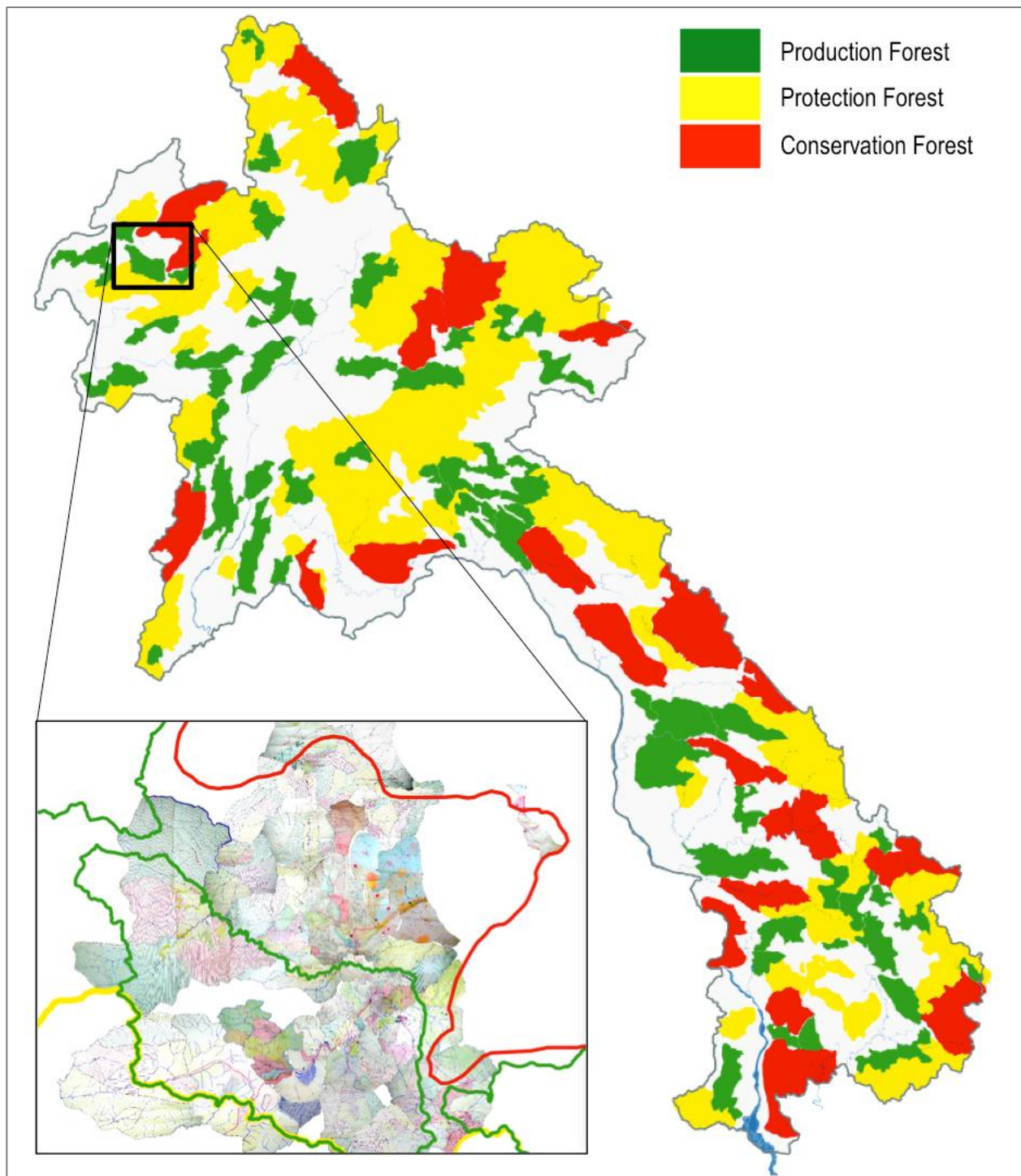


Figure 4. Zoning efforts at multiple scales: national forest categories (main map) with example of village-scale LFA maps (inset).

Source: main map reconstructed from Sawathvong (2010); inset reconstructed from Dwyer (2011). Note: inset map shows clipped LFA maps (village territories only) for 35 villages in central Vieng Phoukha district.

slightly larger on account of their expansion in border areas.) As the inset map shows, the mixture of overlapping category systems, different spatial resolutions, and multiple sets of authority, make these maps difficult, if not impossible, to use for actually governing land use on the ground. In such a context, the national forest categories have been used to divide up jurisdiction over concessions and other development projects (Dwyer & Ingalls 2015), while LFA maps have been used to restrict local land use patterns, as well as carve out land for investment (Barney 2007; Dwyer 2014; also section 3.3. below). Frequently, however, both types of maps are simply ignored.

In 2014, the Lao National Assembly tried to address this situation by instructing the ministries responsible for land use planning and regulation, to re-draw the boundaries of the country's forest estate in order to better reflect condition on the ground (NACO 2014). These efforts are ongoing (see Section 4), but have been hampered by a number of factors. Central among these factors is the complex web of investment, land concessions and infrastructure that sits at the center of rural land governance. This is the topic of the next section.

3.3. Turning Land into Capital (part 1): Investment, Land Concessions and Infrastructure

Ever since roads began to replace rivers as transportation arteries, Laos has been widely considered to be not simply a mountainous, landlocked country, but a country desperately short on infrastructure (Ivarsson 2008). With this problem has come the challenge of recruiting investors: investment requires inputs and logistics, and the shortage of infrastructure makes investment more expensive. As a way to compensate for this, government policies going back to the colonial period have offered a range of concessions to potential investors in order to attract their business. Direct land and resource concessions – long-term monopolies on resource access, often created through lease or concession agreements – are the most visible and literal examples of this (Figure 5), and are often mobilized under a



Figure 5. Banana concession, Luang Prabang province

Source: author

policy of “turning land into capital” (Dwyer 2007). Although rarely well-defined,⁹ this “policy” frames land and natural resources as among Laos’s few comparative advantages and, more controversially, seeks to claim them as state capital (KPL 2016a). Other concessions, such as tax breaks and lax oversight on timber clearance from project areas, have also been used to attract investors. These have been targeted especially at investors who finance *new* infrastructure, for example in the energy, mining and transportation (road-building) sectors.

Infrastructure and other land concession projects have thus increasingly brought to light a question that simmers at the heart of postwar development, both in Laos and elsewhere: Amidst difficult historical circumstances, what is the appropriate balance between the responsibility to sacrifice for the shared common good, and the right to be compensated for one’s loss when this occurs? Efforts to answer this question have played out both at the project level, as investors and local authorities have confronted the question of appropriate compensation on a case-by-case basis, as well as at the policy level, where central-level authorities have addressed the issue of compensation in a series of laws and decrees. Concessions and infrastructure projects are closely linked to these larger questions both because they force general discussions about rights and responsibilities to address details about *who*, *when* and *how much*; and because major infrastructure projects such as the Nam Theun II (NT2) hydropower project, the SEA Games Stadium, and the 450 Year Road in Vientiane have often provided occasions for policy-level debate, decisions and clarifications (see e.g. Vientiane Times 2008, 2009, 2013a, 2014a,c, 2015b,c).

One reason for the prevalence of ad-hoc solutions to expropriation is that for much of the last decade, Laos’s official compensation policy was seen by many state officials as being overly generous, and thus hindering Laos’s ability to attract investors. Prime Ministerial decree 192 on resettlement and compensation was issued in 2005; formally it was a conditionality for an ADB loan on social and environmental management, but given the institutional connections involved and the subject matter it covered, it was widely understood as a conditionality for World Bank approval of the NT2 project. Decree 192 set a high standard for compensation: it required replacement of the full value of benefits lost, and it defined eligibility not on in terms of formally documented rights (which many project-impacted people did not and still do not have), but in terms of existing benefits from land and natural resources. To put it in the terms used here, it defined rights to compensation largely in terms of de facto access rather than formal ownership. While some companies have proven willing and able to meet this standard, across-the-board enforcement has been controversial within government and has not been pursued.

In practice, this has meant a relatively ad-hoc approach to project-related compensation. As illustrated in the introduction’s second opening sketch, both private developers and local government officials often play a significant role in determining how local tenure rights (both formal and customary) are interpreted, and how compensation is allocated in return. These interpretations depend on multiple factors, including investors’ resources and tolerance for risk, communities’ ability to stand up for their collective and individual interests, and local authorities’ understanding and interpretation of relevant Lao laws and locally available documents. A number of communities have been told that they lack rights to compensation since they had not received land titles, although this is unfair since, as the next section elaborates, titles have often never been issued in those parts of the country, and land tax receipts are

⁹ The phrase “turning land into capital” has been in widespread use since the mid-2000s, often in connection with specific large-scale development projects in peri-urban Vientiane (Dwyer 2007, 2013b). A recently released draft of the revised Land Law promises a definition of the policy in an un-specified decree (NA 2015, art. 102).

often used instead (Dwyer 2013a). Possibly due to similar circumstances, communities in various areas have used customary forms of land tenure, both communal and individual, in their efforts to resist uncompensated land loss by investment projects. In one example from Oudomxai province, villagers used land sales among themselves to resist the enclosure of shifting cultivation lands by a Chinese rubber company, justifying these sales as within the bounds of traditional land use when challenged by local officials (Thongmanivong et al. 2009b). In another example from central Laos, a development practitioner described a similar example based on the customary institution of *din jap jong* (reserved land):

We have a number of target villages ... that have a lot of *jap jong* going on. ... In one village, there was essentially no room for the State to appropriate land for concessions development because it was all “reserved” by villagers. In fact, what I realized along the way was that the villagers whose land was appropriated for land concessions were quite good at resisting the pressure to give their land away because they saw it as their individual plots rather than as a communal land resource which the community could “afford” to lose.¹⁰

This distinction between individual and communal tenure is increasingly important, and the two are often in tension in rural landscapes. The same development practitioner thus continued:

However, with the beginning of land commodification, we also found various problems with the *jap jong* system, namely that certain elite individuals in the village were selling large amounts of their own *jap jong* land to neighboring villages and taking all the profits. In this sense it was quite an inequitable system, because essentially the land [had previously been] more or less communal.¹¹

These examples illustrate that concession and infrastructure projects not only cause new land conflicts with “outsiders”; they also exacerbate and reveal existing conflicts *within* communities. This is one of the most important downsides of dealing with land conflict on an ad-hoc basis: local elites are often those who are best able to defend their land, and in some cases even end up benefitting from the threat of external land conflicts.

It is unclear whether recent policy reform efforts are aimed explicitly at this issue, but they will have to confront it nonetheless. Prime Ministerial decree 84, issued in April 2016, represents a step toward a uniform compensation policy, although it also seems to lower the bar from the standard set in decree 192 in two ways: first, by requiring documentary proof of land use rights in order to qualify for compensation (PM 2016, art. 8.4; Mekong Watch 2016); and second, by setting a different and opaque standard in cases where the state (rather than a private developer) is responsible for providing compensation (PM 2016, art. 9). The Land Law revision process, currently ongoing, also seems aimed at bringing a higher degree of uniformity to the “turning land into capital” process/policy, although details remain thin here as well, given the need to define the policy in an unspecified “additional regulation” (NA 2015, art. 102). However these reforms play out in the months and years ahead, the departure from the standard set in decree 192 places a substantial burden on formal, document-based processes. As the next section helps to elaborate, this does not bode well for many rural land users.

¹⁰ Glenn Hunt, excerpted from Land Issues Working Group email thread, 26-27 August 2013.

¹¹ Same as previous note.

3.4. Turning Land into Capital (part 2): Land Titling

Although the phrase “turning land into capital” has become most closely identified with claiming land and resources as *state* property (NA 2015; KPL 2016a), its initial use in government policy – in the 2006 Economic Report on the 8th Party Congress – focused on the creation of a private real estate market. Such a pathway “to implement the policy of transforming land into capital” focused on the creation of land as a commodity that could be legally traded (Vientiane Times 2006). This contrasted not only with the previous history of land markets in Laos, but also with the large-scale, state-led version of “turning land into capital” that has prevailed in the decade since. Nonetheless, this second version of the concept is highly significant, since it has shaped the evolution of land titling, which many government and civil society actors look to as the answer to Laos’s land tenure challenges.

Land titling was introduced into Laos in 1995 with a two-year, Australian-funded pilot project, and in 1997 was scaled up with the Lao Land Titling Project, funded by the World Bank, Australia and Germany. A second phase of the project ran until 2009. As has often been the case with land titling projects, the issue of where it would occur – and specifically how the titling program would expand its geographic coverage as it developed – was identified early on as being of key importance. As implied by the 8th Party Congress report, land titling offered a major contribution to the field of real estate, providing a means to make urban land markets more efficient, and in the process to facilitate investment and state collection of fees on land transactions, as well as more efficient tax collection. At the same time, rural development advocates sought to take land titling into the countryside, largely for purposes of continuing the property formalization efforts begun under the LFA process. Already in 1996, community land tenure and the need to clarify forest boundaries – in particular the line between “degraded” forests, where TLUCs (see Section 3.2) and concessions (Section 3.3) were being issued (LCG 2002: 61), and good forests, which were to be retained for state management – were identified as topics for immediate investigation (World Bank 1996: 14). In the coming years, this question of where rural titling should occur, along with corresponding issues of institutional coordination, would blossom into among the most important tenure issues in the country.

A key question was how to allocate scarce labor and resources to the task of land administration. Part of the answer was to do titling “systematically” – that is, to adjudicate all the parcels in a given village before moving on to the next one. This made titling cheaper and more efficient than sporadic parcel adjudication, but it also led to a tradeoff between efficiency and equity. Systematic adjudication not only saves money, but also helps offset the negative social effects of slow and uneven implementation. In many villages, and especially in rural upland villages, larger and harder-to-reach parcels became *more* expensive to measure, and this created strong incentives for titling teams to leave them out of the adjudication process entirely (Hirsch et al. 2009). By 2002, when the project’s second phase was being planned, it was already clear to project planners that many rural residents “may have to wait for as long as 20 or 30 years before systematic adjudication and registration of titles reaches out to their villages” (LCG 2002: 15). As titling continued through the 2000s, these two scales of exclusion compounded each another, leading to thin title coverage in rural areas overall, and only partial coverage even in villages that had allegedly been titled “systematically” (Hirsch 2011). Due in part to the magnitude of the issues that titling would have had to address had it gone into upland areas – including World Bank safeguards issues on involuntary resettlement, indigenous peoples and the environment – land titling expanded cautiously into rural areas, and in general maintained their original focus on urban and peri-urban areas. Community-scale titling, meanwhile, was identified as a priority in the 2002 study that fulfilled the

requirements of the (then still uncompleted) studies on customary land tenure and forest boundaries (LCG 2002), but languished at the policy level throughout the boom decade of the 2000s.

