

# Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia

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### Allocation or appropriation? How spatial and temporal fragmentation of land allocation policies facilitates land grabbing in Northern Laos

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## Abstract

The Lao Land and Forest Allocation Policy (LFAP) was intended to provide clearer property rights for swidden farmers living in mountainous areas. These lands are legally defined as “State” forests but are under various forms of customary tenure. The policy involves demarcating village territorial boundaries, ecological zoning of lands within village territories, and finally allocating a limited number of individual land parcels to specific households for farming. In Pak Ou District, Luang Prabang Province, all stages of the LFAP had been completed in roadside ethnic Lao and Lue villages by 2006. However, in remote Khmu ethnic minority villages, while territorial boundaries had been demarcated, individual land parcels had not been formally allocated to specific households. Because the implementation of the LFAP was spatially and temporally fragmented, roadside villages where the policy had been completed lay adjacent to remote poorer Khmu villages where it was incomplete. This opened up new incentives and possibilities for grabbing remote lands within and between villages as well as by state officials. Roadside villagers suffering the effects of limited land resources resulting from the policy eagerly bought land or appropriated it in lieu of debt from poorer Khmu villages. Khmu villagers who had “privileged” (but not exclusive) rights to many land parcels began to use the discourse of “land allocation” and its ideas of exclusivity to justify denial of customary usufruct claims of others in their village, essentially “mentally” grabbing land from other Khmu villagers. Concurrently, district officials were misusing the LFAP as a way to appropriate Khmu village territory for Chinese rubber concessions and for elite entrepreneurs from the town. This paper examines how the fragmented implementation of land formalisation programs intended to protect local tenure security is implicated in opening up new possibilities and narratives for land grabbing at different scales, particularly in the context of increasing commercialization of land and agriculture. This paper is based on several periods of field research conducted between 2005 and 2012 which examined land grabbing and land tenure transition in the face of agricultural “modernisation” and transnational foreign investment in highland Laos.

## Introduction

In the early to mid-1990s the Lao government, with support from various international agencies, initiated two parallel programs to formalize and clarify land rights in the country. The Land and Forest Allocation Policy (LFAP), managed by the Ministry of Agriculture and Forestry (MAF), covers land defined as ‘state forest’, providing farmers living in these areas with temporary user rights within state lands. The Land Titling Policy (LTP) initially managed by the Ministry of Finance<sup>1</sup>, provides formal titles for peri-urban, commercial, residential and agricultural lands, registering these within a central cadastral system (Hall, Hirsch et al. 2011; Hirsch 2011). The LFAP, which will be described in more detail later, focuses primarily on the role formalised zoning and land rights can play to influence forest management and change farmers’ agricultural systems. In contrast, the LTP followed the logic of Hernando de Soto (2000) and focuses on enhancing local economic development by enabling farmers and urban dwellers to use formal land and property titles as collateral for loans to allow them to reinvest in their own development, for example in improved farm production and small-scale enterprises (Hirsch 2011). The zoning of the landscape into state forest versus private agricultural land influences which program is deployed in different areas, creating arbitrary boundaries that determine the types of property rights to which farmers in these different ‘socio-ecological spaces’ are entitled. There is some spatial overlap since in certain roadside villages, paddy lands are classified as agricultural lands (and eligible for individual formal title certificates under the LTP) while sloping farmlands within the same village are classified as forest, falling under the LFAP and eligible for temporary usufruct rights but not formal title certificates. The implementation of these two programs is ongoing and both were being enforced concurrently in Pak Ou District, Luang Prabang Province at the time of my research.

Both the LTP and LFAP were initially implemented in areas that were easily accessible and where local property rights were (at least in theory) less contested. The LTP initially focused on areas close to cities and towns, where there were pre-existing land markets, and was eventually extended into roadside rural villages to provide formal titles to lowland rice paddy fields, residential lands and small businesses (such as village shops) (Hirsch 2011). The LFAP was first initiated in easily accessible and long established roadside villages, avoiding recently resettled roadside hamlets where property rights remained unclear. It was deployed later in more remote villages. This created temporal and spatial fragmentation between areas where land was already titled and allocated often lying adjacent to areas that were not yet titled or allocated, created new incentives and possibilities for land enclosure and land grabbing at different socio-spatial scales - within villages, between villages, between rural villages and urban areas, and between villages and the state. In Pak Ou District, processes of accumulation and dispossession resulting from these and other state policies took on an ethnic dimension.

Although both policies were implicated in new forms of land grabbing in the district, this article will focus on the LFAP. I will describe how the spatial and temporal fragmentation in the implementation of the LFAP resulted in the creation of (at least theoretically) state ‘legible’ spaces in roadside village territories where the policy had been completely implemented, which lay adjacent to ‘illegible’ spaces in remote and resettled village territories where the program had not yet been completed. The policy facilitated new types of land dispossession for villagers living in ‘not yet allocated’ areas by providing new incentives, legitimating narratives, and forms of land grabbing within villages, between villages, and between villages and the state. In Pak Ou District, these remote ‘not-yet-legible’ territories were populated by Khmu ethnic minority villagers, locally recognised as

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<sup>1</sup> The LTP was taken over by the National Land Management Authority (NLMA) in 2006, and the NLMA was into the Ministry of Natural Resources and Environment (MoNRE) in 2011.

the most politically and economically marginal group in the area. Roadside ‘legible’ areas were populated by *Lao Loum* (Lao and Lue) who were relatively better off. This spatial distribution of the different ethnic groups combined with the relative poverty of the Khmu compared with the *Lao Loum* meant that processes of dispossession exacerbated the LFAP and other state policies affected the Khmu specifically. I will first introduce the LFAP, and then describe Pak Ou District, emphasizing how this and other state policies for developing ‘upland mountain communities’ are being implemented in practice. I follow this with three case studies that describe local processes of accumulation and dispossession, the ethnic dimensions of this, and of the LFAP and other state policies in exacerbating these shifts in land ownership. The first case describes the incentives and processes by which Lao and Lue farmers facing restrictions imposed by the LFAP in their roadside village accumulated land from neighbouring Khmu villages where the policy had not yet been implemented. The second case describes shifts in customary tenure within a Khmu village where the LFAP had not yet been completed, where the policy’s privatising notion that land ownership includes the ‘right to exclude’ provided a new legitimating narratives for some Khmu to enclose their land holdings from other Khmu who had previously held usufruct rights. These ‘mental enclosures’ were also motivated by other development policies in the area that had increased the demand for land, its market value, and local concerns about future land scarcity. The final case illustrates how the LFAP has been (mis)applied by some state officials to appropriate Khmu land in ‘unallocated’ areas for lease to plantation concessions, for urban elite entrepreneurs and for personal gain. Although this particular case illustrates the involvement of a state official in land grabbing, I have described elsewhere how Lao state officials have also been active in protecting the rights of villagers facing dispossession (McAllister 2015). This paper is based on extensive ethnographic fieldwork concerning agrarian transformation and struggles over land rights conducted in 2006 with a follow-up visit in 2012.

