

# FOREST POLICY OF LAOS IN TERMS OF LOCAL PARTICIPATION

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## 1. Introduction

The purpose of this paper is to analyze national forest policy in terms of local participation. First, the development of a national forest policy will be described. Second, the legal rights of local people will be examined. Third, a theoretical framework to analyze participatory forest management systems will be discussed. Then the main trials of the participatory forest management systems in Laos will be analyzed based on the analytical framework. Finally, the significance of introducing various participatory forest management systems, with newly devised institutional arrangements, will be discussed.

## 2. The development of forest policy in Laos

After the revolution in 1975, Lao P.D.R. was fast becoming a communist country. In 1986, the government of Lao P.D.R. started an economic reform policy under a new economic mechanism called "Chin-Thanakaan-Mai". For Lao P.D.R., which does not have a particular means of foreign currency acquisition, this economic reform meant the logging of trees. This caused serious damage to the forest resources. Due to the lack of plain land, many of the local inhabitants were engaged in slash and burn cultivation on hillsides. This slash and burn cultivation and the forest fires related to this cultivation, have been the major causes of deforestation in Lao P.D.R.

In May 1989, the First National Conference on Forestry was held in Vientiane, Lao P.D.R. to discuss the above mentioned rapid deforestation and environmental deterioration. Proposed as countermeasures were the cultivation of cash crops, the implementation of land use classification policy for the management of land and forest by local inhabitants, and the encouragement of tree planting activities.

After the conference, the preparation of a legal system to govern the land and forest became a priority. So far, its history can be divided into a "trial stage" and an "enforcement stage". In the "trial stage", the government has dealt with the problem by instituting tentative forestry measures enforced by a Prime Minister's Decree. In the "enforcement stage", the government has managed to provide a basic legal framework to govern the land and forest such as the forestry law and the land law. As of 1998, the government is busy working on various kinds of forestry policies based on the forestry law.

### 2-1. The trial stage

Three forestry policies that marked the "trial stage" were "the Decree on the National Forestry Reservation over the Country (No.164/PM)", "the Decree on the Land and Forest Allocation for Tree Planting and Protection (No.186/PM)" and "the Decree by Prime Minister on the Management and Use of Forest and Forest Lands (No.169/PM)".

In October 1993, the Prime Minister's Decree on the National Forestry Reservation over the country (No.164/PM) was promulgated. Twenty sites (at first, eighteen sites) of National Biodiversity Conservation Areas were determined with a total land area of 3 million hectares. Thus, Conservation Areas legally came into existence in Lao P.D.R. This system, however, failed to

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sufficiently address specific ecological concerns. In addition, the Decree did not mention the rights of local inhabitants inside the National Bio-diversity Conservation Areas.

The Prime Minister's Decree on the management and use of forest and forestlands (No.169/PM) was enacted in November 1993. In this Decree, forest and forestland was defined as areas under the control of the Ministry of Agriculture and Forestry, and were not to be used for permanent agricultural land. The Decree stated that the forest and the forestlands were a national heritage. On the other hand, it also acknowledged the traditional use of the forest according to village customs. This contradiction was not sufficiently discussed however. This Decree also classified forests into five categories, but these definitions lacked clear parameters. In October 1994, the Decree on the land and forest allocation for tree planting and protection (No.186/PM) came into effect. By this Decree, the implementation of land and forest allocation was legally started in local areas. According to this Decree, land for allocation is divided into two categories. One is the land for planting trees, the other is the land for the conservation of existing forest. The land for planting trees was to be allocated to households, companies, national organizations such as the ministry, district authorities and police, and public organizations such as schools, hospitals and temples. The land set aside for the conservation of existing forest was to be allocated and located inside villages or within the territories of national organizations such as the army and police. In both cases, detailed regulations and concrete procedures for allocation were not provided. It is worth noting however, that the land for conservation was to be allocated mainly to national defense-related organizations such as the army and police.

## **2-2. The enforcement stage**

Since 1996, forest policy in Lao P.D.R. has shifted from the "trial stage" into the "enforcement stage" when the government established the basic legal system governing forestry such as the forestry law and the land law.

In August 1996, the Instructions for land-forest allocation, management and use (No.822/AF) were promulgated. These Instructions, which mentioned the steps necessary for land and forest allocation was started by Prime Minister Decree #186. In this Instruction, land and forest is to be allocated at the local level and categorized into "slash and burn cultivation areas and deforested land" and "natural forest".

Slash and burn cultivation land and deforested land is allocated mainly to households. It is meant to reduce the impact of slash and burn cultivation, and to aid in the recovery of vegetation. Thus, the methodology of this instruction is re-forestation activities and the introduction of cash crops.