During and especially after the second phase of the Lao Land Titling Project (2003–2009), German assistance in the land administration sector pulled against the trends described above, and focused on rural land tenure. These efforts sought to bridge land administration and rural development, combining land titling with land use planning and other forms of rural assistance; initially, they also focused on issuing Land Survey Certificates (which are less spatially precise than “full” titles [*bai ta din*]) in order to cut costs and increase coverage. This model did not take off on a wide scale, however, and rural titling coverage rates remain low. Figure 6 shows a schematic representation of the gap between titles issued and total possible plots under various relations of local land tenure. The magnitude of this gap is both large and uncertain. Its size is at least the difference between the roughly 800,000 titles that have been issued and the 2.6 million plots estimated by MONRE to be eligible for titles (Vientiane Times 2014b). The uncertainty comes from the imprecise but probably narrow definition of eligible “land plots.” Since much of the land used in rural and upland areas by Lao smallholders is not eligible for a title, the gap between smallholder *tenure* and the protections afforded by titling is likely to be even larger.

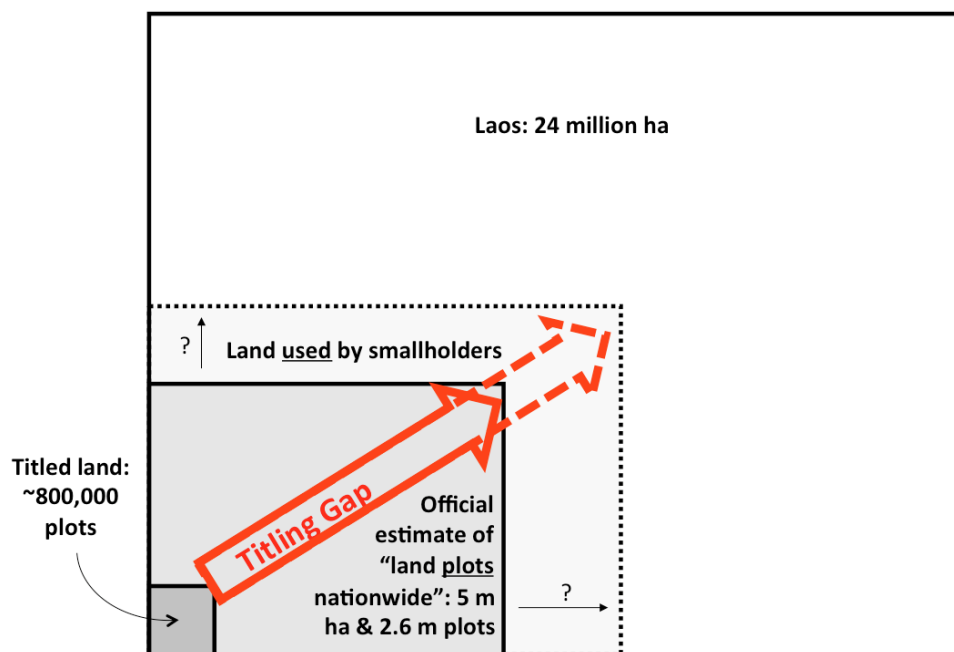


Figure 6. Schematic representation of titled areas vs. areas under some form of smallholder tenure
 Source: author, based on Vientiane Times (2014b)

The precariousness of tenure implied by Figure 6 did, nonetheless, have limits. While a shortage of titles sometimes aided efforts to make land “available” for large-scale projects (Dwyer 2013a), authorities also sometimes needed smallholder land tenure for purposes of development. In 2005, officials in northern Laos began to promote contract farming as an alternative business model to concessions, which by this time had begun to generate worrying levels of land conflict (e.g. Phouthonsy 2006a, 2006b). As the next section describes, this policy-level embrace of smallholder-centered business models did not formally

recognize smallholder tenure, but it did have a number of significant impacts – some positive, others negative – on smallholder tenure-in-practice.

3.5. The Cash Crop Boom and the “Two plus Three” Alternative

Cash cropping has been a feature of Laos’s rural landscape for decades, but several factors intersected to make the 2000s a boom period for commodities like maize, sugarcane and rubber. Rubber has played a particularly significant role in shaping rural land tenure in recent years on account of its involvement in policy-level debates about land concessions and alternatives to them.

Unlike in southern Laos, rubber emerged in the north first and foremost as a smallholder crop. This was due largely to the success of villages in Luang Namtha province cultivating and marketing rubber for sale in China. Tapping began in the early 2000s, right around the time that Lao-Chinese bilateral cooperation began to scale up in the wake of President Jiang Zemin’s state visit to Vientiane in late 2000. Despite some debate early on (Alton et al. 2005), a smallholder contract-farming model was selected as a way to scale up Chinese investment in the rubber sector. A NAFRI study from 2007 described the process by which this was determined:

A meeting was held on 10 October 2005 in Luang Namtha where representatives from three northern provinces (Bokeo, Luang Namtha and Oudomxay) gathered to discuss the [issue of] foreign investment in rubber. Representatives from the three provinces agreed that providing land concessions to investors to manage rubber plantation [would] not resolve rural poverty, as farmers lose access to agricultural land and they are merely hired by investors as laborers. On the other hand, representatives of three provinces agreed that foreign investors should promote smallholder rubber plantations with a general profit sharing arrangement of 70% for farmers and 30% for companies. They also agreed to support foreign investors that are willing to provide inputs on credit, and purchase latex from farmers. (Vongkhamhor et al. 2007: 39)

This approach to foreign investment in the rubber sector was termed “Two plus Three”, since farmers would provide land and labor while investors provided inputs on credit, technical assistance (extension) and a guaranteed market (ibid.; Shi 2008). Despite some initial enthusiasm, however, this business model largely failed to take off, since most companies failed to offer attractive terms and, as a result, many farmers were uninterested in working with them (Vongkhamhor et al. 2007; Dwyer 2011). Instead, a variant on contract farming was designed in order to pay local people wages rather than subject them to the seven-year wait of rubber plantation establishment. This was termed “One plus Four”, since rubber companies took on the financial responsibility for labor as well (Shi 2008). In practice, however, “One plus Four” rubber projects had significantly different tenure arrangements, since in addition to paying for wage labor, companies were allocated large expanses of village land, which was often (by design) upland that had been shifting cultivation fallow and grazing areas (ibid.; Dwyer 2014). Most of these arrangements subsequently transferred a small portion of the company-controlled plantation back to local villagers as their “share” of the project, but these were often resold to the companies or other private individuals, leading to large-scale loss of village lands (Shi 2015). This meant that many rubber plantation projects that were officially termed “contract farming” deals were locally experienced as concessions (Shi 2008; Thongmanivong et al. 2009b; Dwyer 2014).

Smallholder cash cropping has nonetheless provided significant, if still precarious, tenure security for many rural households. In the absence of formal titles or other tenure documents, having visible cash crops in the ground – especially tree crops like rubber – is an effective way to demonstrate land

development, and thus claim land as property. Unfortunately, the crash in prices for many cash crops such as maize, rubber and Job's tears over the last few years has placed farmers in a difficult situation. While these crops have been useful in terms of establishing de facto land tenure (Thongmanivong et al. 2009a), their economic utility has been decreasing. In response, many farmers have begun to explore leasing and land conversion arrangements such as those profiled in the third opening sketch above. Recent government efforts to ban land conversion (e.g. from rubber to bananas; see Vongvisouk & Dwyer 2016) may yet call some of this newfound smallholder tenure into question, and highlight the precariousness that exists even at the more secure end of the rural tenure spectrum.

3.6. Community Forestry and REDD+

As elaborated in Section 3.1 above, the potential for conflict between local livelihoods and national economic claims on forest resources became evident back in the late 1970s, and has not diminished. Since the 1990s, a number of government initiatives – often funded by the World Bank, and operating in the wake of the Bank-initiated Tropical Forestry Action Plan (TFAP) process of 1991 – have attempted to grant communities access to forest rents for both livelihood and conservation purposes. As this section summarizes, this history of community (or village/participatory) forestry efforts has been a difficult one, and has typically gotten caught up on questions of management authority and associated rights to timber revenues. In the last few years, this debate has been replicated in efforts to pursue a second forestry-related revenue stream: that from carbon sequestration under the UNFCCC's REDD+ framework.

In the years after the TFAP process, community forestry in Laos began boldly. “Whoever manages decides. Whoever decides plans. Whoever plans collects the needed information. This means that the villagers, who are the forest managers, formulate and implement the long-term management plan and annual operations plan, and make all management decisions.” This approach (quoted in Hodgdon 2007: 40) was the village-centric version of community forestry piloted in 1995 under the FOMACOP project, funded by the World Bank and the Finnish government. While the model was lauded by World Bank evaluators as “one of the best examples of community forestry worldwide” (World Bank 2001: 5), the project itself ran afoul of what FOMACOP's chief technical advisor guardedly called “the formal and informal system influencing the entire forest sector” (Katila 2000: 4): “As soon as the [village forestry associations] were ready to sell logs and contract harvesting operations, serious conflicts emerged. Villagers were not allowed to sell logs freely to maximize the benefits and there were all kinds of attempts to interfere with the selection of a logging company, determining the quota, and pricing of logs and harvesting services” (ibid.). In late 2000, FOMACOP was discontinued (Hodgdon 2007).

A more modest approach to participatory sustainable forest management (PSFM) emerged from these experiences, as well as from the replication of FOMACOP-style problems in WWF's PSFM project in Xekong in the mid-2000s (Hodgdon 2007). The new approach, funded (like FOMACOP) by the Finnish government and the World Bank, has been developed and expanded by three generations of SUFORD projects. SUFORD's founding document summarizes this approach in terms that clearly rolled back the earlier community-centered approach: “Village-based forest management must be seen to benefit not only rural communities, but also the government, through more efficient collection of royalties and taxes, improved forest protection and sustainable management, and enhanced economic development” (World Bank 2003: 17).

During the last decade-plus, this more top-down approach to village forestry has been the norm, with

SUFORD and its successor projects working in production forests across the country via a “benefit-sharing” approach commercial forestry. But despite getting the revised model of PSFM out into the field, SUFORD’s first-phase evaluation warned that illegal and unplanned-but-authorized logging threatened its operations substantially – a threat that continues today – and evaluators described a situation where illegal logging stemmed not only from elite interests, but from the ongoing lack of secure village land and forest tenure. This echoed the situation described in the opening sketch in Section 1, and highlights the ongoing connection between lack of tenure rights, lack of benefit-sharing, and forest loss: “The majority of villages inside the PFAs will not benefit from timber revenue; unless new policies such as village-based tenure of degraded forest land are adopted[,] there is a risk that many villages will have limited interest to contribute to PSFM” (World Bank 2013: 50).

The NT2 project has also had extensive experience piloting village forestry in the Lao context. Because it is by far the best publicly documented of all of the community/participatory/village forestry efforts in the country due to its decade and a half of supervision and reporting by the NT2 Panel of Experts (PoE), the Nakai plateau village forestry efforts offer an important case study. Village-scale commercial forestry was supposed to be one of the key pillars of livelihood reconstruction for the resettled communities of the Nakai plateau, but has been plagued by problems similar to those outlined above despite having strong legal authorization from the Khammuane provincial governor since 2002. The erosion of the Nakai village forestry resource – both through authorized excisions for urban expansion and road-building and illegally by salvage loggers who were supposed to be operating in the reservoir zone – seems to have helped convince resettlers that they did not actually own the land around them, and has led to ongoing encroachments by resettlers themselves; in 2013, the PoE declared this mix of external and internal threats “a crisis situation.”¹² Initially intending to pay annual dividends to the resettled communities, village forestry has suspended dividend payments since 2012, and was characterized by the PoE in 2015 as both “non-performing” and in need of “fundamental changes” by all stakeholders involved. Echoing the types of threats characterized in the SUFORD evaluation quoted above, the PoE summarized the situation at Nakai by saying in its most recent report that plateau residents “have lost interest and any sense of ownership in the forests they were told were theirs.”

In the late 2000s, a number of forestry-sector projects were launched with the intention to pilot a more conservation-oriented approach to forest-management: the UNFCCC’s REDD+ scheme, an effort to Reduce Deforestation and forest Degradation and build forest carbon stocks under a payment-for-environmental-services (PES) model. Because these projects tend to focus on upland producers as drivers of forest loss (Dwyer & Ingalls 2015), they have engaged with village-scale land and forest tenure in a few different ways (e.g. Schneider 2013). Village land and forest tenure security matters for REDD+ primarily in two ways: first, to deal with the drivers of forest loss, and second, as a way to formalize benefit sharing. Given the issues identified above, this has put REDD+ projects in a delicate situation: On the one hand, they face political and legal barriers to allocating full forest tenure rights to rural communities, and have thus tended to pursue “softer” forms of tenure allocation such as MOUs and village forest management agreements. On the other hand, as noted above (and the opening sketch), lack of secure tenure over both land and forest resources has emerged consistently as a cause of forest loss. The current generation of REDD+ projects is trying to address this through a mix of land-use planning, forest management and possibly formal titling.

¹² A detailed timeline of NT2 village forestry efforts is provided as an Annex to this study. All quotes used in this paragraph are cited there.

3.7. Community Tenure Recognition at the Farm-Forest Interface: Recent Efforts

As the previous sections collectively suggest, today's policy landscape is a challenging one when it comes to community tenure in areas where agriculture and forest use intersect. Recent reform efforts such as the National Land Policy process and the Land Law revision recognize the existence of communal and traditional forms of land use, but maintain substantial discretion for the state in terms of how these lands are recognized.¹³ In such a context, projects that have needed to create or increase community control over land and forest resources have experimented with various approaches over. As this section explains, these include a mix of de facto and de jure efforts that, over the last few years, have tried to make the best of a range of complicated and often difficult situations.

As described in Section 3.4, communal titling in rural areas was identified by the Lao Land Titling Project as a topic of importance in the mid-1990s and again as a priority in 2002, but languished throughout the boom decade of the 2000s as titling focused on individual holdings and stayed away from upland areas. Formal efforts to establish community titles had to wait until the 2010s, and have emerged in three places: an SNV livelihoods project Vientiane's Sangthong district; the resettlement effort on the Nakai plateau discussed above; and a GIZ land administration pilot project in Huaphan. Given the lack of policy clarity, all three undertook their own legal analyses and worked within the constraints imposed by local authorities' interpretations of the law. While an exhaustive comparison is beyond the scope of this review, at least two issues stand out.

First, Lao law makes a distinction between collective (*luam mu*) and communal (*sum son*) ownership; the former refers to group-based *private* ownership (e.g. by members of a cooperative business), while the latter refers to community-based resources that are managed jointly and publicly (e.g. a village forest). The titling efforts at Sangthong and Nakai both issued collective land rights, while the ongoing GIZ work in Huaphan has been issuing communal ones. To some degree, these efforts reflect the logic of this distinction – the Sangthong case sought to promote bamboo and rattan marketing, while the GIZ work aimed to title community assets (e.g. grazing land) more broadly. But this distinction should not be over-interpreted: as Schneider (2013) points out, the Sangthong titles were issued in the name of the village as a whole, and seem to have functioned (at least temporarily) much like communal titles. (The titles were valid for three years, with the possibility of being made permanent, but confusion about how to do this legally seems to have prevented it from actually happening.) At Nakai, on the other hand, the distinction between collective and communal rights was important: the purpose of the titling was to provide permanent tenure rights to the families displaced by the NT2 reservoir, and the titles were issued to these families in particular rather than to villages as a whole. This mattered both legally and practically, given the NT2 concession agreement's requirement to compensate the families who were resettled, and the increasing competition for land between original residents and in-migrants to the area.