## **The Land and Forest Allocation Policy (LFAP)**

The Land and Forest Allocation Policy (LFAP), managed by the Ministry of Agriculture and Forestry (MAF), deals specifically with mountainous lands that are formally zoned as ‘state forests’. These lands are essentially ‘political forests’, defined largely by slope and/or distance from roads rather than by tree cover, and encompass the inhabited forest-farm landscapes cultivated by swidden farmers (often ethnic minorities) under various forms of customary tenure. The program was designed to formalize and protect the territorial claims of villagers living in and farming ‘State forests’ and also to support the national goal of achieving 60% forest cover by the year 2020 by limiting where villagers could farm in the highlands (GoL 2004:54). The policy emphasizes transforming and controlling ‘forest’ management practices by encouraging individualised land holdings and restricting land access, making subsistence shifting cultivation for upland rice socially and ecologically unsustainable and compelling highland farmers to adopt intensive sedentary commercial agriculture. For ‘forest’ lands not allocated to villagers for agriculture, the LFAP prioritises conservation, reforestation (often with commercial trees) or ‘economic development’ (Vandergeest 2003; Ducourtieux, Laffort et al. 2005; Hall, Hirsch et al. 2011:46; Lund 2011). One of the initial goals of the LFAP included the increase of individual and collective land tenure security in order to enable farmers to invest in and sustainably and productively manage their lands and forests (Ducourtieux, Laffort et al. 2005). However, in practice, the other objectives of the LFAP have been emphasized, and the policy has been deployed primarily to enforce national policies to eliminate shifting cultivation, which the government equates with poverty, ‘backwardness’ and ecological destruction, and to encourage farmers to intensify and commercialise their agricultural system (Lao Ministry of Agriculture and Forestry 1999; ADB 2001; Raintree and Soybara 2001; NUOL and IDRC 2003; Vandergeest 2003). This is being done based on assumptions that sedentary farming systems are more ecologically sustainable and profitable than

shifting cultivation, that private title and individualised land parcels will improve local land tenure security and will facilitate the development of land markets, and that government revenue from property taxes will be increased (Rerkasem and Rerkasem 1995; Souvanthong 1995; Cohen 2000; World Bank 2002). The land allocation program also supports other policy goals of the Lao government, to bring Laos into a market economy, to gradually replace upland rice production with livestock and commercial crops, and to “*reduce wasteful, extensive agriculture, in order to maximize the area available for forestry, whose products are more profitable than those of agriculture*” (Vongleck 2002).

The LFAP is implemented in villages primarily by state cadres in the Provincial and District Agriculture and Forestry Offices (PAFO and DAFO)<sup>2</sup>. The implementation was designed to be participatory with villagers involved in all stages, and was flexible to allow for both for individual title to upland plots and collective village title to forest-fallow systems under which customary tenure and overlapping claims could be accommodated. The LFAP involves three main steps; 1) the demarcation of village territorial boundaries<sup>3</sup>, 2) the classification and zoning of forest lands within these boundaries as specific forest types and for specific uses<sup>4</sup>, and 3) the allocation of individual household plots within forest land classified as ‘degraded’ for farming, livestock husbandry or other economic activities. The newly produced ‘state spaces’ defined by the LFAP are represented in hand-painted maps posted on large wooden boards outside each village that illustrate different land and forest types and the area of each within village territories. These maps are widely ignored by the villagers themselves and rarely reflect the rapid evolution of actual land use on the ground (see also Barney 2008).

The negative representation of fallow lands as ‘degraded forests’ obscures their real value as a village commons, the ecological importance of fallow to the sustainability of the agricultural system and conceals the many goods and services Lao villagers gain from these areas. It also helps legitimize the expropriation of village lands for purposes that are deemed more ‘ecologically sustainable’ or ‘economically productive’. Although the LFAP is legitimised through rhetoric that emphasizes protection of the environment and of farmers land rights, the policy is also being implemented to define boundaries around local resource use, ‘legally’ freeing up land for the state and other interests (Delang 2002; Vandergeest 2003; Barney 2008; McAllister 2015). PAFO and DAFO are responsible for land allocation and zoning, for implementing national state goals for modernization and promotion of agro-industry, for approving plantation concessions for foreign business, and for improving local

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<sup>2</sup> In some areas, the program was implemented by personnel from the Army, Police or Office of Finance because of lack of available forestry staff (RRDTC 2009).

<sup>3</sup> The demarcation of village boundaries often created conflict between neighbouring villages, where territorial boundaries were previously fuzzy and resources were shared informally.

<sup>4</sup> During the first approximately ten years of its implementation, land within village territory was zoned into five different forest categories in accordance with the 1996 Forest Law, which governed forest use and management at the time; 1. *protection forests* (forests maintained to protect watersheds, protect from landslides, etc.) in which gathering is allowed; 2. *conservation forests* (village-scale forest land in which all activities are forbidden in order to protect animals, plants, etc.); 3. *production forests*: where wood cutting and gathering are allowed; 4. *forests to be regenerated* (areas of young fallow which is designated to become old fallow, then forests through reforestation, either through tree-planting or naturally; and 5. *degraded forests* (fallow land considered badly destroyed, with no trees, which could be allocated to individual households for agriculture) (Lao Forest Law 1996, Articles 16-21). The more recent forest law (2007) altered this classification to include only three forest zones – production, protection and conservation forests<sup>4</sup> – but maintains the category of ‘degraded’ or ‘barren’ forestland within these three zones. Barney (2008) rightly points out the vagueness of distinguishing between these different forest types, which can also be seen as different stages of forest succession. He argues that the difference between ‘regeneration’ and ‘degraded’ forest are less about type of forest cover than about State goals for how these areas should evolve over time. From the perspective of villagers, the various types of ‘fallow’ are often perceived as owned by particular households (who hold pioneer rights) and as simply part of the swidden cycle.

livelihoods. Often, these goals are conflicting. In some areas, the implementation of the LFAP coincided with the expansion of plantation agriculture, and the policy has been implicated in the ‘legal’ expropriation of village territories for concessions (Barney 2008; McAllister 2015). It has also enabled land grabs by local state cadres and urban-based entrepreneurs interested in accessing land for commercial tree production, as will be described later.

The final stage of the LFAP – the allocation of individual household plots – has both land formalization and land reform goals. Legally, each household has the right to be allocated three one-hectare upland agricultural land parcels per unit of adult labour<sup>5</sup> (two parcels per unit labour for households owning lowland rice fields). However, in implementation, this has been widely interpreted as two or three one-hectare parcels per household. Allocation of private plots is done in collaboration with villagers and village leaders, and essentially formalizes pre-existing customary land claims. Those households with customary rights to more than two or three land parcels are forced to cede some of their lands for redistribution within the community. Once land is allocated, individual households are granted Temporary Land Use Certificates (TLUC) for their agricultural land holdings, particularly for commercial crop areas, orchards, home gardens, new rice paddy lands, tree plantations and sometimes for swidden plots (RRDTC 2009). The TLUC are not permanent titles but provide usufruct rights that are valid for only three years, after which the state maintains the right to revoke the titles if the land is not being used according to national priorities or if the land is left fallow for three consecutive years<sup>6</sup>. If the land has been used appropriately (“*in conformity with objectives and regulations, and if no objections of claim*”) then a permanent title may be requested (Lao Land Law 2003 Article 18). Thus, secure title is contingent on using the land according to state goals, and the titling system is integrally connected with government land use planning in the uplands. According to the law, TLUCs may be inherited, sold, or leased if they have been registered and the taxes paid. Unlike the titles for peri-urban, residential, and paddy land provided by the LTP, TLUCs cannot be used as collateral for bank loans.