The natural forest is allocated to villages, and is designed to inspire the sound and proper management and conservation of forests. Allocation is to be carried out according to the specific land use such as watershed protection forest, conservation forest and production forest. The Instruction recognizes the customary rights of land uses, while having ultimate control over their use. It also expects the villages to promote forest management where possible. In addition, regarding the residential area and permanent agricultural land such as paddy fields and fruit gardens, the Instruction determined that the government was entitled to issue land registration certificates as well as being able to identify the practical ownership of land.

The forestry law was enacted in November 1996 and the land law in April 1997. In the forestry law, the definition of forest was changed from "all areas under the management of the Ministry of Agriculture and Forestry whether covered with forest or not, but not used for or defined as permanent agricultural land" into "land with or without forest on it, which the state has determined as forest land".

There are five categories of forest: the "Protection Forest", the "Conservation Forest", the "Production Forest", the "Regeneration Forest" and the "Degraded Forest Land and Barren Land". Regarding the "Conservation Forest", there was no further categorization in the Prime Minister's Decree #164. The forestry law however, determined that a Conservation Forest has three categories

such as the "Total Protection Zone", the "Controlled Use Zone", and the "Corridor Zone". In addition, the Law mentions that the local inhabitants have the rights of land use and restriction.

In the forestry law, land allocated for households is defined as "degraded forest land and barren land". This category corresponds to the "shifting cultivation area" and "deforested land" in the above mentioned Instruction. The forestry law recognizes the customary rights of land use for local inhabitants in the same way as Prime Minister Decree #169. In addition, as the main factor in the use and control of forest, the Law provides rights and obligations for households and villages.

According to the land law, land in Lao P.D.R. is divided into eight categories. In these categories, the definition of forest is "the areas of all parcels which are covered by forest or land which is not covered by forest but is determined by the State to be forest land as prescribed in the forestry law". This definition of forest and forestland in the land law almost mirrors that of the forestry law.

When these legal systems were established, the implementation of land and forest allocation was instituted nationwide. According to government statistics, land and forest allocation was carried out in 3,096 villages out of a possible 12,000 by April 1998. This number equates to 27% of the total villages in the country.

### **2-3. The next stage**

Based on a series of forestry policies mentioned above, the forest-related legal system will be further developed in the future. Resources will be allocated to facilitate the stabilization of slash and burn cultivation, the encouragement of tree planting activities, inventory of forest resources, conservation of forest and bio-diversity, and the establishment of a competitive wood industry. It can be said that the forest policy in Lao P.D.R. is shifting to the next stage.

## **3. Legal rights of local people to the land and forest (note 1)**

### **3-1. The rights of local people to the land by the constitution**

The constitution enacted in August 1991 clearly states that "Land is the property of the community and the state guarantees the usufruct, the right of transfer and inheritance" (Article 15). The land is the property of the state, but organizations and individuals can have the usufruct and the right to transfer and inherit the land allocated to them.

In addition, the constitution says "All organizations and individuals in Laos must conserve the resources of land, forests, animals and water including underground, and also atmospheric environment and natural resources" (Article 17). In other words, organizations and individuals have an obligation to manage the land on a sustainable basis.

### **3-2. The rights of local people to the land by the land law**

According to the land law enacted in May 1997, Laotian land is classified into eight categories; agricultural land, forest land, constructional land, industrial land, communicational land, cultural land, land for national defense, and land around water resources. Among them, the types of land for which the right to utilize is allocated to organizations and individuals are agricultural land, forest land and constructional land.

The size of the land for which the right to utilize is allocated depends on the occupation of the benefactor (Article 17). The area to be allocated will be no more than 1 ha per laborer for rice cultivators, no more than 3 ha per laborer for the cultivators of commercial crops and annual crops, no more than 3 ha per laborer for orchard managers, and no more than 15 ha per laborer for the cultivators of grasses to raise livestock. For forest land, no more than 3 ha per laborer are allocated.

The right to utilize land granted to organizations and individuals is guaranteed by the land law to overshadow any other rights. In addition, for the land allocated, a land deed effective for three years is given. If the land use is rational, and there are no objections for its use, they can apply

for a long-term right to utilize (Article 18 for agricultural land, Article 22 for forest land). On the other hand, the buying and selling of land is prohibited. (Article 3).

Even in capitalistic countries where private ownership is the rule, land ownership, i.e., the right of use, profits and disposal, are not absolute and are granted on the condition that they do not conflict with public benefit. The right to utilize land in Laos differs from the land ownership in capitalistic countries in that buying and selling are prohibited.