Second, the Sangthong, Nakai and Huaphan efforts vary significantly in terms of how much land within any given village is titled (whether communally or collectively). While available data are incomplete, the Nakai titles seem to be closest to the original intention of the Lao Consulting Group study on customary tenure for the Lao Land Titling Project back in the early 2000s (LCG 2002; see Section 3.4). At Nakai, the

¹³ See e.g. draft Land Law Art. 38: "Management of Communal Land Use: The use of communal land is centrally managed by the state, which assigns such land to villages and ethnic groups to use for the highest benefits of the communities. The management of communal land is determined by specific [other/future] regulation."

collective titles cover a variety of land types, including forestland and agricultural land, the two largest categories (Schneider 2013). Covering 2,780 ha of community agricultural land and 17,428 ha of forestland (ibid.) out of a resettlement area totaling roughly 22,000 ha (PoE 2003), the Nakai titles cover a large majority of the communities' land base. In contrast, the Sangthong and Huaphan titles seem to be much more limited in terms of their total village coverage, in the former case because the titles targeted only village production forest, and in the latter because they focused only on agricultural land. These cases thus highlight the potential for communal lands to be excluded from titling efforts because of sectoral distinctions. While legal restrictions may be the cause of such exclusions (Tolvanen 2015), such restrictions are based on a geography of forest categories that, as Section 3.2 describes, is still very much in play.

As noted in Section 3.6, REDD+ projects in Laos have expressed significant interest in communal titling of village agricultural and forestlands, both for purposes of agricultural development to offset pressure on remaining forests and in order to strengthen village forest management through enhanced local tenure security. A REDD+ feasibility study from late 2011 laid out the case for communal titling explicitly:

Community titles ... can be granted on forest lands zoned as village sacred land, village use forests and communal grazing lands, communal agricultural land but not village protection forests, village conservation forests and unexploited forest land that remain under the ownership of the state. Most importantly for a REDD project this means that the entire village swidden areas can be given a communal title. While a communal title does not give the community the right to sell the land, it does give them greater ownership and control over these areas. It is hoped therefore that farmers will adopt more sustainable approaches to crop production and increase the value of this land. (Moore et al. 2011: 51-52)

As noted above, however, REDD projects have been relatively unsuccessful so far in actually helping the communities they work with gain communal titles. In part the barriers are legal; as Tolvanen (2015) points out, community titles can be issued in production forests and unclassified forestland, but not in conservation or protection forests. But as suggested above, the barriers are unlikely to be only legal, given the range of institutional and political-economic barriers to community control over land and forests. The SUFORD SU project thus recently removed communal titling from its list of "tenure enhancement" indicators, opting instead to focus on alternatives such as village MOUs (World Bank 2016). This pursuit of "tenure security without title" seems to be increasingly common not only in the REDD+ project landscape, but also in rural development projects that are trying to enhance village tenure security in contexts where communal titling is difficult for a mix of institutional and policy reasons (Higashi 2015; Heinemann et al. in press). As Section 4 elaborates, however, past trends do not determine the future. A number of options exist for meaningful community participation in forest management, even within the current (complex and conflicted) policy landscape.

4. Forest Management: Options for Community Participation

As a number of the sections above describe, forests are currently under threat from a variety of angles, including from local communities who live in their midst. In some cases, this stems from a lack of success to promote village forestry and benefit-sharing approaches to commercial forestry (as in SUFORD and NT2), while in other instances it stems from communities who lose land to concessions or other forms of infrastructure and are forced to turn to forestland as a method of de facto compensation (Dwyer 2013;

Ingalls & Dwyer 2015). Given this set of circumstances, the argument for more effective community participation is not merely one of equity and fairness; it is also simultaneously one of effectiveness.

Forests make up the large middle portion of what we might call the “coercive-enclosure spectrum.” This is illustrated in Figure 7, which plots (schematically) the fraction of Lao territory against the amount of state effort that is needed to enclose and allocate various types of land for purposes of national development. At the left – or the “easiest” end of the spectrum – are energy and mineral resources; while these types of projects do generate land conflicts, debates generally focus on the *terms* of compensation; the right of the state to develop energy and mining projects for national development is relatively uncontroversial. Farmland, on the other extreme, is highly controversial, as experience to date with land concessions has shown. It is certainly possible for the state to enclose farmland, but given the high social costs, government policy has, in practice, tended to move toward alternative approaches like the “Two plus Three” policy discussed above.

Forests – along with land uses such as upland fallow and grazing lands, located at the farm-forest interface – are somewhere in the middle: forests are widely claimed as state property, but in practice they are widely occupied and used by local communities. As a result, the amount of coercion that would be required to enclose them completely would be prohibitively high. Forest policy is thus moving toward a type of triage, with village forestry being explored in some areas and state-managed production forestry in others. Moving forward, a geographically attuned approach, such as this study has tried to focus on, is likely to be both necessary and pragmatic in order to balance local community needs and state forest management and development imperatives.

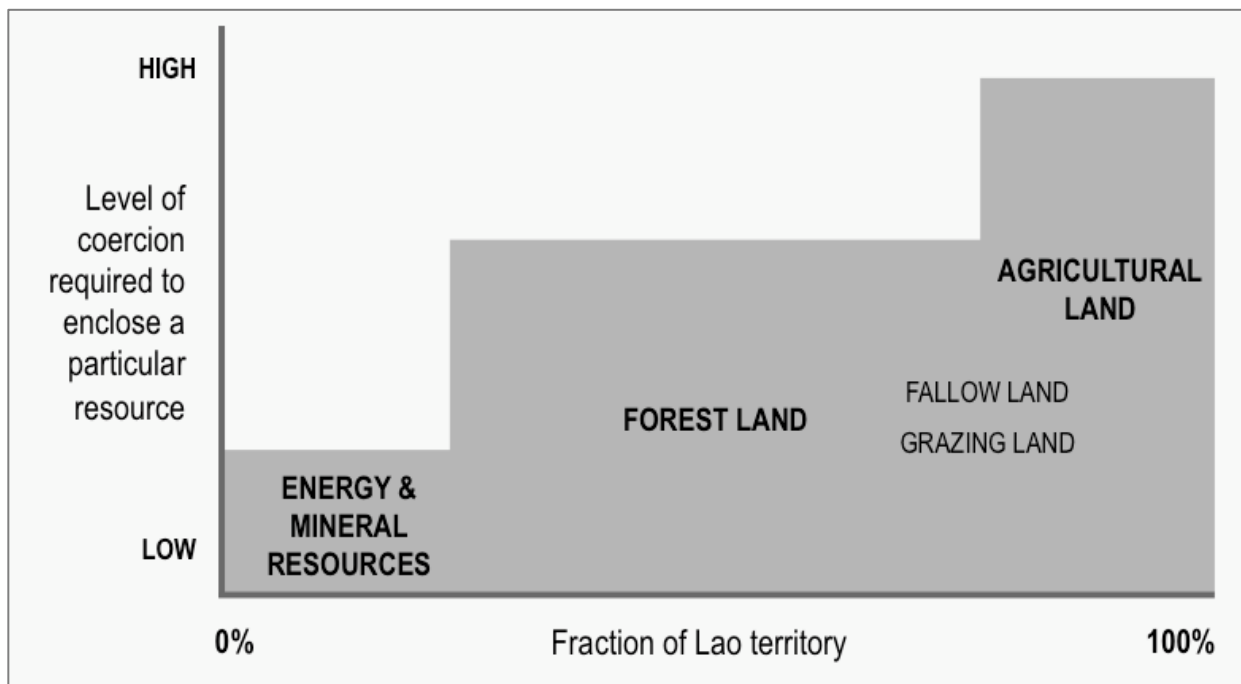


Figure 7. Different possible thresholds for state enclosure powers

Source: author

Efforts focused on creating geographic specificity where there is currently vagueness are thus likely to help address existing conflicts and shortcoming. To inform discussions about improving community engagement in forest management, this final section focuses on three intersecting issues: (1) improving the integration of macro and localized land and forest categories; (2) extending community tenure security over land and forests through various mechanisms; and (3) addressing ongoing issues with compensation and benefit-sharing mechanisms in cases where enclosure of agricultural and forestlands occurs for purposes of “national” development.

4.1. Better Zoning across Multiple Scales

As illustrated above, current methods of zoning forest and land-use categories at different scales are often in conflict with one another. This leads to both jurisdictional and regulatory conflict, and limits authorities’ ability to make use of maps that already exist. As a result, calls for updated maps are frequent, and distrust of existing maps is high.

The recommendations made by the National Assembly in August 2014 are worth reproducing here in their entirety, as they sketch out a vision for harmonizing the categorization of forests at two different scales by re-delineating the national forest categories in a way that removes village agricultural land from the forest estate and prioritizes the creation of community or village forestry:

1. “Re-survey/delineate/zone the three forest types, extracting areas that have been approved for other purposes, and if necessary then make a survey of new areas to compensate for this loss.
2. “Survey the condition of the forest in the three forest categories to ensure it is clear, and define zones where the forest is still rich/good in order to look after and conserve (totally forbidden to destroy), and for areas that have been damaged or degraded, make zonation and plan to regenerate or zone as community forest.
3. “Re-survey/zone agriculture production land of citizens living within the three forest categories (including residential areas) by recognizing the rights to use these lands of the villagers as agricultural production lands and extracting them from the area of the three forest categories.
4. “Survey and zone village forests and community forests, and develop appropriate management mechanisms.
5. “Investigate and develop financial mechanisms to ensure that the income from the forest is re-invested/used for the purposes of forest care and management, based on the participation of the villagers that live in the forest areas.
6. “Review to develop measures and mechanisms for private sectors to participate in the forest management and development.” (NACO 2014, from Dwyer & Ingalls 2015: 39, edited for clarity)

While not all of the details are clear, the impetus to address a number of the conflicts elaborated above through the removal of agricultural land from forest categories is unmistakable, as is the intention to improve sustainable forest management by increasing community participation. The possibility of compensating for past losses – whether to concession projects, infrastructure, or village agricultural use – is there as well, although declining forest coverage suggests that it may not be possible to compensate fully for past losses.

It is important to learn from efforts that have already begun to address the issue. In early 2015, The

Agro-Biodiversity Project (TABI) piloted a re-zoning of the three forest categories in Luang Prabang province (TABI 2015). While the results have yet to be approved – likely because the re-delineation required more removals than could be compensated, and thus decreased the size of the province’s forest estate – they are instructive for showing that such an exercise is possible to do with provincial and district government technical staff and moderate technical support. The SUFORD SU project has also undertaken a pilot re-delineation of forest categories in parts of northern Laos, although from a more remote-sensing-based (and in this case top-down) approach. As current efforts to re-zone forest categories across the country proceed under a current World Bank-funded sub-project, these earlier efforts will provide valuable sources of experience. It seems likely that additional legal-regulatory specifications will be needed at some point – the current revised Land Law draft does not elaborate how “levels” of land categorization relate to the actual eight categories (agriculture, forest, etc.), for example. Since moving beyond current impasses will almost certainly require some specification of hierarchical rules governing the relationship between different “levels” (e.g. forest at village level versus national forest categories), these efforts to pilot re-delineation have much to offer. Such discussions should include not only elaboration of the various methods used among experts and local officials, but also implications for – and discussions with – the communities whose lands are being remapped.

A final suggestion concerns the practice of gazetting (official publication) of administrative maps such as those that show forest zonation. As noted in Sections 3.1 and 3.2, the gazetted versions of Lao NPAs, production forests and protection forests have only been precise enough for certain administrative (e.g. jurisdictional) functions; much of the detail required for actual management has been missing. As future maps of land and forest categories are drawn up at various scales, it may be helpful to build in a public comment period before official gazetting occurs; and as part of the gazetting process, to specify when and how inherent limitations of maps at particular scales will be addressed.

4.2. Extending Community Tenure Security over Forestland and Farmland

As implied by both the National Assembly above and the material presented in Section 3, any successful effort to make forest management sustainable will need to address both agricultural and forest lands. The different examples of communal and collective titling highlighted in Section 3.7 emphasized that a significant difference currently exists when it comes to sectoral versus territorial approaches to village lands. These examples, and others such as CIDSE’s ongoing pilot of communal land titling, deserve to be examined and discussed robustly, so that the legal, institutional and political-economic issues can be understood and, where necessary, appropriately addressed.

One commonly noted barrier to communal titling is that the current Land Law implementation decree (no. 88/PM) forbids land titling of any kind in conservation and protection forests. As a recent legal evaluation for the SUFORD SU project pointed out, this allows for communal titles in production forest and unclassified forest areas under the current framework, but imposes limits on scaling up, especially since so much of the national landscape is currently classified as protection forest (Figure 4 above). (This likely also imposed limits on the GIZ Huaphan case study discussed above, since most of Huaphan province is currently classified as protection and conservation forest.) Two points are worth making for purposes of discussion. First, the prohibition in decree 88 is debatable, and should be reconsidered as part of the Land Law revision process. Second, even supporters of decree 88’s prohibition on titling in conservation and protection forests are likely to agree that this only makes sense if conservation and protection forests are demarcated in a way that *already* excludes villages’ agricultural areas and village

use forests. To put it another way, the expansive gazetting of conservation and protection forests that is currently in force (Figure 4) is, in practical terms, incompatible with enforcing decree 88. Re-categorizing forestlands in the way envisioned by the National Assembly would, among other things, bring biophysical forest *cover* and administrative forest *categorization* more closely into line with each other, and would make decree 88's prohibition on titling less harmful to communities at the farm-forest edge.

Institutional issues *may* also be responsible for sectoral-based approaches that exclude portions of villages' territories from communal titling efforts. This has not been investigated for this report, but could be the case if, for instance, a project was working with a state agency that only had jurisdiction over one type of land. The experience of Cambodia is instructive here: communal titling efforts there focus exclusively on agricultural and residential areas, and are prohibited from including forestlands; this means that the areas that fall under communal title are significantly smaller than the land bases of the communities they are supposed to serve (Dwyer & Sokphea 2016). In such a context, titles may provide security over the land immediately around the village, but they are generally insufficient to protect the agricultural livelihoods of the villagers involved, and it is hardly surprising that many communities are debating whether the process and the protections it offers are even worth it. The Cambodian example provides a reason to reread the dominant narrative about the collective titles at Nakai, which are often said to be exceptional because they were supported by the provincial governor. Seen another way, this non-sectoral approach to community titling may be especially useful if it provides a model for avoiding sector-based fracturing and allows communities to gain effective formal tenure rights over a substantial portion of their actual land base.