A major problem with the early implementation of the LFAP was that village forest lands were classified into unrealistic proportions, not leaving enough land for sustainable swidden agriculture, animal grazing and other forest activities, and placing intense pressure on village livelihoods (see also ADB 2001; Ducourtieux, Laffort et al. 2005; Barney 2008). Furthermore, land that is allocated to

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<sup>5</sup> Article 6 of the Lao Law on Land stipulates the amount of ‘upland’ that can be allocated for different uses. For rice cultivation and animal husbandry, the maximum area that can be allocated per household is one hectare per unit of labour force (per working adult). However households are entitled to a maximum area of 3 hectares per labour unit if they are using the land for fruit tree plantations, industrial plantations and growing crops (presumably they mean other than rice) (Lao Land Law 2003, Article 17). Individuals and households are entitled to a maximum of 3 hectares of forest land per labour unit in the family (in areas zoned as unstocked land or degraded land) in the form of ‘Temporary Use Certificates’ rather than permanent titles. In theory, up to 22 hectares per household unit of labour power (e.g. number of adult workers in the family) can be allocated to each family, as follows: 1 hectare for paddy rice or pond culture for fish or frogs; 3 hectares for commercial crops; 3 hectares for fruit trees or orchards; and 15 hectares for maintaining grassland for livestock grazing. Thus, the law supports state policies to encourage farmers to crop cash crops rather than rice. In reality, these are flexible guidelines, and allocation is on a case by case basis, and other characteristics, such as the condition of the land, are also considered (MAF 1999). In practice, although the law states that households are entitled to 3 hectares *per working adult*, this has been interpreted as three hectares *per household*. Individuals or households can acquire leases or concessions from the state if they want more land and can prove they have the capacity to develop it.

<sup>6</sup> Article 62. (New) Loss of Right to Use Land and Land Use Rights

Persons having the right to use land and persons holding land use rights will lose such rights in the following cases: 1. They have used the land or have exercised their land use rights not in accordance with the objectives as allocated by the State; 2. They have not paid the land tax consecutively for three years after being warned; 3. They have not used the land or not exercised their land use rights as allocated by the State in accordance with the contract and the land law; 4. Land use rights are lost pursuant to a court decision.

farmers through the LFAP is not necessarily suitable for permanent cultivation. Instead of providing tenure security, land allocation has been blamed for creating severe livelihood insecurity as villagers are forced to shorten fallow periods because of reduced land availability, leading to rapid soil degradation and increased weed infestation, greater labour demands (primarily for weeding) and declining rice yields (ADB 2001; McAllister, Gabunada et al. 2001; Vandergeest 2003). Villagers have pointed to land allocation as a primary cause of increasing poverty and livelihood insecurity in the uplands (ADB 2001; McAllister, Gabunada et al. 2001; Ducourtieux, Laffort et al. 2005). The negative impact on local food security has been outlined in many development evaluations and the state recognizes that the land and forest allocation program needs to be reassessed (GoL 2004:54).

**Pak Ou District and implementation of state development and land formalisation policies**



**Figure 1: Map showing location of field research (map taken from McAllister 2015)**

Pak Ou District, named for the settlement where the mouth (*pak*) of the Nam Ou River meets the Mekong, is about 40 km along National Route 13 from Luang Prabang town. The Pak Ou river valley provides very little flat riverbed plain, and the land rises quickly into mountainous hillsides. Some villages are perched along the highway, while others are only accessible by foot, horse or small tractor, located several hours or even days walk into the mountains along steep, narrow and sometimes slippery footpaths that wind through agricultural and forest land, crossing streams that become deep and fast-flowing during the rainy season, cutting villages off from the road for days at a time. The mountainous landscape is a mosaic of different types of forest, fallow, cropped areas and small-scale tree plantations. As in most districts in northern Laos, villagers follow diverse forest and farm-based livelihoods that include shifting cultivation for upland rice and some cash crops such as sesame, paper mulberry, and Job’s tears, lowland paddy rice cultivation, hunting and gathering, small-scale fishing in streams and in the Pak Ou river, animal husbandry, and petty trade. Shifting cultivation for upland rice remained the primary subsistence activity of most villagers, particularly in remote ethnic minority villages.



Like most areas of northern Laos, Pak Ou district is ethnically diverse, and different ethnic groups live side by side, often within the same village. According to government statistics, in 2005 Pak Ou District had 29 villages of mixed ethnic groups, 11 Lao and Lue (*Lao Loum* - lowland Lao) villages, 13 Khmu (*Lao Theung* - Midland Lao) villages, and 6 Hmong (*Lao Sung* - 'highland Lao') villages<sup>7</sup>. All Lao and Lue villages were located along the roadsides, and while there were some roadside Khmu and Hmong villages, all remote villages were either Khmu or Hmong, both considered to be ethnic minorities in a country politically dominated by the *Lao Loum* who make up approximately 50% of the population. Roadside and recently resettled Khmu and Hmong communities are visibly poorer than their Lao and Lue neighbors, and the Khmu are widely considered to be the most politically marginal and impoverished ethnic group in the district. Different ethnic groups interact on a daily basis through trade, agricultural labour relations, and occasional social events. In spite of academic arguments that ethnic boundaries between different ethnic groups have historically been porous (Moerman 1965; Scott 2009), local reiterations of ethnic stereotypes, language differences and tendencies to avoid marriage between certain groups reinforced local perceptions of ethnic difference and ethnic boundaries are experienced as solid.

The population of Pak Ou has historically been very mobile. Most villages were evacuated at some point during the second Indochina war. Hmong settlers displaced during the war moved into Pak Ou from other provinces, sometimes settling in villages that had been abandoned during the war, resulting in conflict once the original residents returned. Although some of the Lao and Lue villages along the river bank had been there for hundreds of years, a survey conducted in Pak Ou District in 2002 indicated that half of the households sampled had migrated within the past 20 years, mostly since 1997 (Phouyyavong, Pandey et al. 2002), mainly to access better transportation or to live with relatives. Khmu communities sometimes resettle voluntarily in response to illness in the village, crop failure, bad omens, or simply to be closer to the road. Sometimes these communities move their houses to a new location within their territory, and continue to use the same land and resources. In addition, the on-going government resettlement program aimed at moving small, remote villages of less than 50 households to roadsides and consolidating small hamlets in order to provide better access to services and markets was also exacerbating movement of people and villages in the district. Because of this mobility, land rights were constantly being renegotiated within and between villages, while state resettlement policies was creating new land conflicts.

Pak Ou District provides a microcosm in which various state policies, development interventions, and private foreign interests intersect in their efforts to govern people and the environment, transform agricultural systems, alleviate poverty and 'turn land into capital'. The district government followed national goals to reduce poverty and develop highland communities primarily by stopping shifting cultivation for upland rice, encouraging farmers to plant cash and tree crops and keep livestock on sloping lands, and expanding the area of paddy rice production where this is possible. In 2006, the district government was also encouraging roadside villages to enter into contract farming arrangements with a Chinese rubber company, and the District Governor had signed a contract to provide the company with 7000 ha of land to establish a rubber plantation. This concession encompassed the territorial resources of five remote Khmu villages (McAllister 2015).

District officials are tasked with enforcing national policies defined by the central government, but they have some freedom in how these policies are interpreted and implemented at the local level. National policies to eliminate shifting cultivation had been interpreted by District officials in Pak Ou as a prohibition on the cultivation of upland rice. Although this is not part of national policy, district

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<sup>7</sup> The categories *Lao Loum* (lowland Lao), *Lao Theung* (midland Lao) and *Lao Sung* (Highland Lao) were developed by the government to encourage a sense of national identity among the many different ethnic groups within the Lao nation-state. Each category includes many distinct ethnic groups, classified together based on stereotypes of land use and location of villages within the mountainous topography.

officials in Pak Ou had asked farmers to sign formal contracts agreeing to stop cultivating upland rice by a specific year (the latest date being 2010, although when I returned in 2012 rice was still being cultivated in the uplands). Many farmers expressed fears that their upland rice crops would be burned as opium fields had been in previous years. The threatened ban on upland rice cultivation had prompted a local rush for land suitable for developing lowland rice terraces by villagers with the capital and labour to construct and maintain these.