### **3-3. The rights of local people to the forest land by the forestry law**

Among the eight land types classified by the land law, the right to utilize forest land is prescribed by the forestry law in detail. In the forestry law, the forest is classified into the following five categories: 1) protection forests to conserve watersheds, to guard against soil erosion and to protect dense forests, etc.; 2) conservation forests to conserve wild animals and plants; 3) production forests to produce wood and NWFP; 4) regeneration forests, or the young fallow to be regenerated immediately; and 5) degraded forest land or barren land. Note here that regenerated forests will be reclassified into protection forests, conservation forests or production forests, and degraded forest land will become a production forest or agricultural land in the future.

Among these forest types, the forests for which the right to utilize can be granted to organizations or individuals are only degraded forest lands. According to Articles 48 - 58 of the forestry law, organizations and individuals have the rights of occupation, use, profits, transfer and inheritance.

### **3-4. Customary rights of local people to utilize the forest as prescribed by the forestry law**

In the forestry law, the customary forest utilization is defined as "long-term use of forests, forest land and forest products approved as socially and legally" (Article 30). In concrete terms, it includes the collection of wood for fences and fuel, the harvesting of forest products, and hunting for household consumption and others. This does not include swidden agriculture.

Such customary forest use is granted for all forest land excluding protection forests and conservation forests. Customary forest use that damages resources is not granted, and neither is forest use that infringes on rights belonging to individuals or organizations. In other words, customary forest utilization is granted with restrictions, and can in no way impact the rights of others. .

## **4. Analytical framework** (note 2)

Three elements will be made use of as an analytical framework.

### **4-1. Legal land possessor**

Even though the forest policy, consisting of several programs, and the land classification/allocation policy have been put into effect simultaneously in Laos, we should notice that the forest policy would be implemented on the assumption of a certain legal status of land, consisting of land classification and land possessor.

This is the reason why we should consider the legal status of land for the analysis of participatory forest management programs. Based on the land law and the forestry law, the potential legal possessors of land and forest are individuals, organizations, villages, outsiders, and governments such as districts, provinces, and the state. Participatory forest management systems can be adopted with land of any legal status.

Provisionally, we regard the land of different legal status to be individual land, organizational land, village land (note 3), and governmental land.

### **4-2. Forms of participation**

In order to implement the program at a village level, it is necessary to organize the labor force. Theoretically, the following "forms of participation" or work organizations can be assumed;

- ❑ **individual participation:** individuals participate in the activities voluntarily
- ❑ **temporary group participation:** individuals take the initiative in participating, with groups of families temporarily formed for each operation for equivalent labor exchange, such as "Hao Haeng Ngan" of Lao Lum (lowland Lao), "Deuang Raeng" of Khamou (hillside Lao), an "Pau Joa" of Hmong (highland Lao).
- ❑ **fixed group participation:** groups of individuals, bodies of temple's member, schools, and other organizations take the initiative in participating and the members are mobilized for the activities.
- ❑ **community participation:** villages take the initiative in participating, and collective labor systems or labor mobilization systems are applied, such as "Oak Haeng Ngan Samarkhy" of Lao Lum, "Taeng Viek Ruam" of Khamou, and "Sii Kon Tee" of Hmong.
- ❑ **wage labor participation:** individuals are employed as wage laborers.

Theoretically, temporary group participation, fixed group participation, and community participation may be called "**collective participation**". In a general sense, all forms mentioned above can be regarded as participation. However, wage labor participation is hardly considered to be participation.

#### 4-3. Types of forest management

In order to evaluate the nature of participation, it is convenient to take management responsibility and initiative into consideration. In terms of management responsibility and initiative, theoretical "types of forest management" are classified as follows;

- ❑ **peasant forestry:** managed by individuals, often called farm forestry.
- ❑ **group forestry:** managed by fixed groups and organizations, such as schools, temples, women's unions, elder's groups, groups of relative's etc.
- ❑ **community forestry:** managed by an executive body of a village community
- ❑ **private forestry:** managed by outsiders and corporations
- ❑ **public forestry:** managed by governments

Group forestry and community forestry may be based on "collective management". Private forestry is not considered to be a participatory forest management system because it implies that local people participate as wage laborers.

#### 4-4. Possible combination of three elements

Here "types of forest management" are given first priority in order to consider the possible combination, because the types of forest management reflect the leading factors of forest management. Who takes initiative to manage the forest is more important than who owns the forest in a discussion of participatory forest management.

"Peasant forestry" cannot be carried out on land belonging to organizations, village land, or on governmental land, only on land allocated to individuals. Possible forms of participation are individual participation and temporary group participation.