Finally, it is easy to see how political-economic issues are involved as well, since economics are often closely connected to institutional behavior. The current arrangements – legal, institutional, economic – have all interacted to create precarious land and forest tenure for rural communities in Laos. As noted above in Section 3.3, this is compatible with a version of “turning land into capital” that is based on large-scale concessions and that tolerates high degrees of enclosure and dispossession from rural communities. But as Section 3.4 and 3.5 imply, this is not the only version of “turning land into capital” that is possible. Since it lacked proper support, the “Two plus Three” alternative was not able to create a viable alternative to the concession model, and it eventually slipped into the concession-like “One plus Four” model. But with a mix of legal, institutional and economic support, smallholder-based business models could be made to succeed. Such an approach would likely include (although not be limited to) the recognition of community tenure in ways that protected, incentivized and actively supported smallholder production, both individually and collectively. While most production would likely remain individual, community-wide forms of tenure would almost certainly play a key role in allowing collective marketing to occur, as in the widely known success story of Ban Had Nyao (Vongvisouk & Dwyer 2016).

4.3. Harmonizing Compensation and Benefit-sharing

Compensation and benefit-sharing are sometimes conflated, but refer to two distinct ways in which communities or individuals receive revenues or goods-in-kind from development projects that intrude on their lands. The former refers to situations where communities lose their access to something they currently have access to, with compensation providing one side of an involuntary (and usually one-time) “sale”. The latter, in contrast, refers to situations in which communities actually maintain a degree of ownership, and receive a share of the “rent” from a particular resource like a forest (or hydroelectric dam), through the process of economic shareholding. There is increasingly a trend in large development projects to make benefit-sharing *part of* larger compensation packages, in order to make compensation

not simply a one-time event, as well as to better align the incentives of resource developers and local communities. This can create problems if it is not done transparently, or if benefits fail to materialize at the levels initially expected, but the prevalence of both compensation and benefit-sharing in Lao development projects involving land and forest, means that these issues are sure to be part of ongoing conversations.

One issue that compensation and benefit-sharing schemes both wrestle with is equity. As illustrated in the opening sketch and elaborated in Section 3.6, in many parts of Laos, communities are unable to access formal benefit-sharing mechanisms in ways that provide what they perceive to be a fair share of forest rents, and are therefore participating in unsustainable modes of extraction. In projects like NT2, CliPAD and SUFORD (quoted above), community tenure recognition is often seen as a step to rebalance the equity equation, so that development is more inclusive, and includes local communities rather than creating tradeoffs between particular communities and national development. Such an approach seeks to decrease the “tragedy-of-the-commons”-type situations that emerge when state interventions undermine customary forms of resource tenure without replacing them with inclusive alternatives. Current discussions about how to recognize customary and communal use in a context of individually focused land-use rights (on the one hand) and longstanding state claims to resource ownership (on the other), highlight the complexity of the current landscape. But they also foreground the need for protective types of tenure recognition that serve communities’ most vulnerable members.

A second key issue is the quality of the forest resource itself. From commercial forestry to REDD+, initial expectations have proven to be overly optimistic, both because of external/structural conditions (e.g. low carbon prices, high transport costs) and because forests themselves have been under continuous pressure due to the extractive nature of the status quo. The rationales for communal tenure articulated by various development projects are thus often based not only on protecting forests, but creating and enhancing the potential for complementary revenue streams – most often from agriculture. These efforts have not been systematically reviewed, and it is possible that projects like REDD+ and village forestry may simply push the responsibility for rural development back into the arena of agricultural regulators, extension agents and investors. In the months and years to come, looking across sectors at the revenue models implied by various types of forestry, agriculture, and payment for environmental services is a necessary complement to the distributional questions discussed above. Using a spatial approach will be a necessary component of this process, given the spatial variability of forests, soil, infrastructure and other resources.

5. Conclusion

Different pieces of this study may be useful for different actors and purposes, including ongoing efforts to improve land administration, the regulation of investment projects, and the governance of forest resources. It is nonetheless intended that the approach taken here – both the conceptual approach outlined in Section 2 and the specifics covered in Sections 3 and 4 – will serve adequately for capturing the situation of land and forest tenure in Laos, 2016. High variability of tenure relations across space and time are features that deserve discussion and debate: some are appropriate, given the high variability that characterizes the social and physical landscape, while others likely indicate inconsistencies in need of reform. Heterogeneity is neither inherently good or bad, but demands to be evaluated as such. The sections of this review attempt to provide a set of materials for these and other discussions to proceed on shared ground over the months and years to come.

References

- Alden Wily, L. (2012). Looking back to see forward: the legal niceties of land theft in land rushes. *The Journal of Peasant Studies*, 39(3–4), 751–775. <https://doi.org/10.1080/03066150.2012.674033>
- Alton, C., Bluhm, D. & Sannanikone, S. (2005). *Para rubber in northern Laos: The case of Luangnamtha*. Vientiane: GTZ.
- Anonymous. (2000). Aspects of forestry management in the Lao PDR. *Watershed*, 5(3), 57–64.
- (ADB) Asian Development Bank. (1999). *Participatory Poverty Assessment, Lao PDR*. ADB, Manila.
- Badenoch, N. (1999). *Watershed Management and Upland Development in Lao PDR: a Synthesis of Policy Issues*. Washington DC: World Resources Institute.
- Baird, I. G. (2010). Land, rubber and people: Rapid agrarian changes and responses in Southern Laos. *Journal of Lao Studies*, 1(1), 1–47.
- Baird, I. G. (2011). Turning land into capital, turning people into labor: primitive accumulation and the arrival of large-scale economic land concessions in the Lao People’s Democratic Republic. *New Proposals: Journal of Marxism and Interdisciplinary Inquiry*, 5(1), 10–26.
- Baird, I. G., & Shoemaker, B. (2007). Unsettling experiences: Internal resettlement and international aid agencies in Laos. *Development and Change*, 38(5), 865–888.
- Barney, K. (2007). *Power, Progress and Impoverishment: Plantations, Hydropower, Ecological Change and Community Transformation in Hinboun District, Lao PDR: A Field Report*. York Centre for Asian Research, CIFOR, Rights & Resources.
- Barney, K. (2009). Laos and the making of a “relational” resource frontier. *Geographical Journal*, 175(2), 146–159. <https://doi.org/10.1111/j.1475-4959.2009.00323.x>
- Borras, S. M., Franco, J. C., Gomez, S., Kay, C., & Spoor, M. (2012). Land grabbing in Latin America and the Caribbean. *Journal of Peasant Studies*, 39(3–4), 845–872. <https://doi.org/10.1080/03066150.2012.679931>
- Broegaard, R. B., Vongvisouk, T., & Mertz, O. (2017). Contradictory Land Use Plans and Policies in Laos: Tenure Security and the Threat of Exclusion. *World Development*, 89, 170–183.
- Dwyer, M. B. (2007). *Turning Land Into Capital: A review of recent research on land concessions for investment in Lao PDR*. Vientiane: Land Issues Working Group.
- Dwyer, M. B. (2011). *Territorial affairs: Turning battlefields into marketplaces in postwar Laos*. Doctoral dissertation, University of California.
- Dwyer, M. B. (2013a). Building the Politics Machine: Tools for “Resolving” the Global Land Grab. *Development and Change*, 44(2), 309–333. <https://doi.org/10.1111/dech.12014>
- Dwyer, M. B. (2013b). Timeline of the That Luang Marsh project (2004-2008) and Turning Land into Capital policy (2006-2011). Unpublished data available at <http://laofab.org/document/view/2147>.
- Dwyer, M. B., & Ingalls, M. (2015). *REDD+ at the crossroads: Choices and tradeoffs for 2015 – 2020 in Laos*. Center for International Forestry Research (CIFOR), Bogor, Indonesia. Retrieved from <http://www.cifor.org/library/5536/redd-at-the-crossroads-choices-and-tradeoffs-for-2015-2020-in-laos/>
- Dwyer, M. B., Ingalls, M. L., & Baird, I. G. (2016). The security exception: Development and militarization in Laos’s protected areas. *Geoforum*, 69, 207–217.
- Dwyer, M. B., & Sokphea, Y. (2016). *Uneven Developments: Toward Inclusive Land Governance in Contemporary Cambodia*. Retrieved from <https://opendocs.ids.ac.uk/opendocs/handle/123456789/12186>
- (FAO) Food and Agriculture Association. (2012). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Rome: FAO.
- (GO) Government Office. (2015). *Draft National Land Policy*, version 16 October.

- Heinimann, A., Flint, C., Bernhard, R., & Hett, C. (In press). Putting upland agriculture on the map: The TABI experience in Laos. In Cairns, M. (Ed.), *Shifting Cultivation Policy: Balancing Environmental and Social Sustainability* (pp. 873–890). Wallingford UK: CABI Press.
- Hett, C., Nanhthavong, V., Saphangthong, T., Robles, G. R., Phouangphet, K., Epprecht, M., ... Messerli, P. (2015). Land deals in Laos: First insights from a new nationwide initiative to assess the quality of investments in land. In *Proceedings of the International Academic Conference on Land Grabbing, Conflict and Agrarian-Environmental Transformations: Perspectives from East and Southeast Asia*, Chiang Mai University, Chiang Mai, Thailand.
- Higashi, S. (2015). An alternative approach to land and forest management in Northern Lao PDR. Chapter 5 (pages 253-290) in C. Erni (ed.), *Shifting Cultivation, Livelihood and Food Security: New and Old Challenges for Indigenous Peoples in Asia*. UN FAO, International Work Group For Indigenous Affairs (IWGIA), and Asia Indigenous Peoples Pact Bangkok (AIPP). Available at <http://www.fao.org/3/a-i4580e.pdf>.
- Hirsch, P. (2011). Titling against grabbing?. Critiques and conundrums around land formalisation in Southeast Asia. Presented at the International Conference on Global Land Grabbing, Sussex UK.
- Hirsch, P., Sacklokhom, S., & Tubtim, T. (2009). *Welfare impacts of land titling in Laos*. Unpublished report.
- Hodgdon, B. (2007). No success like failure: Policy versus reality in the Lao forestry sector. *Watershed*, 12(1), 37–46.
- Ivarsson, S. (2008). *Creating Laos: The making of a Lao space between Indochina and Siam, 1860-1945*. Copenhagen S, Denmark: NIAS Press.
- Kenney-Lazar, M. (2012). Plantation rubber, land grabbing and social-property transformation in southern Laos. *The Journal of Peasant Studies*, 39(3–4), 1017–1037. <https://doi.org/10.1080/03066150.2012.674942>
- KPL [News]. (2016a). Premier notes research on policy of turning land into state capital. 5 July. Lao-language post at <http://www.laopost.com/2016/07/05/64223>.
- KPL [News]. (2016b). Land allocations remain confusing to Lao people. 24 August.
- (LCG) Lao Consulting Group. (2002). Existing land tenure and forest lands study, final report, Land Titling Project IDA Loan CR 2832 LA. Vientiane: Lao Ministry of Finance, Department of Lands.
- Laungaramsri, P. (2012). Frontier capitalism and the expansion of rubber plantations in southern Laos. *Journal of Southeast Asian Studies* 43(03), 463–77.
- Lavers, T. (2012). “Land grab” as development strategy? The political economy of agricultural investment in Ethiopia. *The Journal of Peasant Studies*, 39(1), 105–132. <https://doi.org/10.1080/03066150.2011.652091>
- Lestrelin, G., Castella, J.-C., & Bourgoin, J. (2012). Territorialising sustainable development: The politics of land-use planning in Laos. *Journal of Contemporary Asia*, 42(4), 581–602.
- Lette, J. (2016). Agribusiness case studies. MRLG, Vientiane.
- Ling, S. (Forthcoming). LIWG study on land-use planning (currently in progress).
- McAllister, K. E. (2015). Rubber, rights and resistance: the evolution of local struggles against a Chinese rubber concession in Northern Laos. *The Journal of Peasant Studies*, 42(3–4), 817–837. <https://doi.org/10.1080/03066150.2015.1036418>
- Mekong Watch. (2016). Comparison between PM Decree No. 192 and Decree No. 84. 11 July. Unpublished analysis.
- Moore, C., Eickhoff, G., Ferrand, J., & Khiewvongphachan, X. (2011). *Technical feasibility assessment of the Nam Phui National Protected Area REDD+ Project in Lao PDR*. Vientiane: GIZ, WCS and GoL.
- (NA) National Assembly. (2015). (Revised) Land Law of Lao PDR, Draft version 16 July. Lao National Assembly Vientiane.

- (NACO) National Assembly Cabinet Office. (2014). Notice 273 on the review/consideration, for endorsement, of the three forestry categories (Protection Forest, Conservation Forest and Production Forest) (unofficial translation). 21 August. Lao National Assembly Cabinet Office, Vientiane.
- Obein, F. (2007). *Assessment of the environmental and social impacts created by the VLRC industrial rubber plantation and proposed environmental and social plans, final report*. Vientiane: Earth Systems Lao.
- (PoE) Panel of Experts (2003). Sixth report of the Nam Theun II Panel of Experts. Washington DC: The World Bank.
- Persson, R. (1983). *Forestry in Laos*. Vientiane: Self-published.
- Phouthonesy, E. (2006a). Petition for fences, buffalo grazing space: Villagers need help from local authority, rubber plantations lack fences, roaming buffaloes cause damage. *The Vientiane Times*, 14 August.
- Phouthonesy, E. (2006b). Feature: Farmers cannot live without buffalos. *The Vientiane Times*, 11 September.
- (PM) Prime Minister. (2016). Decree No. 84 on Compensation and Resettlement Management in Development Projects. 5 April (possibly 4 May). Vientiane.
- Ribot, J., & Peluso, N. L. (2003). A Theory of Access*. *Rural Sociology*, 68(2), 153–181.
- Rigg, J. (2005). *Living with transition in Laos: market integration in Southeast Asia*. London; New York: Routledge.
- Sawathvong S. (2010). Progress in REDD+ Preparation in Lao PDR at International Seminar on REDD, 10–12 March 2010, Tokyo. Available at: <http://www.rinya.maff.go.jp/j/kaigai/kyoryoku/pdf/sawathvong.pdf>
- Schneider, T. (2013). Study on communal titling. Vientiane: GIZ/ClipAD.
- Scott, J. C. (1998). *Seeing like a state: how certain schemes to improve the human condition have failed*. New Haven: Yale University Press.
- Shi, W. (2008). Rubber boom in Luang Namtha: A transnational perspective. Vientiane: GTZ.
- Soulivanh, B., Chanthasay, A., Suphida, P., & Lintzmeyer, F. (2004). *Study on land allocation to individual households in rural areas of Lao PDR*. Vientiane: GTZ.
- Suhardiman, D., Giordano, M., Keovilignavong, O., & Sotoukee, T. (2015). Revealing the hidden effects of land grabbing through better understanding of farmers' strategies in dealing with land loss. *Land Use Policy*, 49, 195–202. <https://doi.org/10.1016/j.landusepol.2015.08.014>
- (TABI) The Agri-Biodiversity Project. (2015). Report: Pilot review and redelineation of 3 Forest Management Categories (State Forest Land) in Luang Prabang Province, Lao PDR, 23/2 to 6/3 2015. TABI & MONRE, Vientiane.
- Thompson, E. P. (1991). *Customs in common*. New York: New Press : Distributed by W.W. Norton.
- Thongmanivong S, Y Fujita, K Phanvilay and T Vongvisouk. (2009a). Agrarian land use transformation in northern Laos: from swidden to rubber. *Southeast Asian Studies* 47(3); 330-347.
- Thongmanivong, S., Phengsopha, K., Hounghet, C. H., Dwyer, M., & Oberndorf, R. (2009b). *Concession or cooperation? Impacts of recent rubber investment on land tenure and livelihoods: A case study from Oudomxai Province, Lao PDR*. Retrieved from <http://laofab.org/document/view/477>
- Thongphachanh, & Birgegard, L. (1982). *Muong Paksane Regional Development Study, Vol. 1. Main characteristics of Muong Paksane, Proposed long-term development strategy, Proposals for action*. Lao-Swedish Forestry Project.