Officials from the District Agriculture and Forestry Office (DAFO) began implementing the LFAP in Pak Ou District in 2000, and its implementation was ongoing at the time of my research. By 2006, the program was fully completed in all easily accessible well-established villages along the road. In these villages, territorial boundaries had been demarcated, landscapes had been zoned into different forest types, land-use and forest classification maps had been posted on wooden boards, and two or three upland parcels of approximately 1 ha each had been formally allocated to individual households. However, land allocation lagged behind in remote villages that were difficult-to-access and in roadside villages that were sites for resettled villagers from elsewhere where land claims remained uncertain and disputed. This created spatial pockets of assumed state 'legibility' in roadside villages where the LFAP had been completed, adjacent to territorial spaces of 'illegibility' where lands continued to be managed under customary tenure arrangements. These formal/state and informal/customary spaces and property systems interacted 'homeostatically', creating 'hybridized' socio-spatial territories in which state and customary laws were negotiated, manipulated and combined. The boundaries between 'state' and 'non-state' spaces and institutions became ambiguous as formal and customary understandings and practices for asserting territorial rights and property claims articulated with one another. Because remote and newly resettled villages were all ethnic minorities - primarily Khmu but also Hmong - the impacts of the temporal and spatial fragmentation in implementation of the policy had a distinct ethnic dimension and intersected with pre-existing asymmetrical economic relationships, particularly between the Khmu and the roadside Lao and Lue. The following cases describe how the implementation of the LFAP has been implicated in land grabs within Pak Ou District, describing how and why Khmu villagers are particularly vulnerable to dispossession.

## **Case 1: Inter-village and inter-ethnic processes of accumulation and dispossession**

In 2006, Ban Houay Song<sup>8</sup> was a small village of 42 households. Village houses were gathered on a narrow strip of land bounded on one side by the Nam Ou River, and on the other side by National Route 13. The fields were located in the mountains on the opposite side of the highway from the hamlet. The village population was predominantly Lao Tai (*Lao Loum*), with a small population of Lue (*Lao Loum*) and Khmu (*Lao Theung*). Ban Houay Song is surrounded by several Khmu villages located off the road further into the hills or that had been recently resettled along the road. These Khmu villagers held territory and agricultural lands adjacent to those of *Lao Loum* villagers from Ban Houay Song.

The demarcation of Ban Houay Song's territorial boundaries by the LFAP was completed in 2000 and the formal allocation of individual upland fields was officially enforced in 2003. Although legally each household was entitled to two or three hectares of uplands per adult labourer in the household depending on if the household owned paddy fields, in implementation this was interpreted as two or three upland fields of one hectare per household. Households who had customary rights to more than two or three fields were allowed to choose which plots they wanted to keep, generally keeping fields that had better soil quality, less steep slope and that were closer to the road or to trails that were large

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<sup>8</sup> The names of all villages in this article have been changed.

enough for a small tractor to make it easier to transport crops. Households that had owned many parcels of land redistributed some of their fields to their relatives and children so that the best lands remained in control of the family. The remaining parcels were put into a lottery and distributed randomly to households who had less land or to new families. Land that was considered too steep for cultivation was zoned as protection forest, with the intention that swidden fields in this area would no longer be cleared for agriculture. As in all villages, an area of land had been zoned as preservation forest.

TLUCs had not been issued for swidden land at the time of this research.

Villagers in Ban Houay Song had mixed opinions about the impacts of land allocation in their village. Although a relatively well-off village compared with the neighbouring Khmu villages, Ban Houay Song had only a small territory and land access was already constrained prior to the LFAP. Land allocation had reduced the amount of land to which some households had formal access, and all villagers were struggling with the ecological and livelihood impacts of reduced fallow periods, particularly increased labour demands because of weed infestation, declining yields of rice and other upland crops because of soil degradation, and a shortage of large wood for fencing animals out of the fields and for firewood because there were fewer larger trees. There was also no longer a place for grazing animals since all plots had been allocated to individual households, which increased conflicts when animals got into the crops, and more villagers were keeping their large animals near the village.

The LFAP increased constraints on land access for some families while providing more land to others, and changed the distribution of land rights and land control within the community. Young households who had previously gained access to land by borrowing from grandparents, parents, siblings or cousins now held land in their own right as this was allocated to them by their relatives prior to land being redistributed randomly by lottery. This had the consequence of speeding up the process of inheritance, giving adult children ownership rights to land while their parents and grandparents were still living. Prior to land allocation, although adult children could use and work together on their parents land, they often would have to borrow the land and would have needed to ask permission first. Because of land redistribution, households that were newcomers to the village were able to access more land for themselves than prior to the LFAP.

Farmers in Ban Houay Song were suffering from the land use restrictions increased by the LFAP and were struggling to intensify their agricultural systems. However, in spite of experiencing many of the widely cited negative livelihood impacts of the LFAP, most villagers were surprisingly positive about the program, claiming it had reduced land grabbing and conflicts over land rights within the village. This perspective was sometimes held even by households that had lost land in the process.

Many people say good things about land allocation. I think land allocation is a good thing because we won't snatch land from each other now... Before land allocation, some people had 4-5 fields and didn't give them to others. Some people didn't have any, but had still not been given land. And some people had more land and some people had small areas of land and weren't given land...If there had been no land allocation, because my wife's grandfather is still alive, my wife would not yet have inherited land and we would need to borrow land from a cousin. If we wanted new land for ourselves, it would be very far from the village (more than one hour walk). Before land allocation, the grandfather owned many fields. After land allocation, he kept three land parcels and gave the rest to children and cousins (Lao villager who had moved to the village when he married a girl from Ban Houay Song and gained access to land from his in-laws)

Before land allocation, my family had 7-8 fields. But after land allocation, we had to give

some of our fields to other people – we kept the best ones. We gave the fields to new families, tried to give them to our relatives if possible.

One reason for the positive assessment of the LFAP was that the negative livelihood impacts were buffered by on-going informal land transactions with neighbouring Khmu villages. Although Ban Houay Song villagers highlighted their compliance to LFAP restrictions within their village territory and claimed formal rights to only two or three upland parcels, when describing their actual land use, it was clear that many households were using more land parcels than officially recognised. These ‘extra’ parcels were located in the ‘illegible’ territories of neighbouring Khmu communities where the LFAP had not yet been completed either because they were far from the road or had incorporated newly resettled villagers so land rights were unclear. Lao and Lue farmers gained access to the lands of their Khmu neighbours through informal purchase or in repayment for debts. Many impoverished Khmu households sold land in order to pay off subsistence debts incurred during periods of rice shortage or in response to immediate cash needs for emergency medical or subsistence expenses. Some Khmu from remote communities who had been forced by the government to resettle their houses to Khmu villages adjacent to Ban Houay Song territory had borrowed money from *Lao Loum* villagers to hire tractors to move their household goods (and often the houses themselves). Many of these households sold some of their land to villagers in Ban Houay Song in order to pay off their debt or in direct exchange for the use of a tractor. These informal land transactions particularly benefitted the better-off Ban Houay Song farmers who held a dual role as traders or middlemen and regularly purchased crops from Khmu in remote villages, transporting these by small tractor to the roadside for resale to traders travelling along the roads, or to Luang Prabang town for resale to central traders for eventual export to neighbouring countries. Some of these middlemen had accumulated a significant number of land parcels from neighbouring Khmu territories as debt repayment (often for debts as low as 300,000 kip (US\$30.00)). This land was often better quality than the land in the roadside villages or was valuable because it could be converted to lowland paddy. These fields, located in neighbouring Khmu territories, were sometimes resold to other roadside Lao or Lue villagers who were suffering from the land restrictions of the LFAP and seeking to extend their land holdings outside of their own village territory. There was a perception among the Lao and Lue that the Khmu had a lot of land, and also better soils. Their position of relative poverty compared to the Lao Loum was often attributed to ‘laziness’.