"Group forestry" can be adopted on land belonging to organizations. Possible forms of participation are fixed group participation and wage labor participation.

"Community forestry" can be applied on village land and governmental land. Possible forms of participation are fixed group participation, community participation, and wage labor participation.

#### 5. Existing participatory forest management systems (note 4)

In Laos, various types of participatory forest management (PFM) systems have been implemented since the early 1990's. Some of them are models for production forests, some for conservation forests and others for regeneration forests and degraded land.

### **5-1. Joint Forest Management (JFM)**

Since 1994, the Lao-Swedish forestry program has been testing JFM for state production forests in Savannakhet province (Manivaong and Muraille 1997). In a "model 1 agreement", villagers form a Joint Forest Management Association (JFMA) that consists of at least two members of every household in the village, which then has the responsibility to implement the management plan prepared by the Provincial Agriculture and Forestry Office (PAFO). JFMA harvests and sells logs, processed logs and timber. In exchange, the villagers should commit themselves to protecting the management area as well as paying a royalty and other taxes. In a "model 2 agreement", the arrangements and involved parties are the same, but the PAFO organizes the harvesting and selling of the timber (Sopthathilath 1998), while the villagers are contracted to protect the forest for a yearly salary, and are hired as labor for harvesting and enrichment, planting, etc.

While it is true that the JFMA can be called participatory forest management, the villagers are not actually involved in the planning process. The villagers play the role of subcontractor for implementation of the plan in a model 1 agreement whereas they take part in the management of the forests only as laborers in a model 2 agreement. We should notice that the amount of royalties the villages paid were more than the amount of the villages' revenue in 1995/96 for both models (Manivaong and Muraille 1997). Even though the resin of Dipterocarp sap is collected by the villagers, the main purpose of the JFMA is to produce timber.

In conclusion, the JFMA can be regarded as a "public forestry" existing for the purpose of timber production on "governmental land" covered by rich natural forest, through the combination of "fixed group participation", "community participation", and "wage labor participation".

### **5-2. Village Forestry by FOMACOP**

The Forest Management and Conservation Program (FOMACOP) started in 1995 as a joint undertaking of the government of Laos, the government of Finland, the World Bank, and the Global Environmental Facility (Phanthanousy 1997). In terms of resources and area of coverage, FOMACOP's village forestry component is the largest project in Laos, which developed and monitored the village forestry in 100-120 villages during its first five years (1995-1999).

Village forestry is defined by FOMACOP as a partnership between organized villagers and the state for the sustainable management of designated forests (Phanthanousy 1997). It empowers villagers by strengthening their capacity and motivation and by giving them the authority to protect and manage the forests, and to benefit from their efforts. Villagers establish a Village Forestry Organization (VFO), a juridical entity, by whom the forest within the village territory can be allocated for management. A VFO should be a rural enterprise in order to make a profit and pay royalties to the government. Although the village forestry activities are carried out on production forests, conservation forests, and protection forests, the main concern of the village forestry is the production of wood and non-wood forest products. The main lesson learned from three years experience shows that a village forestry has the best potential in the areas where the remaining forests are still relatively abundant and have commercial potential (Anonymous, 1998). They are not concerned with the land allocated to individuals and other juridical entities (Bonita, 1997).

The activities of the village forestry covers various aspects of rural development. Paying attention to the activities related to forest management, it is concluded that village forestry in FOMACOP can be considered to be "community forestry" on "village land", through "fixed group participation", "community participation", and sometimes "wage labor participation".

### **5-3. NGO-supported Community Forestry**

In 1995, a Community Forestry Project (CFP) was established by the Department of Forestry (DoF) to support community forest activities (Daoroung, 1997) under the shifting cultivation stabilization program. The CFP is an extension of the community forestry support unit

(CFSU), which is a joint DoF-NGO initiative established in 1993 with direct support from CUSO, a Canadian NGO and TERRA, a Thai NGO. The project plays a role in supporting the CFSU and a community forest development project (CFDP) in Khammouane province. The latter is supported by JVC, a Japanese NGO, and is active in 18 villages. Out of the 18 villages, five have prepared simple forest management plans after the village boundaries were delineated and land-uses were mapped through a participatory approach (Department of Forestry, 1997). The villagers have also developed rules to control forest management.

NGO-supported community forestry is regarded as "community forestry" on "village land" mainly for the purpose of conservation, through "community participation" where village forest volunteer groups play an important role.