- Tolvanen, J. P. (2015). *Report of legal advisor's mission 16 February to 20 March 2015, SUFORD SU project*. Vientiane: Lao Ministry of Agriculture & Forestry, Indufor, GFA Consulting Group, World Bank and Ministry of Foreign Affairs of Finland.
- Vanderveest, P. (2003). Land to some tillers: development-induced displacement in Laos. *International Social Science Journal*, 55(175), 47–56.
- Vientiane Times. (2007). Reducing poverty, or perpetuating it? 23 April.
- Vientiane Times. (2008). Govt outlines plans for That Luang marsh development. 21 March.
- Vientiane Times. (2009). 450 Year Road forges ahead. 2 February.
- Vientiane Times. (2013a). Land compensation tops parliament debate. 26 July.
- Vientiane Times. (2013b). Policy makers explore measures to contain land occupation. 1 August.
- Vientiane Times. (2014a). No concessions without consent, working group says. 4 November.
- Vientiane Times. (2014b). More than 800,000 land titles issued, officials report. 5 November.
- Vientiane Times. (2014c). Authorities violate compensation promise, 22 December.
- Vientiane Times. (2015a). Poor accounting hollows out timber revenues. 8 July.
- Vientiane Times. (2015b). Prior construction approval will ensure homeowner compensation, 26 October.
- Vientiane Times. (2015c). Land owners notified of compensation for highway project. 23 December.
- Vientiane Times. (2016). Ministry to set up logging units. 16 June.
- Vongkhamor, S., Phimmasen, K., Silapeth, B., Xayxomphou, B. & Petterson, E. (Fujita, Y., ed.). (2007). Key issues in smallholder rubber planting in Oudomxai and Luang Prabang provinces, Lao PDR. National Agriculture and Forestry Research Institute, Upland Research Development Program, Vientiane.
- Vongvisouk, T., & Dwyer, M. B. (2016). *After the Boom: Responding to Falling Rubber Prices in Northern Laos*. Vientiane: LURAS/Helvetas.
- Walker, A. (1999). *The legend of the golden boat: regulation, trade and traders in the borderlands of Laos, Thailand, China, and Burma*. Honolulu: University of Hawaii Press.
- White, B., Jr, S. M. B., Hall, R., Scoones, I., & Wolford, W. (2012). The new enclosures: critical perspectives on corporate land deals. *The Journal of Peasant Studies*, 39(3–4), 619–647. <https://doi.org/10.1080/03066150.2012.691879>
- World Bank. (1996). Staff appraisal report (Report No. 14902-LA). Lao PDR Land Titling Project. Agriculture and Environment Operations Division Country Department I, East Asia and Pacific Regional Office. Washington DC: The World Bank.
- World Bank (2003). Project appraisal document, Sustainable Forestry for Rural Development (SUFORD) project. Washington DC: The World Bank.
- World Bank (2013). Implementation, completion and results report, Sustainable Forestry for Rural Development (SUFORD) project. Washington DC: The World Bank.
- World Bank (2016). Aide Memoire, Scaling Up Participatory Sustainable Forest Management Project (SUFORD SU), Joint implementation support mission, November 14-22. Washington DC: The World Bank.

Annex: Timeline of Village Forestry on the Nakai Plateau

This annex is based largely on reports 5–13 and 15–25 from the Nam Theun 2 Panel of Experts (PoE) and the 2005 joint report by the PoE and the NT2 International Advisory Group, all available online,¹⁴ and is supplemented occasionally by details from Schneider (2013).

It contains three parts. The preface summarizes what is reported about the area under village forestry, which varies considerably over time and is often not clarified. Part 1 summarizes the history of dividend payments to resettled communities on the Nakai plateau; this history traces the rise and decline of village forestry efforts, and provides a succinct overview of the longer timeline presented in Part 2. Added emphasis is indicated by underlining.

PREFACE: GEOGRAPHY

The POE's 6th report, from 2003, lists some basic numbers about the geography of the resettlement zone:

- 22,000 ha: whole Nakai Plateau resettlement zone
- 10,000 ha: initial estimate of village forestry area
- 5,700 ha: revised estimate of village forestry area, presumably from the forest inventory planned in the 5th (2001) report.

The 12th report (2007) provides a map (see below, Part 3) that lists the village forest association (VFA) forestland as 13,362 ha. This discrepancy with earlier numbers is unremarked.

Schneider's study, from late 2013, lists the size of forestland in Nakai at 17,428 ha; this is fairly precise figure because it was produced during the collective titling exercise finalized in early 2013 (details below in Part 3).

The POE's 25th report (2016) lists 20,000 ha, without qualification, as the size of the village forest area. This is surprising since over the years that precede this number, the POE has noted with alarm the continuing erosion of the VFA land base, not simply due to degradation from illegal and specially authorized logging, but from excisions of the land base due to urban expansion and agricultural land allocation on the southern part of the plateau (details in Part 3).

PART 1: TIMELINE OF DIVIDEND PAYMENTS

Summary of POE statements about village forestry dividends on the Nakai plateau

- April 2009: "The resettlers will finally benefit directly from their forests this year, with the VFA Board having declared a dividend of \$205 to each resettler household to be paid in two installments in May and October." (POE report 15, p. 27)
- Nov. 2010: "A dividend of around \$160 per household was paid last year [note conflict with

¹⁴ <http://documents.worldbank.org/curated/en/docsearch/projects/P076445%5EP049290>

above] and a further \$150 is to be paid shortly, possibly with an additional amount later this year. This is not close to the original estimate of \$300 per household p.a. [per annum] from timber resources but sustainability of the resource and hence a dividend is more significant in the end than reaching arbitrary targets.” (POE report 17, p. 19)

- July 2011: “The dividends per household amount to around \$100-\$150 per year on average and this may not be sustainable indefinitely given the degradation of parts of the VFA forests owing to the continuing unauthorized removal of timber by resettlers themselves and by poachers.” (POE report 18A, pp. 24-25)
- Feb. 2013: “The harvesting of the resource has produced three dividends totaling US\$551,000 or an average of US\$460 for a resettled household of five people. A fourth dividend is being considered.” (POE report 20, p. 30)
- March 2013: “A dividend derived from 2012 harvesting is under preparation and may be paid out in September [2013]. Current expectations are that a total of approximately US\$200,000 will be available, providing around K.250,000 for each resettler family member.” (Report 21AB, 2013, pp. 14-15). As implied by the next report, this expected dividend did not happen.
- Dec. 2014: The situation is “parlous” [perilous]. “There have been no dividends paid to resettlers since April 2012” (pp. 12-13). “The POE is of the view that while the long-suffering resettlers deserve a dividend payment now it should be a limited one, taking into account the resources – which can not easily be found elsewhere – which will be involved in truly getting the VFDC back on its feet” (pp. 14-15).
- Oct. 2015: “A [portion] of the outstanding arrears owed the VFDC by the former sawmill operator/wood seller have been recovered and a proportion of that has been distributed to the resettlers in the form of dividend payments. However, the dividend, paid two and a half years after the last one, is a paltry LAK 150,000 per VFDC shareholder (each member of a resettler family).” (POE 24th report, p. 22)
- Sept. 2016: “The VFDC has paid only small dividends since 2012 and is unlikely to pay anything more this year.” (POE 25th report, p. 11)

PART 2: FULL TIMELINE TIMELINE

Jan. 2001 – POE 5th report

From the 5th POE report:

Timber export is still a major foreign exchange earner though now said to be in third place after garments and tourism. Chan Lin [a Taiwanese company], BPKP and the other saw and veneer mills at Laxxao and around Thakhet [sic] may exert strong political pressure to be allowed to log inside conservation areas when their existing log sources are exhausted and before plantation grown timber becomes ready to harvest. (p. 22)

The POE’s 5th report makes it clear that community forestry was already on the table even before the irrigated rice plan was shelved. The following paragraph mentions the irrigation plan, and also contains a reference to BPKP’s power to resettle villages in the days before NT2:

The PoE also visited the resettlement site selected with the Ban Sailom villagers. The site of the first topographical mapping for the resettlement program, it is also relatively close to the only host village on

the Plateau, which is a consolidated village resettled some years ago by BPKP. Expected host-Sailom tensions can to be alleviated by a shared development program involving irrigated agriculture since the resettlement site is also adjacent to the largest area available within plateau resettlement areas for dry season paddy. With a construction of a 7.5 meter weir, water will be sufficient for approximately 50 irrigated hectares which, as a 0.2 ha per household component of a diversified livelihood system, is sufficient for several villages. (p. 27)

The 5th report also reported that logging was taking place in areas slated for community forestry by resettled communities, which it considered to be a significant infraction:

The mission results indicated that there was no logging in the upper NBCA or the lower areas of the Nam Theun corridor, but that there were substantial logging activities in at least four areas outside the sanctioned logging areas, including some of the areas scheduled to be community forestry areas for the resettlement activities, plus a number of less substantial but still significant infractions of the agreements between the GOL and WB. The present PoE mission received an indication of the magnitude of the infractions. The PoE was informed that the illegal logging in the Community Forestry Area by Gnommalath District, in the Corridor around the Nam Malou area (by the Nakai District) and in the Thousand Island area totalled 32,034 cubic m. When the PoE visited another site identified by the May WB mission, near Ban Ka Oy, the loggers stated that they had cut over 3,000 cubic m. there. (p. 14, emphasis added)

In early May 2000, members of the POE and the NT2 International Advisory Group (IAG) wrote to the Lao Prime Minister about this, who in turn responded with a government notice:

On May 19 the Office of the Prime Minister replied to McDowell [IAG] and Talbot [POE] accepting all the recommendations and issuing Government Notice No. 0885/CPMO to put the recommendations into effect. The main actions included ceasing logging in the areas involved, ordering that boundaries be clearly delimited and corridor and resettlement areas be given full legal protection, establishing a local body to monitor wood exploitation, and approval of a joint annual monitoring by GOL, NTEC, and WB with participation by PoE and IAG. (p. 14, emphasis added)

Another part of the report slightly clarifies the location of the community forestry area as “the part of the plateau near the escarpment” (p. 19).

The 5th report outlines the need for what subsequently became the Village Forestry Association: “The critical issue of capacity” ... “The community forest component in the RAP [Resettlement Action Plan] will necessitate increasing the skills of district forestry staff (DAFO), creating a community forestry association, and training villagers in all aspects of sustainable forest management. Similar training applies to the other components of the RAP as well ...” (p. 20, emphasis added)

Here is the main passage on community forestry. It is clear that this refers to commercial forestry, or what is later called village forestry or village production forestry:

Community Forestry

One important component of the livelihood of the resettled villagers, especially in the first few years, is planned to come from the sale of timber from a community forest, to be established along the hills of the Phou Ak escarpment and the adjacent part of the plateau. The villagers have no experience of forestry and the only precedent for community forest management in Laos is the recently prematurely terminated FOMACOP project. Training and management will be provided by DAFO[.]

The plateau forests are mainly pine with some patches of evergreen broadleaf. The hills along the

escarpment also bear evergreen broadleaf forest, said to contain much kayung (*Dalbergia cochinchinensis*), a rosewood of high value whose exploitation requires a special license. In January 2001 the PoE inspected parts of the plateau forest designated for community use. It was observed to have been in part logged, especially for pine. Many logs and branches lay on the ground. Pine logs degrade quickly (bluestain and shothole borer) and some of these logs now have little or no commercial value.

It can be envisaged that in the first few years of the NT2 project an income could be made from selling old logs for fuelwood or as charcoal. There will presumably be a big market at the construction camps. Timber sawn from the less degraded logs (as used in the new NTEC Nakai guesthouse) would be suitable for these construction camps. If a license could be obtained a one-off harvest of slow-growing *Dalbergia* could occur. A forest inventory of the community forests is to be made during 2001. Once that is complete, suitably qualified foresters have been seconded from DAFO, and a management plan written, income can be generated from felling remaining large-girth pine and hardwoods, and perhaps also from sale of thinnings of dense stands of young pine. (p. 28, emphasis added)

March 2002: 2nd World Bank illegal logging survey (1st was in May 2000)

2002: First resettlers arrived in pilot village (B. Nong Boua) (POE 13th report, p. 11).

March 2003 – 6th report

2002 was a key year for village forestry. Mid-year saw the issuing of key documents, one of which legally established the Nakai Plateau Village Forestry Association. This was recognized by the POE as being nationally unique:

Precedent setting for Lao PDR was the Prime Minister's Decree 37 of April 12, 2002 which authorized the resettler communities to undertake "sustainable forestry business activities," including felling and sale of timber, in the forest area of the 22,000 ha Nakai Plateau resettlement zone. Regulation 484 of June 13, 2002 by the Governor of Kammouane Province established the financially independent Nakai Plateau Village Forestry Association for managing the forest area. (POE 6th report, p. 29, emphasis added)

With this recognition, village forestry featured prominently in the Resettlement Action Plan of December 2002:

According to the December 2002 version of the RAP, at 30 percent each, fishing and forestry are unchallenged as the two most important livelihood options. (p. 13)

The main [future] livelihood options [for resettled communities on the plateau] are forestry, fisheries, wage labor, irrigated gardens, livestock management, and collection of non timber forest products. Such a diversified set of livelihood options is necessary because each is associated with risks. (p. 28)

The following description of the village forestry livelihood "pillar" on the plateau complements the earlier account (2001, 5th report) of community forestry. Like the 5th report, the 6th refers back to the failed village commercial forestry effort of the 1990s:

Risks associated with the forestry component of the RAP relate to the nature of the forest resources and to implementation issues. Initially estimated at 10,000 ha, the forest management area has now been

reduced to 5,700 ha. Partially offsetting reduction in size is the conclusion of the Company's forestry consultant that the sustainable cut of pine and deciduous hardwoods can be increased to provide the planned \$100 dividend for each household. On the other hand, the smaller size of the forest area will require a smaller labor force, hence reducing expected income from wage labor. There are two major institutional risks. As with the World Bank-assisted FOMOCOP community forest project, one is that the Government will have second thoughts about setting a precedent whereby villages can actually cut and sell timber in addition to customary use of NTFPs. The other concerns the ability of the resettlers to manage the forest area through what will be, for them, a new type of institution. (p. 29, emphasis added)

Mar. 2004 – 7th report

Village forestry seems to be going well so far – the POE mentions it briefly but positively – but the POE worries that it, along with other benefits, is being captured by migrants and elites:

Far too often immigrants with more education, experience, and capital have “captured” the opportunities planned for Project Affected People in connection with dam-induced resettlement. A similar risk applies to more powerful individuals within resettlement villages acquiring the assets of vulnerable neighbors. In the NT2 case that would not only be the home plots and 0.65 hectare gardens of resettlers, but also their fishing rights and rights to participate in community forestry. (p. 30)

Feb. 2005 – 8th report

The same issue of outsiders accessing benefits intended for resettled communities is reiterated and elevated (see Recommendation 3).