The Khmu have a lot of land because they don’t have a large population. However, in Ban Houay Song there are a lot of people so we cannot have a lot of land, therefore we get land from the Khmu.

Ban Houay Song villagers were adamant that they were adhering to the land use restrictions imposed by the LFAP. However, for many Ban Houay Song households, this was only true within village territorial boundaries. The purposes of the policy - to provide secure land tenure, restrict village territorial lands and promote sedentary agriculture – were undermined by local practices and ongoing informal land transactions between villages where land allocation had been and had not been completed. While tenure security had increased within the village (and land conflicts had decreased), the spatial and temporal fragmentation in the implementation of the policy had exacerbated land dispossessions in neighbouring Khmu villages where the policy had not yet been completed. Households in Ban Houay Song compensated for the ecological constraints imposed by the LFAP by acquiring land outside their village territory from their economically marginal Khmu neighbours where land was perceived as being available and was not yet allocated to households. The livelihood

constraints imposed by the LFAP combined with the relative wealth of the Lao and Lue in comparison to the Khmu had increased the number of villagers seeking to enforce 'informal' claims to Khmu lands, creating new tenure insecurities that were ethnically and spatially defined. Forced resettlement indirectly increased vulnerability of certain Khmu households to land dispossession through debt accumulation. The carefully documented and mapped land use of Ban Houay Song undertaken by the LFAP failed to account for these informal transactions, which had in practice extended the land claims of Ban Houay Song villagers into the territories of various neighbouring Khmu communities.

## **Case 2: Transformation of customary tenure and 'grabbing the right to exclude' in a Khmu village**

Ban Samsun is a small ethnic minority Khmu community of a mere 54 households, which in 2006-7 was located a two hour hike into the mountains from National Highway 13. A road has since been built which connects the village to the main highway. The entire territory of Ban Samsun, including 'privately held' lowland rice paddy fields, is legally classified as 'state forest'. The territorial boundaries of Ban Samsun were formally demarcated by DAFO in 2003 as the first step in the Land and Forest Allocation program (LFAP), and were embraced by villagers who interpreted this as official recognition of village rights to the land within these borders. Once the borders were demarcated, the village headman was instructed to allocate three land parcels of 1 ha each to each household. However by 2006 the final stage of the LFAP had not been formally implemented by state officials, and villagers continued to use land according some form of 'customary tenure'. Even though the privatisation step of the policy had not been implemented in the village, the concept of exclusive 'private' property that is embodied within the LFAP was influencing local perceptions and practices of property rights and leading to increasing enclosure of land by certain Khmu households. This was exacerbated by other state policies in the district that had heightened local concerns of future land scarcity and had increased the market value of flat swidden land for lowland paddy development.

According to the customary tenure system in Ban Samsun, primary forest is freely available to any villager who wants to clear the land for cultivation unless the area has been specifically protected as the village cemetery, for watershed maintenance or has particular spiritual value. 'Pioneer rights' to specific parcels of land (*bon*) are gained through the initial labour of clearing primary forest, and the resulting forest-fallow (*pah low*) becomes the property of the person who first cleared it. This initial forest clearing also involves rituals to appease the spirits (*phi*) who are considered to be the original owners of the land, transferring land rights from the spirit world to the person who cleared the land (essentially to the human world). These property rights are not exclusive, but are 'privileged rights' that grant the new 'land owner' first choice to clear and cultivate that *bon* in future years.

Because of the nature of swidden systems, in a given year households only are only able to cultivate a small portion of the land to which they have rights, leaving the other areas fallow. Each year, most of village territory is left as forest-fallow and is used communally for hunting and gathering and as grazing land for domestic animals. The amount of land (or number of *bon*) cultivated by a household each year is limited by their access to labour, primarily for weeding and maintaining the crop as it is growing. Before villagers begin the process of clearing the fallow for cultivation, households with privileged pioneer rights have first choice of where they plant that year, and mark their intention with a *taleao* - a 'star like' structure of woven bamboo. Once all households with privileged 'ownership' rights have marked the areas they wish to cultivate, the remaining fallow-forest land may be claimed for cultivation of annual crops by any other villager regardless of social

connection and with no obligation of rent or a share of the crop<sup>9</sup>. In principle, ‘privileged pioneer rights’ are maintained no matter how long the fallow has been left to re-grow or who has cultivated land in the meantime, so long as the owner makes his claims known through marking or simply through local discussions. Sometimes pioneer rights are allowed to lapse over time if owners don’t maintain active interest in the land, allowing others to lay priority claims. Property rights to land are thus gained through the initial input of labour in clearing the forest, but are maintained through repeated assertion of the claim and the recognition of its legitimacy by others in the community, rather than by continued land use and even if the labour of others is invested in re-clearing the area in subsequent years.

In Ban Samsun, all land that has once been cleared of primary forest is locally recognised as someone’s property, and because men are responsible for clearing and burning the land they hold initial pioneer rights. However, rights to specific *bon* may be passed down to descendants (both male and female) or to other kin, and often become subject to overlapping and ranked ‘priority’ claims within kinship groups. Because of displacement during the war, Ban Samsun is a relatively young village, and the current Khmu residents did not resettle the site until 1975 after the war had ended<sup>10</sup>. Therefore, rights to ‘*bon*’ had not yet passed through many generations, and in most cases the original owner was clearly remembered or still living and kinship lineages were undisputed. This is different from many other swidden communities in Southeast Asia, where people have lived in the same place for many generations and the ancestry of original pioneer claims is forgotten, constructed and contested (see for example, Li 2002c, for her discussion of upland swidden rights in Sulawesi, Indonesia).

Although local ‘moral economy’ (Scott 1976) dictates that all villagers in Ban Samsun have rights to cultivate at least some land within village territory, this does not imply that all households have equal access to the best and most coveted lands. The earliest settlers in Ban Samsun first cleared forest land with good soils within easy walking distance of the village hamlet and, unless specifically protected by the village, almost all forest-fallow land in close vicinity of the hamlet has been cleared at some point and is considered to be ‘owned’ by someone. Most of these original settled households had accumulated privileged rights to many of the best land parcels near the village, and claims to *bon* near the hamlet were well defined and strongly adhered to. However, with increasing distance from the village, borders of fields and territories are fuzzy and claims to individual *bon* become looser and are often allowed to lapse. Land shortage was not yet perceived as a serious constraint at the time of the research, and on the steeper slopes and at the edges of village territory, there were still areas of uncut primary forests that were available for pioneer claims. More distant fields were most often cleared by

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<sup>9</sup> The complexity of tenure in Ban Samsun can be illustrated by providing an example of a ‘swidden biography’ for one particular land parcel (*bon*) that belonged to Thong Bai, one of the original inhabitants of Ban Samsun. The *bon* had last been cultivated in the previous year (2005) by his friend Thong Kham who had cultivated it for that year only. Thong Kham explained that he had chosen this place to plant because there was no land allocation yet and he could take whatever land he wanted. He described the land as being young fallow (*pah low on*) with a lot of weeds (*nya bin khao* – ‘weeds are rice’, i.e. growing as if planted, like rice), but as having very good soil that was good for rice. The *bon* actually belonged to Thong Bai, who had cleared the land from forest more than 10 years before (he didn’t remember the exact year). Thong Bai had cultivated it for only one year, and since this time, between various lengths of fallow, it had been cultivated by five different people; Niyem (locally known as the crazy man), then by the village headman, then Khamsong, then Potah, and finally in 2005 by Thong Kham. None of the villagers who had cultivated the land since it had been originally cleared from forest were close relatives of Thong Bai. Throughout this time, Thong Bai remained the recognised owner of the land, even though he had not actually cultivated the area himself for more than 10 years.