#### **5.4. Profit Sharing Systems (PSS) by FORCAP**

The Forest Conservation and Afforestation Project (FORCAP), supported by the government of Japan, is about to introduce a profit sharing system (PSS) on the land allocated to individuals in a second phase (1998-2003). Under contracts that will be determined on an individual basis, the government will provide the villagers seedlings of *Acacia mangium*, *Pterocarpus macrocarpus*, *Azelia xylocarpa*, and *Tectona grandis* as well as steel wire for fences and pineapple shoots. A villager will undertake the clearing, protecting, planting, tending, thinning, and harvesting. 75 % of the profits earned from the first thinning of *Acacia mangium* four years after planting will belong to the villager, 25 % of it will go to the government. The same profit sharing will be done with the profit earned from the second thinning of *Acacia mangium* around seven years after planting. At the second thinning, all the trees of *Acacia mangium* will be harvested. 15-20 years after planting, the standing volume will be surveyed and the value of the timber will be estimated. Then the villager and the government will make a decision as to whether the villager will pay 25 % of the estimated value to the government, or the government will pay 75 % of it to the villager, or both parties will wait to share the profit after the trees are harvested.

This project will establish a "Forest Development Fund" with capital from the 25% governmental share in the profit. This fund can then be utilized to increase the number of participants in the PSS.

It is concluded that the PSS is considered to be a "peasant forestry" on "individual land" mainly for the purpose of commercial timber production through "individual participation" and "temporary group participation".

#### **5.5. National Village Forestry Strategy**

In the national village forestry strategy, the Department of Forestry uses "village forestry" as a generic term when referring to the broad spectrum of participation by villagers in forest management, including various models mentioned above. The definition of village forestry by the Department of Forestry (1997) however is almost the same as the one by FOMACOP, which implies "peasant forestry" might not come in the near future. By including conservation, protection, regeneration, and re-forestation activities, all activities will need to be taken up as an initiative by the village community or organized villagers.

Then the village forestry under the present definition can truly be regarded as "community forestry" or "group forestry" for the purpose of forest related activities, on every status of land.

### **6. Discussion**

First of all, we would like to argue the importance of the wide variety of programs being introduced at the village level. "Community forestry", where the village community takes management responsibility and initiative through an executive body, is very important but does not seem to be all that effective. Actually, many community forestry projects have failed because villagers have been allocated poor quality forests, or totally deforested land that cannot support the

population (Anonymous 1998). It seems that the collective management of the forests would be most appropriate in areas where the forests are still relatively abundant and have higher commercial potential. On the other hand, in areas where most forests have been degraded or denuded, re-forestation might be effective because land allocation to the individuals could be used as an incentive. This is why "peasant forestry" as well as "group forestry" and "community forestry" should be promoted.

Next, the term village forestry in a national village forestry strategy is examined. When referring to the broad spectrum of participation, a generic term of "social forestry" seems to be more suitable, because "peasant forestry" is also included in the concept of social forestry. If the government of Laos would like to use the term "village forestry" however, the definition should be improved to show clearly that "peasant forestry" is also a type of village forestry.

Finally the institutional system to be introduced is identified. For the purpose of re-forestation on degraded land, a profit sharing system can be introduced for "group forestry" on organizational land as well as "peasant forestry" on individual land (See table 1). On the other hand, for the purpose of conservation and production from natural forests, a "community forestry" or "village forestry" should be promoted on governmental land as well as village land.

On all the forest land, including national bio-diversity conservation areas (NBCA's), various types of participatory programs should be introduced on every legally defined status of land. Many trials will be necessary to promote and combine some participatory programs in a project site, through institutional arrangement.

Table 1. Existing Programs and desired institutional arrangement

Types of forest management	Legal Status of Land			
	Individual land	Organizational land	Village land	Governmental land
Peasant Forestry	PSS by FORCAP	-	-	-
Group forestry	-	*NVFS (A)	-	-
Community forestry	-	-	VF by FOMACOP (H) CF by NGOs (C) *NVFS (A)	*NVFS (C,H,A)
(Public forestry)	-	-	-	JFM (H)

  

Forest classification	Degraded forest land	Protection forest, conservation forest, production forest, regeneration forest
Main forestry activities	Afforestation (A)	Conservation (C), Harvest (H) Afforestation

\* These activities are recommended to be introduced under NVFS (National Village Forestry Strategy)

#### Notes

- 1) This part is cited from a paper (Namura and Inoue, 1998).
- 2) This part is cited from a paper (Inoue et al, 1998).
- 3) Village land means the land whose management is entrusted to the village under the certain condition. When the protection, conservation, and production forests are entrusted to a village, the village does not have the right to dispose of such forests.



4) This part is also cited from a paper (Inoue et al, 1998).

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