2005: World Bank approval of NT2 loan guarantee

Aug. 2005 – POE-IAG Joint report

Nakai Plateau VFA seems on track, but is not yet “providing a source of livelihood” to resettled communities (p. 9). The authors refer to 2006-2008 as a key “transitional period” (p. 10) during which sources of livelihood for resettled communities need to be found because the VFA and reservoir fisheries operations will not yet be producing. They identify the Salvage Logging Operation from the reservoir as one example of how to “assist the start up and operations of the Nakai Plateau Village Forestry Association” (p. 13). In future years, it seems clear that failure to establish sustainable forms of livelihood replacement during this key transition period sets the stage for much of what happens, including but not limited to the pillaging of the village production forest by approved salvage loggers.

Feb. 2006 – 9th report

Outside threats to village forestry continue but are not elaborated, suggesting that all parties know who is involved and that it is better not to name them.

Granted the fundamental importance of the forest reserves as a key component in the resettlers' livelihood options which must be safeguarded, the POE was especially concerned about efforts to acquire logging rights to timber that has been allocated to the Nakai Plateau Village Forest Association. (p. 19)

Oct. 2006 – 10th report

In sum, "The forestry aspects of the project are not progressing well" (p. 21). The management of the VFA was placed in the hands of a MAF official seconded to NTPC due to failure to develop in-house capacity among villagers themselves. The POE noted, with obvious regret, that:

It will be several years before the contribution from their forest lands will add up to the intended substantial addition to the villagers' income. ... This state of affairs is an unfortunate precedent: in effect management of one of their major resources has been taken out of the hands of the villagers for a couple of years at least and their income will suffer. This may be depicted as "adaptive management" but POE sees it as a capacity building failure. (p. 22)

In addition (possibly relevant, given the later report of the salvage logging company logging illegally in the VFA forest – see 13th report):

There has been little forward movement on logging and wider clearance of the extensive area to be inundated once the dam is built. The tendering process for the logging operation broke down and now one firm is to undertake the felling of the logs over the next two dry seasons, while a log tendering process open to all Lao timber companies will be conducted to remove the logs. (p. 22)

Feb. 2007 – 11th report

Village forestry appears first in a section called "Livelihood Constraints". This builds on the delay in VFA payments mentioned in the previous report:

Not only will expected income from the Village Forestry Association also be delayed but its amount (\$300 per household each year) is likely to be significantly less due to the size and productivity of the forest area being less than anticipated. (p. 11)

The POE notes that the VFA was at this time doing significant work on providing timber for resettlement housing – in fact, they note that this "priority" was getting in the way of capacity-building efforts (p. 6):

While the first priority of the VFA must continue to be completion of resettler housing, the POE believes that a more flexible approach to working with District, RMU, RO staff and with villagers can also increase its contribution to improving resettler village and household incomes during the next 22 months. (p. 17)

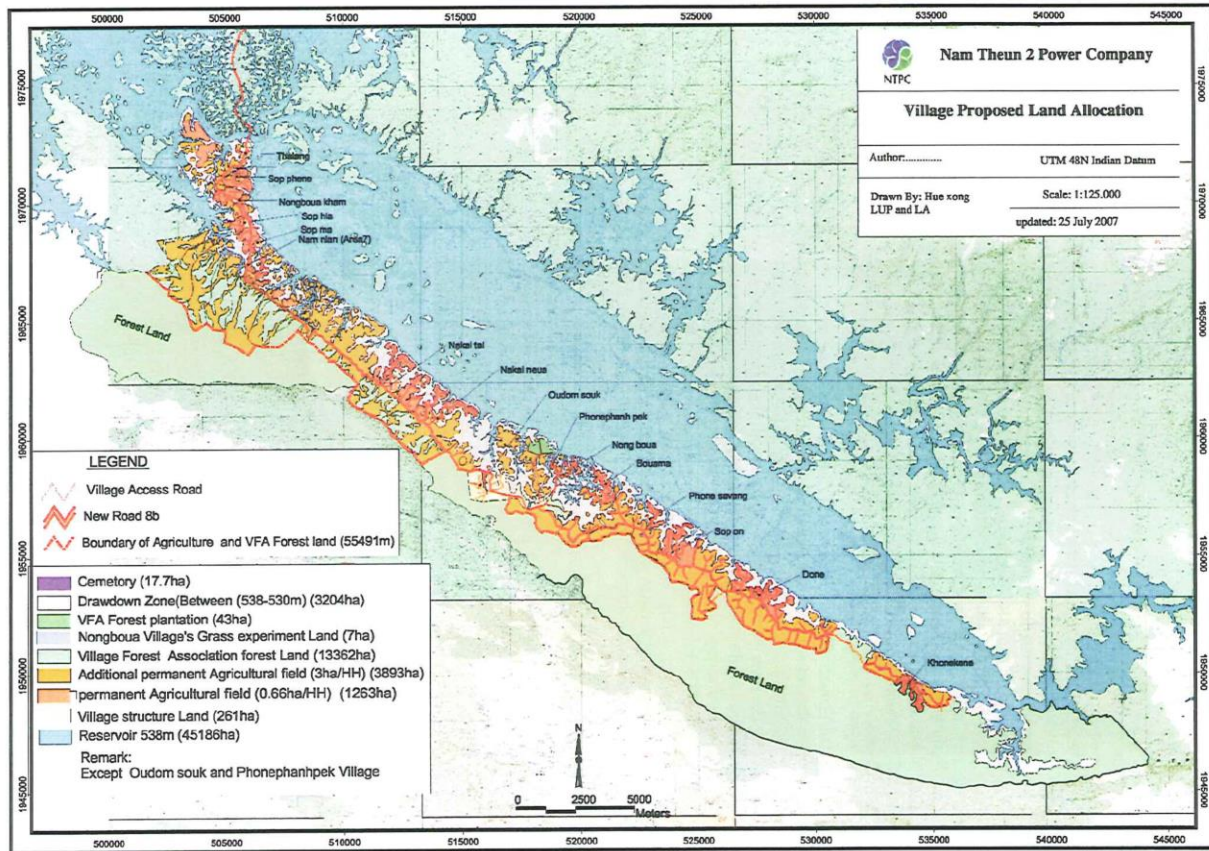
The POE also notes that the "VFA has allocated to each household 5 hectares for silvo-pastoral activities" (p. 13). Such begins the subdivision of the village forestry land.

Sept. 2007 – 12th report

POE suspects rosewood "poaching" by villagers in old village areas (p. 11).

This report contains one of the few maps provided by the POE (p. 14). It shows the VFA forest lands, and

lists them as over 13,000 ha – this is an upward revision from the 10,000 ha initially planned, and contrasts significantly with the downwardly revised 5,700 ha listed in 2003.



The report describes an “epidemic of illegal rosewood cutting” that has been happening inside the protected area, and occupying significant time of the WMPA. The POE recommends focusing on checkpoints, “especially routes 8 and 12”, as a way to address this (p. 29).

Feb. 2008 – 13th report

The POE wrote that the initial livelihood improvement that occurred in the early years after village resettlement (2002 onward) “has started to reverse” (p. 11):

Reasons for this unfortunate situation are many and most are Project-related. They include the Company’s failure over the years to anticipate adequately the staff and budget requirements of the NTPC’s Social Department, micro-management of the Social Department from Vientiane and a failure to make adequate use of existing expertise in Laos, plus failure to fully adapt GOL’s village consolidation policy to resource availability and over-optimistic assumptions in the Social Development Plan as they relate to agriculture and to the Village Forestry Association. (p. 12)

This report continues the inconsistency between VFA land shown on the map (13,000+ ha) and VFA land quantified in print:

On this and previous missions the POE frequently has been informed about **illegal logging in the VFA**

Forests. Resettlement villagers and others have told of meeting men with arms and vehicles cutting VFA timber, and also meeting men from the salvage logging contractor cutting trees in the VFA forests. The VFA forests were intended to provide an important component of the resettlers' livelihood. If these illegal actions cannot be controlled, they deny the resettlers benefits they are entitled to receive from the VFA and threaten the viability of the project. Of course, they reflect poorly on the NT2 Project and all involved. **POE recommends that much tighter control be instituted to protect the VFA forest resources for the resettlers.**

The proposed excision of a 1,500 ha "urban area" from the VFA is a further problem which threatens the Project's viability. POE was given maps showing a 1,500 ha section in the center of the VFA forest, near Oudomsouk, which was to be removed from the permanent VFA forest as "urban area." The VFA production forest originally was to comprise about 10,000 ha, and this has since been reduced to under 6,000 ha. The proposed excision of the "urban area" would divide the forest into two separate pieces, and **would further reduce the already minimal VFA forest area.** (p. 29, emphasis in original)

Later in the report, the POE reports that 690 ha of the 1500 ha has been returned to the VFA.

2007-2009: bulk of resettlement takes place on the Nakai plateau (Schneider 2013)

2009-2011: PLUP takes place in the plateau's resettlement villages (Schneider 2013)

April 2009 – 15th report

In this report, the POE announces a major re-thinking of the village forestry enterprise. Here, first, is the summary of problems:

A particularly rosy picture was painted if commercial forestry development operations drawing on a sustainably managed resource were to prove successful. Not for the first time in Lao history these hopes in the forestry sector have not been realized. There is a variety of reasons advanced for this, an underlying one being that the rich forest timbers of the country including some of those in the VFA areas have been the target of poachers and unscrupulous elements, national and international, for decades. But it is probably also true that the project's forestry sector planning was simply too ambitious to be achieved by a group of villagers with little managerial or commercial background in an enterprise like this---and preoccupied, as they have been, by the time and energy required when moving from established villages and livelihood patterns to entirely new circumstances and livelihood pursuits. Other factors have been the over-estimate of the marketable timber potential of the reserves handed to the resettlers, the lack of true commercial experience of the VFA managers drawn from the Forestry Department and the encroachment on VFA reserves by the resettlers themselves, impatient with delays in allocating such areas to villagers for agro-forestry and irrigated plots, for example. (p. 27)

The POE then outlines a plan to turn the VFA into a limited-liability company (LLC):

But new thinking is required to take the VFA on from here. A new plan is evolving. It envisages the VFA making a transition to a commercial enterprise, a limited liability company, owned by the resettlers and involved in participatory sustainable management of the allocated village forestry areas and profitable operation of forest enterprises... (p. 28, emphasis added)

This plan, assuming it is realized, seems to set the stage for territorial conflict that emerges later, when the singular forest resource is subdivided into communally titled parcels.

The POE seems to argue for land-use planning to occur immediately around the villages, in complement to a forest management plan that they describe having been recently completed:

A forest management plan has been drawn up and approved but there remains a whole raft of actions needed before a limited liability company can be constituted. Overall land use planning around the resettlement villages is critical (we are encouraged to hear that such a process has now been approved by the Governor of Khammouane Province as is the content of the business plan). The principles of exclusive benefit, collective benefit and multiple types of benefit (timber, NTFPs, agro-forestry etc.) must be underlined, written specifically into the business plan and enforced. There should be no exceptions to or exclusions from these fundamental principles. POE will be monitoring this provision closely in the years ahead. (p. 28)

The POE also seemed to try to preclude the imposition of the SUFORD-style compromise on the Nakai resettlers, arguing either against a “profit sharing” arrangement entirely or making sure that any diversion of VFA revenues to parties outside the community would be temporary:

Some argue that a “profit sharing” element will need to be incorporated in the management contract. The POE is not convinced that that will be a necessary component, particularly if the GOL accedes to a forthcoming request to provide a long-term timber-cutting quota to the VFA of around 6,000 m³ p.a. [per annum], accords favorable tax treatment to the VFA, enforces in an effective manner the Nakai Governor’s edict that only the resettlers may use the forests on the Plateau, provides the VFA with sole access to the remaining timber in the drawdown area, ensures that the VFA sawmill is to be the only one operating on the Plateau, and enforces the restrictions in the contract with the activated charcoal company. If “profit sharing” is to be a part of the initial management contract then there should be a major provision for capacity building written into the contract until the resettlers are able to take over complete management of the VFA. (p. 28)

Feb. 2010 – 16th report

While illegal logging figures significantly in many of the POE’s earlier reports, the 16th report takes the alarm over the “depredation by outsiders, and sometimes by rogue insiders from the resettlement villages themselves, of the forest resources set aside for the resettlers as a group” (p. 17) to a whole new level. This is merely the summary:

The forest resources of the VFA, which are owned by the resettler population, are under two types of extreme pressure which are discussed below. One involves Provincial Forest Office (PAFO)-directed logging of VFA timber along, and in many cases well away from, the route of the new Nakai Tai Nadane road prior to its descent down the escarpment to the 21 lowland Nakai District villages. The other involves small scale logging and collection of NTFPs on VFA land inland from southern cluster villages. In all cases District authorities appear unable to arrest, fine and deport encroachers, while in some cases Provincial forestry authorities (PAFO) are actually playing a major role in illegally removing VFA and hence resettler resources. (p. 16)

In addition (and possibly connected, if the same company involved in reservoir clearance was also building roads), the POE was also alarmed by the continuing presence of the salvage logging company in forestlands “well above” the expected reservoir line:

Especially adverse has been the illegal so called salvage logging by Nancy [Phonesack] which included removal of large timber well above reservoir storage level. Subcontracted loggers brought with them a complete range of barges to expedite their illegal activities... (p. 16)

All in all, despite the 2009 plans to reorganize the VFA as an LLC (15th report), the year that followed saw its power to manage and use the forestlands of the plateau decrease even further. Details focused on the conflict between VFA rights and timber-barter practices that have long been used for road-building in Laos, as well as collaboration between locals and outsiders to whom they are related:

The POE encountered a breach of the undertakings given in the CA and other solemn documents regarding the villagers' rights. In accordance with a decision to replace an old road (now inundated) with a new rural road leading down from Nakai Tai on the Plateau to Nadane, NTPC and the Governor of Kammouane Province signed a financial agreement for road construction. A portion of the road (2-3 kilometers) crosses virtually uncut VFA forested land. No contract has yet been signed to build the road but authority was nevertheless given by the Provincial forestry authorities for a private sector firm to cut a logging road along the track of the new road, presumably to remove trees blocking the route. The POE walked the new track as far as the escarpment and found over 150 hardwood logs stockpiled, numerous fresh stumps well away from the roadbed---some as far away as 100 meters and more---and many others marked for harvesting.