<sup>10</sup> It is not clear whether customary rights to specific plots of land before wartime displacement were maintained when the villagers returned to the site, however it seems unlikely since the village was very small at this time, and land was easily available.

new, younger households<sup>11</sup> whose parents and siblings held stronger claims to nearby fields, and by new immigrants who had no customary land claims or kinship links to access fertile land closer to the hamlet. Land more distant from the settlement generally had better and more fertile soil, fewer weeds and was more productive because fallow periods were longer or because it has been recently cleared from primary forest. However, these fields were sometimes a two hour hike away from the village, and the benefits of better soils were balanced against the time demanded for travelling back and forth to work in the fields. Because labour was a constraint, the extra travel time was a burden. It was also more difficult to transport heavy crops back to the village and more distance plots were difficult to protect from wild animals and from theft, which influenced the types of crops households chooses to plant in farther fields. In Ban Samsun, households without privileged claims were often left with poorer soils, were prevented from planting permanent crops like teak or pineapples on land that was ‘borrowed’, or had to plant areas farther away from the settlement where there was still unclaimed and uncleared forest or fallow land for which the owners had allowed their claims to lapse over time.

Various state policies being implemented within and outside of Ban Samsun were having a significant influence on customary tenure systems within village territory. The implementation of the LFAP and resettlement in the surrounding area, combined with government promotion of cash crops and lowland paddy rice and the threat of prohibition of upland rice cultivation in all villages, were motivating a shift towards more exclusive and privatised land claims by earlier-established Khmu households who had privileged rights to many of the best *bon*. Even though land scarcity was not yet a problem for villagers, these policies were creating an anticipation of future scarcity and conflict, and at the same time had increased land value and opportunities for land sales to neighbouring communities suffering the effects of LFAP (as described for Ban Houay Song) and who were seeking land for lowland rice paddy development in anticipation of the ban of upland rice cultivation.

## Grabbing the right to exclude

At the time of my research, whether allocation of individual household plots had been officially enforced in Ban Samsun was locally contested. From the perspective of the District government, Ban Samsun had not yet undergone land allocation because the final step in the process had not yet been formally implemented. According to district officials, although community borders had been officially demarcated, Ban Samsun residents did not have secure territorial rights and their farmland belonged to the state. Similarly, neighbouring villages perceived Ban Samsun territorial lands as ‘not yet allocated’ and therefore freely available, and Ban Samsun became a site of immigration for land-short and displaced people from other areas. As a recent Hmong immigrant articulated; ‘*For two years*

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<sup>11</sup> According to Khmu custom, newly married households usually live in the house of one of their parents during their first few years of marriage, contributing their labour to help cultivate the parent’s land especially if the parents are old or sick. Young couples most often initially live with the girl’s family for the first few years of marriage, for a period of ‘bride service’ during which the boy helps pay off bride price, after which they tend to move permanently to the husband’s home village (Ireson1996, Évrard 2006). However, in Ban Samsun, while most often newly married couples lived with the girl’s parents, this was not necessarily the case, and the pattern of ‘patrilocality’ was not strict. Where a couple chose to settle often depended on where they had better access to land and also on how many other children their respective parents had to help them. While the couple lived with parents, they used land belonging to the parents, and privileged claims to any land they cleared went to the parents’ household. Once they moved out of the house, often after they had their first child, the new household usually cultivated independently from the parents, sometimes using land belonging to their parents or clearing elsewhere. Being a new household was identified as an indicator of poverty by the Khmu in Ban Samsun, not only because they had young children to care for and a higher household dependency ratio, but also because unless they were closely related to someone with rights to many *bon*, young couples often had to clear land that was farther from the village, or borrow land close to the village that belonged to relatives but often had poorer soil.

*already I've cropped land here in Ban Samsum. I came and got land from other people who gave it to me because there is no land allocation yet'. Most recent immigrants identified the availability of unallocated land as an important reason for deciding to move to Ban Samsum. Furthermore, the village headman had a policy of encouraging immigration in order to increase the size of the village to decrease its vulnerability to forced resettlement and in hopes of attracting state investment in village development. Ban Samsum was known to be a particularly impoverished village by district standards, and with only 54 households and no road connecting it to the main highway, it was extremely vulnerable to being resettled in the name of development, poverty alleviation and provision of services. Although the concession of rights to parcels of land to new immigrants sometimes created conflict within village boundaries, the headman's acceptance of immigrants formed part of a pithy and intentional strategy to strengthen Ban Samsum's territorial claims against dispossession by the state and other interests.*

Long-term Khmu residents of Ban Samsum gave conflicting narratives about whether or not land allocation for individual land parcels (*bon*) had actually been implemented in the village. The village headman insisted that village leaders had formally allocated land to individual households following the demarcation of village borders, and that each household was now paying taxes for three plots of uplands, but maintained that this had not been formally implemented by the government. His emphasis on the compliance of the village to the LFAP was part of his broader attempt to secure village territorial claims against state expropriation of village land for a Chinese rubber concession (see McAllister 2015). In other interviews, he explained that he was waiting for the government to implement land allocation at which time he would lay claims to plots of land currently owned by the Deputy headman. In spite of lack of formal state enforcement of the final step of the policy, many villagers described their access to land in terms of 'before land allocation' and 'after land allocation'. 'Before land allocation', they asserted, anyone could clear and cultivate any land that had not been marked for use that year by the owner, and no permission, rent, share of the crop or specific social connection was required. However "*... now this is not true. Before you didn't have to ask. Now we have land allocation so cannot do like this*".

Inherent in the LFAP is the concept that land can be privatised and disembedded from social relations, and that private land entails the right to exclude others from its use even if the owner is not using the land themselves. According to the Khmu, this was not part of their customary tenure system prior to the introduction of the LFAP in the area. The LFAP thus introduced the concept of 'mental' enclosure – asserting one's 'will' to exclude others from land as a 'property right', and expecting that this right will be respected by others. The privatisation rationale provided a new narrative for justifying exclusion of some Khmu villagers from access to coveted land in Ban Samsum even though this contradicted customary property rights practice. 'Before' and 'after' land allocation was identified as the point of rupture. Some of the earlier-established Khmu households who held pioneer rights to many *bon* had started to apply the 'privatisation' rationale embodied in the LFAP to legitimise excluding other villagers who had previously held customary usufruct rights to the land. Citing the implementation of land allocation, they demanded that other villagers first ask permission before using their *bon*, sometimes refusing usufruct rights even if they were not cultivating the land themselves that year. This 'grabbing of the right to exclude' constituted was a new form of land enclosure provoked by the ideas inherent in the LFAP. However, local interpretation of the policy was selective. Households with pioneer rights to many land parcels used the policy to legitimize greater exclusivity of their claims to many *bon* while ignoring the redistributive aspect which would have forced them to give some of this land away. Most of the households who were granted usufruct rights to owned *bon* were close relatives, and fields were increasingly used in swidden rotations by different members of the same family. It had become more difficult for villagers without close kinship and friendship connections to gain usufruct rights to the more fertile and coveted fields.



A number of concurrent factors may have motivated the ‘grabbing of the right to exclude’ and the subsequent enclosure of land access within particular kinship and social networks. The district government had made it clear that formal allocation of individual plots of land would be enforced in early 2007. The Khmu had observed that in neighbouring villages where the policy had been completed, villagers had been able to keep the best *bon* for themselves or distribute these to their relatives, as described for Ban Houay Song. In adopting the right to exclude, Khmu households with pioneer rights may have been trying to reinforce their claims to the best parcels of land in order to retain rights to these lands and pass on the remaining best parcels to close relatives when the policy was officially enforced.