None of the logs from the VFA area was going to the VFA mill, no compensation was planned to be paid to VFA for their removal and it was not clear who was to be the eventual beneficiary. What was obvious was that this was not primarily a road clearance exercise but a well-organized removal of a significant portion of the resettlers' forest resources.

This was not an isolated exercise. The POE viewed from the air and the ground a number of sites around VFA land adjacent to Ban Done and Khon Kaen where fresh stumps and small numbers of logs were visible. There appeared to be collaboration between some of the resettlers and kinfolk in Gnommalath in these deprecations. Some small areas of VFA land have also been cleared by resettlers for cultivation, an inevitable result of the delays in allocating land and issuing titles so that all resettlers know who owns or can use what areas. (p. 17, emphasis added)

The POE's frustrations come through quietly in its quoting of the 70-year monopoly granted to plateau residents by the NT2 concession agreement:

The CA is unequivocal. The GOL, it records, will take appropriate steps to "...ensure that the forest resources in the Resettlement Area are for the exclusive use and benefit of the Plateau Resettlers for seventy (70) years from the establishment of the NPVFA." There are no qualifications to this undertaking. (p. 17)

Nov. 2010 – 17th report

The POE's 17th report picks up early on the reorganization of the VFA: "While a decision was taken at the beginning of this year to convert the Village Forestry Association into a limited liability company (LLC), little progress had been achieved" (p. 16). During the POE's visit, a meeting was held on this, the outcome of which was "driven by an articulate selection of village representatives, [and] was very positive" (p. 16). Notwithstanding, plateau residents were frustrated:

The problems of the always-troubled forestry element of the resettlement exercise will not end there. The

timber resources of the resettlement areas and the adjacent NPA are a magnet for poachers of all persuasions. At the workshop villagers were angry about the lack of enforcement of the regulations supposedly protecting the timber set aside as a mainstay of their livelihood program and incomes. They called for heavier penalties and a greater display of will on the part of enforcement agencies to halt the stealing of their precious but limited resource. (p. 17)

The chief challenge to the VFA's successful operations stemmed from the persistence of a rival sawmill that, as the POE noted, should be closed down in order to operationalize the VFA's legal monopoly over legally harvestable timber on the plateau.

The timber available from the Nakai Plateau is either in the NPA and therefore unavailable for commercial logging, or in the lands reserved for the Village Forestry Association (VFA). There is one VFA sawmill on the plateau, and accordingly, in December 2008, the NT2 Steering Committee recommended that authorization be given for only one sawmill (the VFA one) on the Plateau.

The Phonesack sawmill near Oudomsouk had been used to process "salvage logging", which is now no longer legally available. Consequently there is no further legal source of logs for that sawmill (and the POE has previously noted that some of the "salvage logging" illegally involved trees well above the high water line). The Panel believes that as long as that sawmill remains functional it will represent a threat to the timber of the NPA and/or the VFA, and we believe it should be decommissioned and removed immediately. (p. 17)

Although they do not come out and say it, the implication is that the logging barges moored near B. Oudomsouk, coupled with the earlier removal of 800+ hectares from the VFA land for Oudomsouk's "urban" expansion, all feed into this pattern of forest resource use, if not solely for "outside" benefit, then nonetheless by outside companies under terms of exploitation that were in direct competition with the forest tenure rules set down under NT2.

Despite these challenges and ongoing reforms, the VFA had continued to pay dividends to local residents:

A dividend of around \$160 per household was paid last year [2009] and a further \$150 is to be paid shortly, possibly with an additional amount later this year. This is not close to the original estimate of \$300 per household p.a. from timber resources but sustainability of the resource and hence a dividend is more significant in the end than reaching arbitrary targets. To ensure this the time is well overdue for a more active program of propagation and reforestation, a subject covered in earlier reports. The time is also overdue to begin formulating the Village Forestry Plans called for in the CA. (p. 19, emphasis added)

Feb. 2011 – report 18A

The POE reiterated its earlier concerns about the persistence of the Phonesack sawmill. It also noted another sawmill that was threatening village forestry operations:

The POE has also heard reports that the smaller but still operational former BPKP sawmill just south of Oudomsouk is being used to process trees illegally cut from the Village Forestry Association lands. The former BPKP sawmill also should be decommissioned and removed. (p. 12)

POE reports that individual titling has now been completed.

July 2011 – report 18B

In this report, the POE noted the government’s compliance in beginning the shutdown of rival sawmills on the plateau (emphasis on beginning), but stated nonetheless that “it cannot be said that the forestry sector of the project is in a sound position”:

The uncontrolled and wholesale plunder of the reservoir’s and watershed’s rosewood resources by anyone with a chainsaw, a boat or even a motor cycle does not foster a sustainable management atmosphere or ethic and it is clear that a high proportion of Nakai resettlers is heavily engaged in this pillage. They undoubtedly receive much higher returns from collecting and selling rosewood than from the small dividends earned by contractual harvesting of their own forests, a fact which they freely acknowledge. As already noted, the rosewood gathering does swell the present income, and property accumulation, of most resettlers including some of the poorest, but it is not a sustainable activity ... (p. 24)

In this report, the POE pulled toward the “villagization” of the forest resource as a way to convince plateau residents that they themselves owned it and that it was worth their efforts to protect. This continues the tension identified above (2009, see yellow highlight) that reemerged in 2015 with the IFIs dissenting opinion vis-à-vis the POE.

The villagers appear to have no feeling of ownership of their forests. Perhaps because of continuing opposition in some official circles to giving authority to villagers to own and operate a forest enterprise, the range of activities set out in Volume 2 of the SDP has not happened. Of the planned harvesting from production forests, the controlled forest grazing, the farming of domesticated NTFPs and value-added activities like furniture-making only the first has eventuated---and it is done under contract by an outside company [a Vietnamese firm, as the next report explained]. The dividends per household amount to around \$100-\$150 per year on average and this may not be sustainable indefinitely given the degradation of parts of the VFA forests owing to the continuing unauthorized removal of timber by resettlers themselves and by poachers. (pp. 24-25, emphasis added)

March 2012 – 19th report

The POE lamented the “continuing presence” of the Phonesack sawmill at Nakai (p. 10), which was a purchaser of rosewood (also see 18th report). The POE notes that it received a written guarantee that the mill would be removed within 60 days. Clearly skeptical, given earlier promises,

The POE is counting. The reality is that the continued presence of the mill on the Plateau encourages villagers to keep cutting rosewood even though prices have dipped. A belief in continued demand stimulates continued supply. (p. 15)

The POE also noted with apparent consternation that despite finally having the hard-fought right to do village production forestry, plateau residents were outsourcing it to Vietnamese companies:

The POE has been assured that there already are villagers in the resettlement area, formerly employed in State Forestry Enterprises, who are perfectly capable of undertaking both the cutting and the transport of VFA’s timber quota. At present this is done on contract by Vietnamese logging companies. This is an anomaly. As soon as the LLC is set up the manager (probably the former VFA manager) should present a proposal to the LLC Board for the cutting and transport of the timber quota to be taken over by the company itself, drawing on the expertise already in the villages. A converted Russian truck with winch, log cables and transport stays would cost somewhere between US\$5,000 and \$30,000 depending on its

longevity and state of maintenance. The Board, which is to have a naiban (village headmen) majority membership of five along with PAFO and NTPC representatives, will need to decide whether and when this function can be funded and taken on. Similarly, the existing VFA furniture-making facility should desirably be transferred to LLC management. Employment opportunities for over a hundred villagers would be created by these two moves. (p. 14, emphasis added)

The causal arrows aren't clear: the POE seems to blame the rosewood on distracting villagers from the legal activities, while others (the NPA report that Akiko sent) said that the illegal logging was done because the livelihood restitution wasn't working.

POE recommends expediting the community titling process. They say there is local political support for it, and that it's happened in Sangthong, but it clearly hadn't happened there yet.

Feb. 2013 – 20th report

In this report, the problems with village forestry reported over the last 3+ years reached a new level of urgency ("This is a crisis situation" p. 30). The POE's concerns centered on the fact that the VFA's resource base was dwindling – with possibly dire implications for ongoing dividends – and also included the fact that what little the VFA was managing to produce for local livelihoods risked being diverted to government coffers via taxation. The POE report notes the parcelization of VFA lands into village-scale units through community titling; this is explicitly undertaken in the interest of agriculture, which is glossed as agro-pastoral forestry (meaning that cattle are grazing in mixed forestland), and is justified as a way to convince resettlers that the land actually does belong to them.

The POE recommends, because current livelihood programs for resettler households may not meet CA requirements, that major development efforts are required in the years ahead. Increased emphasis on agro-pastoral forestry is one such requirement while an increased capacity of Nakai District staff to assist resettlers to meet CA requirements is another. (POE 20th report, p. 5)

The issuance of the first Village Land Certificates this month is one of several developments that could begin to re-orient agriculture. Village land titling will complement previous home plot and 0.66 ha field titling by subdividing VFA land between the 16 resettlement villages; hence providing resettlers with the security of ownership needed for making long term agricultural investments. One such investment under discussion in the VFA and at the village level, and with increasing district and NRO support, involves agro-pastoral forestry. More villagers are beginning to form cattle producer groups, while Nakai District and NRO experiments are continuing with various Non Timber Forest Products. One villager in Phonsavang has converted indigenous tea into a potential cash crop. (p. 26, emphasis added)

This is significant in part because of the IFIs' subsequent objection to the fragmentation of forestry activities, as articulated in their 2015 note responding to the POE's 24th report (October 2015, see below). The IFIs objected to the development of hamlet-by-hamlet management plans:¹⁵ "The forest should be managed as a whole...", in part to address "the failure of this livelihood pillar" currently

¹⁵ Terminology: Village, hamlet, community: "[Under the] 2012 Regulation on Collective Land Titles of the Nam Theun 2 Project, Khammouane Province whereby, under Regulations for Management and Use of Land under Collective Land Title, hamlet refers to the 14 resettlement communities and village refers to the 10 consolidated villages in the three Nakai clusters. Community, as in community health, is an inclusive term that includes both hamlets and villages" (POE report 21ab, March 2013, p. 11). Schneider (2013: 29) puts it more succinctly: "The original 14 resettled hamlets [were subsequently] consolidated into 10 administrative village units."

occurring.

In its 20th report, the POE vented its frustrations at the ongoing failure of village forestry. This is the culmination of problems reported over the previous half-decade:

The forestry element of the resettlement plans was to have been a flagship of the operation, providing a substantial and ongoing income for all households from cut timber sales and NTFPs gathered from their reserves, generating many jobs and further earnings for the resettlers as the sector branched out into agro-pastoral forestry and value-added activities like furniture making and, most important, becoming sustainable over the long term by engaging in extensive reforestation and accelerated regeneration as the existing tree stocks were harvested.

To understate, the outcome has been disappointing, not least to the resettlers. It has been a saga of conflicting philosophies and interests, foot dragging by agencies which felt threatened by the new institution, mediocre planning, excessive taxing of what is a compensation exercise for the resettlers, a lack of dynamism and transparency in management, a consequential loss of trust in the sector among villagers and plundering of the resource by unchecked outside interests and sometimes the resettlers themselves. ... (pp. 29-30, emphasis added)

It is ironic that at a time when the VFA has secured for the first time assurances regarding an ongoing harvesting quota of 6,000 cubic meters a year and is poised, as a limited liability company, to go on milling at this rate there are now serious doubts about the volume and quality of the remaining resource of accessible and millable timber. No reliable up-to-date data on the size of the remaining resource are apparently available. This should be remedied quickly – and authoritatively, through an independent agency – for there has from the beginning been uncertainty about the actual volume and quality of the wood available, a situation made worse by the plundering of the resource by outsiders and resettlers over the last several years. (p. 30, emphasis added)

... The VFA management has forecast that if current cutting rates are maintained the prospect is that by mid-2015 the resource of millable timber would be close to exhaustion.

This is a crisis situation. If VFA management's forecasts are accurate and if harvesting were to be maintained at the rate envisaged in the new but unsigned contract with the existing buyer, the total cut envisaged for the next three years would not be able to be met. All dividends would cease as from 2015. There would be no revenues to enable a start to be made on agropastoral forestry and value-added activities or reforestation and accelerated regeneration. This would inter alia severely dent the prospect of resettler households achieving through legitimate means the income targets set out in the Concession Agreement. (p. 31, emphasis added)

... The present manager has had to find his way through a morass of conflicting interests and cannot be held solely accountable for the slow progress thus far. But what is needed now is a vigorous manager with experience in livelihood and community development, agro-pastoral forestry and preferably marketing as well, who can get alongside the villagers and convince them, for example, of the advantages in using the new strips set aside in the PLUP process for agro-pastoral forestry activities and the long term security to be attained by growing tree crops on or reforesting their worked over land, perhaps including some of the less fertile parts of the 0.66 ha. and irrigated plots. The appointee would need to be able to work closely with DAFO/PAFO and have access to their advice and experience. (p. 32, emphasis added)

The POE also addressed the issue of taxation. The following should be read in comparison with the "benefit-sharing" model developed under SUFORD, as what appears to be happening at Nakai is a convergence of the two approaches, despite the initial prospects of divergence:

While it was always envisaged in the NT2 Social Development Plan that conventional Government log taxes and some other charges would be payable from VFA revenue it was not expected that the full raft of fees, taxes, charges and expenses payable by a frankly commercial forest company would be faced by VFA. No provision was made in the SDP, for example, for the payment of the GOL reforestation levy as it was planned that the VFA itself would be meeting the costs of forest rehabilitation and regeneration. But the reforestation levy in all its forms (surveys, forest plantation, reforestation and forest management activities) is charged to VFA by the provincial forest agency when, as far as the POE could determine, few of these services have been provided to VFA by the agency.

The system is highly opaque. ... The end result is that in 2011, for example, when \$200,000 was paid out as dividends to resettlers, a total of \$240,000 was paid out in logging fees and an additional \$371,500 in other taxes and fees. In short, of the revenues from the VFA resource last year the Government took three quarters and the resettlers received one quarter.

That is inequitable. As the SDP points out, the transfer of the forests was designed as a compensatory exercise for people resettled from their traditional lands in the interests of a national project. They were moved to less fertile soils where entirely new and more labor intensive forms of cultivation had to be learned. The plan was to provide villagers through forestry activities with a sustainable and guaranteed source of income. Taxation concessions were expected. None were forthcoming. Partly as a consequence there have been few resources available to engage in the activities planned to ensure sustainability like agroforestry and reforestation. (p. 33)

Mar. 2013 – report 21AB

This report sees the further erosion of VFA lands by agriculture while the VFA itself sits dormant waiting for new leadership:

The crisis in the forestry sector described in POE Report 20 has not been resolved. Indeed in one respect it has been heightened by the PLUP transfer of a significant portion of VFA land – notably in the southern zone – for agricultural [including agro-pastoral] activities. The positive development is the progress finally being made in fostering agro forestry on village lands.” (p. 14)

In the absence of a current manager it is proving difficult to obtain information of relevance to VFA’s future. The Prime Minister also approved in GO 407 the signing of a further logging contract with Leang Fat Hong Company for 2013. It is unclear from VFA sources whether this has been signed or what its status, let alone contents, are. More transparency about the affairs of VFA is desirable. (p. 15)

Should the VFA be shut down and the remaining forest lands handed over to the resettlers to manage? POE suggests not. A new manager is being recruited. The mill will still be required presumably for several years at a reduced cutting rate and some small dividends may still be payable. (p. 15)

Jan – Mar 2013 – Schneider’s report on communal tenure

Schneider provides figures and descriptions of village land allocation on the plateau that is more precise than the POE recounts, but that also implies a significantly larger forest area than that described above.

In January and March 2013, the permanent land titles for collective land (*din luam mu*) were awarded for different types of land, including village forest land (*din paa mai saoban*) and additional agriculture land, as well as “public benefit land” for village buildings such as market, school buildings, rice mills, and ware

houses. A total of 2,780 ha of additional agricultural area and a total of 17,428 ha of forestland in Nakai were issued under collective titles. (Schneider 2013, p. 29)

Schneider is more precise in her legal terminology than the POE, distinguishing between collective and communal land. The POE do not make this distinction, although they distinguish between village and hamlet when appropriate (e.g., note 15 above).

May 2014 – 22nd report

In this report, village production forestry is looking increasingly implausible. The 22nd report continues the trajectory of “agro-forestry” – clarified here as fruit tree planting on cleared land and livestock-raising – gaining territory at the expense of village forestry land. Between this report and the last (21st), the VFA seems to have finally transitioned into the LLC envisioned back in 2009:

The only bright spot in the village forestry sector is the progress being achieved in promoting agro forestry. Nearly three hundred households took part in agro forestry activity in 2013, with NTPC providing them with thousands of largely fruit tree seedlings. A Moringa Producers’ Group has been set up and has signed a contract for supply. There have been high losses of mortality of Moringa seedlings due to farmer neglect but the problem is being addressed. While conventional pasture areas are being extended there is a need, with growing herds of cattle, to develop agro pasture acreage as well but it is premature to be engaging in this latter work. The wider community participation in agro forestry is encouraging.

Beyond the agro forestry sector, however, it must be said that village forestry is unquestionably the least successful of the five pillar livelihood ventures. It was originally planned to provide a third of the resettlers’ income but has not succeeded in coming close to that goal, though a number of dividends have been paid to the villagers over the years. It now faces considerable constraints with the resource depleted to a presently unquantified degree by poor management, illegal cutting by a variety of predators, a reallocation of lands originally assigned to the former VFA (now the VFDC, Village Forestry Development Company Limited) having been reassigned to provide additional agricultural land to resettlers and second generation families, substantial unpaid arrears owed by the logging sales contractor and – an old problem – unreasonably heavy taxation of a venture which was set up to provide compensatory income for the dislocated resettlers. (p. 17)

The POE noted high-level support for its earlier proposals that the VFA not be treated as a standard commercial enterprise when it came to taxation, and not be billed for replanting services by the PAFO if these were not actually being provided. But it was still waiting for action:

Government approval at a very high level has been given to a tax reduction, with back dating, but it has yet to register in VFDC’s bank account. There is also a return owed to VFDC for a replantation fee/tax it has been paying but has received no money back for the replanting. (p. 17)

Dec. 2014 – 23rd report

The POE made it clear in this report that village forestry was in dire straits, that the onus was on the Lao government to work with NTPC and the World Bank, and that the decisions and progress in this sector over the next year or so would have a strong influence on the POE’s decision about whether to sign off or not on the end of the Resettlement Implementation Period (RIP):

No objective observer would contend that holding the NT2 forestry pillar upright is a sustainable exercise at this moment. The situation of a sector which was to have produced up to a third of the villagers' income is parlous. Unless rapid and effective steps are taken to right the situation it will deteriorate further.

As the POE emphasized in its oral debriefing at the end of this mission, progress in getting the pillar upright and beginning to strengthen it in the years ahead will be one of the major considerations central to the outcome of the POE's assessment of whether the RIP has progressed to a point where it may be brought to closure. The situation should be addressed at the highest levels in the GoL, the IFIs and the NTPC as a matter of urgency and decisive steps taken to start the process of correcting the weakness of a sector which is very shaky.

In the absence of substantive decisions and actions and full participation by all stakeholders in the process of rehabilitating the sector within the next few months the outlook is bleak. The opportunity is there: if leadership is taken by the GoL at Ministerial level and the World Bank, the NTPC has undertaken to help underpin them. That chance of forward movement must be seized or reputational damage will result for all major parties. There are encouraging signs that the World Bank is facing up to the challenge. The GoL needs to follow suit. (p. 12)

The POE continues to enumerate the problems, but also notes a glimmer of hope in the form of some positive steps from the interim manager of the VFDC (formerly VFA):

The size of the forest estate has, furthermore, been reduced by encroachments, the latest being the conversion of some of the land to "additional agricultural land" which has been distributed to resettlers and often burned off for swidden cultivation without the considerable timber resources being harvested beforehand. When logs were removed ahead of the firing they were seldom processed but abandoned in log yards or ponds. One assessment is that shifting cultivation took around 700 ha of community forests in 2013, which would amount to about 4-5% of the VFDC forests.

The condition of the sector is not yet terminal. There have been preliminary if only partial assessments of the remaining forest resource which suggest that if the planning and forest management flaws were to be remedied and the required advice and expertise supplied the sector could become revenue-earning and self-sustaining in due course. Those are substantial prerequisites. The Interim Manager needs help. He does not claim to have expertise in all the required fields. He inherited a damaged enterprise and has done reasonably well in re-establishing working relationships with key agencies and people including the village shareholders, has got the sawmill operating again which at least provides about 50 jobs for villagers, has now succeeded in recovering over 90% of the money owed the Company by the former contractor and has been transparent in communicating what he is doing. (p. 13, emphasis added)

The POE then lays responsibility on the government, the World Bank and NTPC, and ends with a plea for cooperation to save the forestry livelihood pillar from oblivion:

It has to be said that the GoL agencies which have been key players in the NT2 village forestry experiment – for that is what it is – cannot escape a degree of responsibility for the failure of the enterprise thus far to meet its objectives.

Neither have the IFIs always fully pulled their weight in providing expertise and advice in this sector. There are now positive signs that the World Bank for one is taking a new and active interest with a team reported to be in Laos looking at what is needed for a survey of forest resources and to lift the forest management performance of the VFDC. That is encouraging.

For its part NTPC deserves credit for carrying out its initial CA responsibilities in terms of providing advice,

equipment and operating finance but it found developing a forest management and development plan, to cite one example, difficult in the Lao context and it was not able to put one in place. Similarly, the role of identifying the forest resource was not satisfactorily completed. These key gaps remain. NTPC's inputs were in part limited by cost in the CA and once the funds provided were apparently exceeded the Company largely disengaged from the sector. It is worth noting in this regard that the NTPC functions of helping develop a Forest Management Plan and a Sustainable Forestry Plan are listed in the CA as lasting until RIP completion date. The withdrawal of NTPC has proved to be counter-productive in that the elements of continuity, competent oversight and planning were lost as the enterprise ran downhill. (p. 13)

Under the heading of “So what is to be done?”, the POE laid out a series of steps (p. 14) which included “drawing up an overall forest management and associated operational plan (called for in the CA),” which it called “well overdue” (p. 15). Central to this process, it noted, was a decision about whether to target “the very demanding but lucrative Japanese market” for high-quality pine logs (p. 14).

The POE ended with a frank statement of the resource limitations that now forced the VFDC into the difficult decision of whether to issue a fourth dividend and, if so, how much:

The POE is of the view that while the long-suffering resettlers deserve a dividend payment now it should be a limited one, taking into account the resources – which can not easily be found elsewhere – which will be involved in truly getting the VFDC back on its feet. (p. 14-15)

Oct. 2015 – 24th report

In their 24th report, the POE devoted a few key pages to the issue of sustainability. As they noted at the beginning of the document, the 24th report was special because it was the one in which the POE weighed in on the question of whether to end the Resettlement Implementation Period as planned – this was the period during which the livelihoods of resettled communities on the Nakai plateau have their livelihoods supported by the NTPC – or continue it into the future. A key concept at the heart of this decision is sustainability. The POE noted that the company's Concession Agreement (CA) requires that the replacement livelihoods for resettled communities be “sustainable”, but that sustainability is nowhere defined in the CA.

Sustainable livelihoods are a basic objective of the CA, but it [the CA] contains no adequate definition of sustainability or how it may be measured. We therefore have to look for its commonly accepted meaning. (POE 24th report, p. 9)

This need to find sustainability's “commonly accepted meaning” prompted a short literature review, from the Brundtland Commission to the economists Robert Goodland (a consultant on NT2 at some point) and Herman Daly, to the POE's own Thayer Scudder. The POE converged on four key pillars of sustainability as applied to the NT2 livelihood restitution program: “longevity, intergenerational justice, resilience and development without growth beyond environmental carrying capacity” (p. 10). These in turn justified the following summary of the POE's analytical position:

Sustainability of livelihoods on the Plateau will be achieved when the natural resources of the plateau are being replenished and its built assets are maintained to support the living standards of the people who draw upon them and the law and governance institutions enable them to protect their property rights and resolve disputes. This requires evidence that natural resources such as soil, forests and fish, are not being depleted by human activity; that the built assets necessary for livelihoods are being properly

maintained; that the formal and customary institutions are protecting the commons and giving fair access to them; and that estimates of future population growth do not indicate a growing unmanaged risk in the immediate future. (POE 24th report, p. 11)

The bulk of the 24th report is devoted to laying presenting evidence about why such conditions were not being met, despite the finding (in two sets of surveys conducted in 2014 and 2015) that incomes (as measured through consumption) on the plateau were well above the levels to which the CA required. The problem, the POE found, was that these levels were probably not sustainable, and were largely not the result of livelihood restitution activities that NTPC had carried out. Rather, the relatively good standards of living that were being observed among resettled communities were, the POE argued, the result of illegal and unsustainable resource extraction that was in many cases competing for plateau residents' time with company livelihood activities.

In describing communal forestry, the POE called the endeavor “non-performing” (p. 23), called for “fundamental” changes and reengagements by the Lao government, the IFIs and NTPC, and hinged the failure-to-date in this sector to the POE's decision to extend the RIP beyond 2015:

Achieving sustainability in the village forestry sector requires a fundamental change of approach by the major stakeholders. The failure of this critical sector to produce the one third of resettlers' incomes originally planned, the maladministration over a decade of the harvesting, processing, marketing and sales of a valuable resource, the crippling level of levies, fees and taxation, and the inadequate support for the whole operation in recent years by the relevant GoL agencies and NTPC are all factors affecting the POE's conclusion **that the state of this sector is a major reason for extending the RIP beyond 2015**. One reality is that the resettlers have been forced by this sectoral failure to seek elsewhere the income needed and have resorted to illegal or unwise practices to do so. It is clear that the village forestry pillar requires additional support which could come from GoL agencies, NTPC and/or the IFIs.

While it would be possible to outline a series of steps through to 2035 to attempt to right the situation it is clear that some prior decisions have to be taken if such courses of action are to have a chance of being successful. The GOL at a high level, NTPC and the IFIs all need to rethink their approaches and level of commitment to meeting the CA's objectives in village forestry. And the villagers themselves have to be convinced that their active participation in helping manage some aspects of the operation will bring more substantial rewards than have been forthcoming thus far. (p. 22, emphasis in original)

The POE recommends that: (Recommendation 16/24) The GOL, at a high level, review the present state of the NT2 forestry sector and restate the commitment of Ministers to a renewed effort by all stakeholders to meet the requirements of the Concession Agreement in this vital sector, to countering illegal activities such as unlawful logging on hamlet forest lands and to renegotiating a more equitable basis for sharing NT2 forest revenues between the GOL and the resettlers. (p. 24)

The POE's vision for “community ownership and participation in management” of forestry began with continuing the longstanding effort to convince resettlers that the land actually belonged to them. This built on the legal allocation of land begun in 2013 (see above):

The most demanding part of the first phase will [be] the creation from scratch of working HFMCs in each hamlet. It is the POE's firm view that moves toward heeding the CA's calls for “forest development and management by villagers, for villagers” and for a sustainable forest plan based on the principle of community ownership of the resource are overdue. The 16 individual hamlet communities, who are the legal owners and users of the former VFA land, should eventually undertake many of the tasks involved. The logic of the Participatory Land Use Planning (PLUP) process, which followed the CA guideline by

transferring legal title of the village forest lands to the communities themselves, should be followed through in due course. (p. 24)

As the IFIs noted in their 2015 comments to the POE, such an approach was at least partially in conflict with the commercial aspects of managing the forest resource on the plateau. The POE's implicit response was to put tenure first, given the threats to the resource and the need for community management:

The emphasis above on the eventual transfer of several basic planning and management functions to hamlet level does not imply that the VFDC should be restructured out of existence. An upgrading of VFDC planning, management and financial skills and probably the replacement of some mill equipment will be involved if the villagers decide eventually – as “economies of scale” would seem to dictate – that pooling of harvesting and milling resources, information exchange and large scale transport and marketing functions in this way would continue to make good sense well into the future.

It is on this basis that the recommendations above for technical assistance to the VFDC be provided. In an appropriately phased program, other technical expertise will be required in due course. ... But these are issues for further down the track. The focus at this point should be on establishing the beginnings of a communal forest management system on the Plateau as envisaged in the CA and lifting the returns to the villagers to a more encouraging level. Those are the most effective ways of attracting resettler buy-in to the strengthening of the forestry pillar and to preventing misuse of the forest resources. (pp. 26-27)

Sept. 2016 – 25th report

The POE continues with the “failure so far” theme...

The forestry sector was supposed to contribute up to one third of resettler incomes, but so far has failed to live up to anything near that expectation and has been the least successful of the five project pillars. There is a long history of mismanagement of the resource and encroachments by outsiders and resettlers themselves. The VFDC has paid only small dividends since 2012 and is unlikely to pay anything more this year. The villagers have lost interest and any sense of ownership in the forests they were told were theirs. (p. 11)

... but it notes a bit of optimism, although this is based on an unelaborated figure of 20,000 ha (cf. map above and subsequent erosion by “urban” and agricultural uses):

It doesn't have to be this way. We were heartened by the relatively upbeat tone of the draft Action Plan for the pillar. From an effective production area of around 20,000 ha it estimates that with better management, profits could be substantially increased – even doubled - without increasing the size of the annual log cut, while maintaining good forest stocks and protecting biodiversity. The natural regeneration characteristics of the species mix in the community forest lands should mean that little or no reforestation or planting of trees should be required for some time.

At the same time the draft is realistic in listing and assessing the risks and challenges ahead if the pillar is to be saved. It stresses the need for an “enabling environment” to be created and is well aware of the challenge involved in re-engaging the villagers in all 16 hamlets. (p. 11)