Another factor that may have been influencing the move towards more exclusive land holdings was the increasing village population and land pressure resulting from immigration and growing families. Following the arguments of Boserup (1965), increasing populations and land scarcity lead to intensification of agriculture and more privatised land holdings. Although swidden agriculture had not been greatly intensified in Ban Samsun and the population remained relatively low with respect to land resources, half of village territory had been expropriated that year by the district government for a Chinese rubber plantation concession, and this had increased local *anticipation* of land scarcity and conflict in the future. While most farmers were not yet experiencing serious difficulties in accessing land, many feared that this was going to be a problem in the near future, and were anticipating conflicts within the village over land rights. The deployment of state narratives derived from land allocation in order to enforce more exclusive land claims can be seen as a way of protecting future rights of access rather than responding to immediate scarcity.

The increased value of land may also have provoked these ‘mental’ enclosures. When I returned to Ban Samsun for a short visit in 2012, I discovered some previously poor ‘older’ Khmu, who I knew had held privileged rights to many *bon* in 2006, had been able to build concrete houses and had earned the income from renting out their *bon* to others. The construction of a new road had brought in more immigrants to the village and demand for land had increased. The concept of privatisation embodied in the LFAP combined with new economic opportunities for earning money through land rental had increased local perceptions of land as a commodity that could be disembedded from social relations and used for commercial purposes. I am not sure if the land was being rented to new immigrants or to Khmu from the same village.

## **Grabbing the right to sell**

Another form of dispossession and accumulation that was occurring in Ban Samsun was transpiring between the Khmu and ethnic Lue farmers from the adjacent roadside village of Ban Nanpeng where land allocation had been completed. As explained earlier in this paper, District officials in Pak Ou had been attempting to prohibit the cultivation of upland rice in order to push farmers to comply with national policies to eliminate shifting cultivation and to grow cash crops in the uplands. Concurrently, the district was actively promoting the development of irrigated rice fields. The combination of these policies led villagers who had resources to scramble to buy up land suitable for constructing paddy fields. In the Lue and Lao villages along the road, all land suitable for paddy development had already been claimed and converted, motivating Lao and Lue households to seek land suitable for paddy development in more remote neighbouring Khmu villages such as Ban Samsun.

They (the government) are going to stop people from planting rice in the uplands, and people in Ban Nanpeng are looking for lowland fields – also because you don’t have to weed lowland rice fields. (Lue Farmer from Ban Nanpeng)

Khmu from Ban Samsam with pioneer ownership claims to *bon* had been selling flat swidden land for the development of lowland rice paddy fields to villagers Ban Nanpeng prior to the introduction of state policies to eradicate swidden rice cultivation. Some Lue villagers claimed that they had purchased land in Ban Samsam for paddy development as early as 1987<sup>12</sup>. However, these transactions increased after the policies were initiated. At least 13 places suitable for paddy construction had been sold to Lue households from Ban Nanpeng, eight of which had already been fully constructed lowland paddy fields by the Khmu at the time of sale.

Even the headman had sold his lowland fields, and also Thong Kheo, the traditional headman, is planning to sell his teak garden and land – which had more than 20 trees. The only Khmu living in Ban Samsam who has lowland paddy rice now is Bounsavath, and he is originally from Houay Leuang and has only lived in Ban Samsam for 5-6 years....(According to Ounheuan, Bounsavath had also bought the land in 1987, paying only 40,000 kip (US \$4.00) at the time, and it was already built as a paddy field when he bought it).

According to many of the Lue who owned paddy fields in Ban Samsam, the Khmu were selling their lowland fields because they are lazy.

The Khmu don't like to work lowland rice fields. They don't sell because they are short of rice, but because they don't like to work paddy rice... The Khmu in Ban Samsam are too lazy to work paddy rice. Even the headman sold lowland area.

This explanation reflects prejudicial ethnic stereotypes about the Khmu commonly held by lowland ethnic groups in the area. It also mirrors state representations that link different ethnic groups to specific topology and livelihood strategies, which identify the Khmu as being among the *Lao Theung* (middle hill Lao) who practice swidden cultivation and the Lue (identified as *Lao Loum* – lowland Lao) who practice lowland paddy rice cultivation. Paradoxically, most of the Lue who accused the Khmu of being too lazy to work lowlands had hired Khmu labourers to do the bulk of the construction work. Representing the Khmu as lazy could be viewed as one way they legitimized their appropriation of Khmu lands.

The Khmu themselves offered a different explanation. Initial sales of fully constructed paddy fields were provoked by an epidemic that killed off all the large buffalo in the village<sup>13</sup>. Without their animals, with little capital to buy tractors and with fear of reinvesting in expensive animals that could again be lost to disease, the Khmu could no longer plough their paddy fields. While some households kept their lowland areas but cultivated them as swidden, many sold their land to villagers from Ban Nanpeng at this time. The village headman further explained that 1997-1998, when many lowland fields were sold, was a year that the village suffered a serious food shortage. At the time, the land was sold for only 20-30,000 kip (US\$2-3).

Most Khmu sold their lowlands before they realised that the state was going to eliminate upland

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<sup>12</sup> Local memory of dates needs to be interpreted with caution. This date could be completely incorrect and these sales may have occurred much later.

<sup>13</sup> The death of the large animals also had a spiritual impact, since these were important for ritual sacrifice to *Phi* (land spirits) and therefore, some people attribute bad luck, poor crops, illness, etc. to their growing inability to appease the Khmu spirits.

rice cultivation. However, at the time of my research, the market value of the remaining fallow land suitable for lowland paddy had increased because of anticipation of the district-level ban on upland rice cultivation, and Lue households from Ban Nanpeng were increasingly buying up land and building paddy fields in Ban Samsum territory, often hiring the Khmu as labourers. All lands within Ban Samsum, including lowland fields, are legally classified as state forests, and buyers cannot obtain formally recognised land titles even if they convert the land to paddy fields. These sales occurred informally and were not recorded in formal cadastral records. Although it is widely argued that formal land titles provide greater tenure security and limit overlapping claims, facilitate land markets, increase land value, and enable farmers to access credit for investing in land by using title as collateral for bank loans (Bruce 1993; Maxwell and Wiebe 1999; de Soto 2000), customary pioneer rights to individual *bon* in Ban Samsum provided sufficient tenure security to allow recognised owners to sell fallow land to people outside the community in spite of overlapping usufruct claims. Furthermore, Lue villagers were confident that these sales would be respected by Ban Samsum villagers. In fact, the increased value of land and existence of a land market had themselves motivated those with 'privileged' rights to *bon* to assert more exclusive claims in absence of processes of land formalisation.

Piecemeal sales of land by Ban Samsum farmers to people in Ban Nanpeng have gradually excluded the Khmu villagers from all land suitable for paddy rice cultivation within their own territory. The appropriation of their flat areas by villagers from Ban Nanpeng places the Khmu in a vulnerable position. If the district enforces the elimination of upland rice cultivation as planned, the Khmu will have no land for lowland rice and will be forbidden from growing their main subsistence crop in the uplands and become increasingly dependent on cash crops in a very imperfect market.

### **Case 3: Allocation or appropriation? State land grabbing and the implementation of the LFAP**

In Ban Houay Theung, there is a project to plant fruit trees. Ban Houay Theung is a Khmu village, on another river, not along Pak Ou. It is a Yao (*Lao Sung*) man who owns the fruit trees and this is a private project. The Yao man surveyed the land and got permission from the District to plant fruit trees there. This land used to be the land of Ban Houay Theung for many years. The government has new land for them, and they will have land allocation. So, the state took this land and gave it to the Yao man to plant fruit trees. He took 40 hectares. The government wants people to see him as a model star farmer – to show other farmers that by planting fruit trees, you can have enough rice and can have money to spend. Also, we want people to change and have new jobs. If they are working in the uplands, we want them to plant integrated fruit trees. The aim is that they plant fruit trees because we want people to stop planting rice in the uplands – want them to plant fruit trees, paper mulberry, and other things because they only have three plots. It's fine also if they plant Job's tears and sesame. These are also traditional crops for the uplands, because if you plant sesame, corn or Job's tears along the edges of the uplands...

This is happening just this year. The village that was there already was planting on that land. The government had to tell them and explain to them that this land is state land and will be taken for fruit trees, and they agreed with the government.

Q. What would happen if the village didn't want this?

But then the government will order them, and they will have land allocation. Maybe in the first year and second year, the people won't like this. But then when the income comes in, they will like this, because they will get income from this. Also, because they have planted rice now for many years, and they are still poor and do not have enough rice to eat. Actually, the farmers don't want to give away the land. But the government wants them not to do shifting cultivation, and wants them to know how to plant cash crops so that they can earn money for living. Want to stop shifting cultivation.

This narrative, recounted to me by a district official (from an unnamed district that was not Pak Ou), illustrates how the LFAP was deployed to accomplish a thinly disguised land grab on the part of a local official in collaboration with a Yao business man. The expropriation of land belonging to the Khmu village of Ban Houay Theung for the development of a fruit tree orchard was legitimized by the state official by repeating national narratives for modernising upland agriculture, alleviating poverty and eliminating shifting cultivation. The orchard, he argued, would provide both wage labour opportunities and a 'model' for the Khmu farmers to copy so that they would stop planting rice and become involved in commercial agriculture. Furthermore, he asserted that because the land had not yet been allocated, it belonged to the state. The allocation of land to the Yao man was planned for that year, before the Khmu cleared and burned their fields for planting. The Yao man would be given a contract to lease 40 hectares of land from the state for 30 years, so would essentially 'own' the land and pay taxes on the land to the government. The district official also had personal business interests in the project. The area was about five hours from the road, and had a cave and water spring, and could be accessed by boat from a river popular with tourists. The official hoped that tourists would be attracted to the area, and would want to walk to see the fruit trees, so there would be income from fruit and from tourism. He was planning to start a small tourist business in collaboration with the Yao entrepreneur.

The land that was allocated to the Yao man – it has very good soil, and we will plant fruit trees. We will plant the fruit trees near the spring water because we want two things from this – if plant the fruit trees up there, can sell the fruit and can open the area up for tourists. We will build a road so that the fruit can be sold anywhere because 'the fruit is not enough for the market' [the demand for fruit is higher than the current supply].

The first year, I will do an experiment to see what kinds of fruit will grow well, and then will grow this kind of fruit. Because now we bring fruit from Thailand. Mangos, tangerines. So it will be easy to sell Lao fruit. This is my idea – I am not looking for another project [to help]. I have also had fruit trees before, and sell fruit and get a lot of money each year.

DAFO officials who are responsible for enforcing implementation of the LFAP are the same individuals who are tasked with supporting state policies to transform subsistence highland swidden agriculture to commercial sedentary cropping. This opens space for manipulation of the LFAP to legally appropriate land in the name of development. Even after village territorial boundaries have been demarcated, some state officials have argued that the land belongs to the state, and have applied the LFAP to redefine village territorial boundaries, 'legally' emptying land for uses deemed more 'economically productive' or 'ecologically sustainable' and providing it to companies or individuals with more economic and political power. The orchard 'project' described above is firmly embedded

within and supported by the national legal framework and complies with the modernisation policy promoting cash cropping in the uplands.

The practice of using the LFAP to appropriate land for the personal benefit of a local official described above was consciously modelled after the use of the policy to legally appropriate village territory in Ban Samsun for a Chinese rubber concession approved by the district governor, a case which I have described in detail elsewhere (McAllister 2015). In this latter case, although the village boundaries had been formally demarcated by the LFAP in 2003, because the final step of allocating private household plots had not been officially implemented, district officials argued that the land still belonged to the state. By formally allocating private household rights to land parcels within only half of the village territory, the government was able to appropriate over half of the best village lands for lease to the company, essentially redefining village territorial boundaries that had been officially demarcated by the LFAP several years earlier. The Khmu in Ban Samsun had successfully undermined the expansion of the rubber trees in the concession area through various forms of rightful and everyday resistance and had eventually reclaimed the land for swidden cultivation. DAFO officials involved in implementing the LFAP to free up land for the rubber concession did not benefit financially from the process themselves, but were complying with the orders of more senior district officials and perceived the project as a positive development intervention. Eventually, in the face of local resistance, a new district governor acted in support of Khmu claims to protect their territorial rights. However, the granting of this concession put in place a ‘model process’ that set a precedent for lower-level state cadres who had observed the practice of using LFAP to acquire land for plantation concessions to deploy the policy to grab land for themselves at a smaller scale, and to similarly justify this using state narratives of upland economic development and poverty alleviation. These ‘official’ small-scale land grabs occur below the radar of the province or central government. Khmu villagers living in remote villages are particularly vulnerable to dispossessions accomplished through the (mis)use of the LFAP, not only because the policy has often not been fully implemented in these areas, but also because the Khmu are identified as impoverished shifting cultivators, and their displacement can be legitimized in the name of poverty alleviation through provision of wage labour and eradication of shifting cultivation.

## Conclusion

Although couched in a narrative of providing tenure security in order to motivate villagers to ‘improve’ their hilly land holdings and plant permanent cash crops, the implementation of the LFAP has created new insecurities for villagers in remote areas where land allocation has not been fully implemented. Because of their pre-existing economic and political marginality, Khmu ethnic minorities who live in these ‘still-illegible’ territories are particularly vulnerable to dispossessions exacerbated by land formalization and other state development policies. The transition from customary to formal tenure systems opens up new opportunities for land grabbing within and between villages. While the LFAP has (at least temporarily) created greater tenure security for young households and immigrants in roadside villages, since it has allowed them to gain ownership over land that they otherwise would have needed to borrow from kin, the spatial and temporal fragmentation of the implementation of the policy has decreased tenure security in neighbouring economically marginal Khmu villages. Impoverished Khmu villagers in areas where land is not yet allocated are selling land to neighbouring villages that are struggling with the negative ecological effects of the policy. Thus, the negative livelihood impacts of the LFAP in roadside villages are buffered by informal land purchases in neighbouring communities where the policy has yet to be completed. Khmu from remote villages and those who have been recently resettled are especially vulnerable to piecemeal dispossession of land through sales to neighbouring communities since they often incur debts because of rice shortage,

emergencies such as illness in the family, and to fund the movement of their belongings if they are forcibly resettled by the government. They are motivated to sell land to earn money or give it away in lieu of debt repayment if they cannot repay in cash or if they have a poor harvest. Paradoxically, it appears that the LFAP has enhanced the local land market, but for unallocated rather than allocated land. Furthermore, land formalisation programs such as the LFAP are implemented through informal local systems of power and within particular place-based political economies, and provide new legal opportunities and legitimating narratives for local officials to grab land for themselves or for more powerful entrepreneurs and companies. The increased value and demand for land resulting from the LFAP and other state development policies is leading to piecemeal and large-scale land dispossession in Khmu communities not only because land allocation had not been completed in their villages (creating the perception that their land is freely available or still belongs to the state), but also because of their pre-existing political and economic marginality.

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