



Contradictory Land Use Plans and Policies in Laos: Tenure Security and the Threat of Exclusion

RIKKE BRANDT BROEGAARD^a, THOUMTHONE VONGVISOUK^{a,b} and OLE MERTZ^{a,*}

^a University of Copenhagen, Denmark

^b National University of Laos, Vientiane, Laos

Summary. — Contradicting policies and overlapping property arrangements are common in many countries, opening doors for diverse interpretations by different actors. This requires better knowledge on how competing interests and actors interact and what determines the practical competition outcomes as demand for land intensifies and international actors get increasingly involved in regulating natural resources. Land use planning in Laos provides a case in point as it aims at strengthening tenure security, intensifying agriculture and sparing forest areas while other policies simultaneously promote agricultural development and agri-business investment that reconfigure land use and land access. Through national, provincial, district, village and household interviews, we examine how different land- and forest-related policies interact, and whether ongoing land use planning processes and land rights formalization increase tenure security. We show how government policies supported by international donors, and introduced to strengthen tenure rights for the rural population actually reduce villagers' legally permitted agricultural areas. Even if district-level land use regulations do not currently exclude local communities from their land, land use plans lay the groundwork for potentially excluding villagers from large land areas. We find that plural, contradictory regulations and policies, combined with existing power inequalities result in a “filter mechanism” that reduces the practical impact of legal instruments and safeguards aimed at strengthening the least powerful actors' rights. Our results add to other authors' arguments that political and legal changes are mediated by power relations, cultural norms and economic incentives, by highlighting that the dual-edged rights sword may actually end up paving the way for greater state control over future benefits derived from community areas classified as forest lands. This is especially relevant when preparing REDD+, which we show is likely to weaken rather than strengthen tenure security for rural populations.

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1. INTRODUCTION

Pressure on land is increasing in many parts of the Global South, as are concerns about future land scarcity and competition (Haberl *et al.*, 2014; Lambin & Meyfroidt, 2011), partly due to demands for land by domestic and foreign investors and new alliances in land management (Cotula, 2012; de Schutter, 2011; Deininger & Byrlee, 2011; Kaag & Zoomers, 2014; Margulis, McKeon, & Borrás, 2013; Schönweger, Heinemann, Epprecht, Lu, & Thalongsengchanh, 2012). These pressures tend to squeeze smallholder agriculture, forcing local actors to revise their strategies for gaining and securing access to land (Naughton-Treves & Wendland, 2014; Peluso & Lund, 2011). However, legislation on land access and land rights is often complex, contradictory, and only partially implemented and enforced, if at all (Lestrelin, Castella, & Bourgoin, 2012; Rigg, 2012; Sikor & Lund, 2009; Sikor & Müller, 2009), leaving an open door for the wide range of actors (i.e., smallholders, investors, government agencies, NGOs) engaged in the land sector to claim and contest rights to land and other natural resources. While the stated goals of governmental land use planning may be to achieve environmental improvements and strengthen tenure security for the rural population, the practical outcome of land and forest policies, combined with the priority given to economic growth and foreign investments, is often that strengthened rights to some types of land for rural people come at the cost of exclusion from other land categories (Adler & So, 2012; Biddulph, 2011; Ribot & Larson, 2012; Sikor & Nguyen, 2007; Suhardiman & Giordano, 2014). These developments are particularly strong in Southeast Asia (Cramb *et al.*, 2009; Fox *et al.*, 2009) and a country like Laos, where new plantations, mines, and hydropower-dams are expanding

(Schönweger *et al.*, 2012), enforcement of protected areas is increasing (Hall, 2011; Hall, Hirsch, & Li, 2011; Moore, Eickhoff, Ferrand, & Kheiwongphachan, 2012) and land use planning is highly regulated (Lestrelin *et al.*, 2012; Vandergeest, 2003), provides an apt case for studying contradictions in land use policies and their effects on the rural population's land rights, tenure security and livelihood. Here, different land use planning exercises have been the main tool for controlling local land use, often with considerable support from international development agencies (Ducourtieux, Laffort, & Sacklokham, 2005; Kirk, 1996; Vandergeest, 2003), albeit with severe limitations in implementation and enforcement (Vongvisouk, Broegaard, Mertz, & Thongmanivong, 2016).

Unexpected outcomes of such land use planning efforts may be the reinforcement of existing power structures and legal changes may not lead to improved access for the rural population, as shown by studies in Vietnam, which has implemented similar land allocation processes (Clement &

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Amezaga, 2009; Friederichsen & Neef, 2010; Knudsen & Mertz, 2016; Sowerwine, 2004; Thanh & Sikor, 2006, see also Ribot & Peluso, 2003). Additionally, land policies are often set in policy environments with contradicting regulations and discourses that are not only used to legitimize the selective implementation of rules, but also to *ignore* certain regulatory frameworks (Benda-Beckmann, 1995; Ribot & Larson, 2012; Rose, 1994; Sikor & Lund, 2009). This leads to fluid rules that are often reinterpreted, thereby preventing rights from being certain. For example, the multiple, contradicting land use plans and policies in Laos enable the state to maintain an open basis for claims for rights (and obligations), ready for reinterpretation and renegotiation (Suhardiman & Giordano, 2014). Different levels and sectors of government—reinforced by external actors—create competing rights regimes and which regime that gets the upper hand in the practical implementation depends on a complex interplay of power relations between actors, as well as on cultural norms and economic incentives (Lund, 2011; Sikor & Lund, 2009; Sowerwine, 2004; Thanh & Sikor, 2006). The ability, or inability, to use political and legal changes to claim land rights is related to the actors' connections and social and political status (Adler & So, 2012; Suhardiman, Giordano, Keovilignavong, & Sotoukee, 2015). With the increasing involvement of multiple actors in land use decisions in developing countries such as Laos, policymakers need a better understanding of how land access is influenced by land use planning and other regulations—not least in order to understand what might be the outcome of new initiatives such as REDD+ (Dwyer & Ingalls, 2015, see also Larson, 2011).

Inspired by legal pluralist scholars (Adler & So, 2012; Benda-Beckmann, Benda-Beckmann, & Wiber, 2006; Hall *et al.*, 2011; Meinzen-Dick, 2014; Sikor & Lund, 2009), this article analyses how different land policies and governance approaches change peoples' access and rights to land in Laos including though various processes of formalization of land rights. Yet, formalization of rights is a dual-edged sword, which includes some rights-holders (and, possibly, strengthens their tenure security) at the expense of others, who lose rights (Hall *et al.*, 2011). The case study takes place in a context of contradicting policies, a rapidly developing economy, and limited local participation in rights negotiation, not uncommon in one-party dominated states. Through analyzing past and current contestation of rights and regulations in practice, the article contributes to ongoing debates about the impact of legal instruments and regulation of natural resource access intended to strengthen tenure security (Deininger & Feder, 2009; Dwyer, 2015; Naughton-Treves & Wendland, 2014; Place, 2009; Ribot & Larson, 2012; Sikor, 2006; Sikor & Nguyen, 2007; Sjaastad & Bromley, 1997). It shows that multi-level and multi-sector analyses are needed to understand how often contradictory policies and rules, designed and implemented from local to international levels, interact and influence practical outcomes at the local level.

We also examine how the fluidity of rules raises questions about the effects on land rights of new land management tools such as REDD+ (“Reducing Emissions from Deforestation and forest Degradation + the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries” as defined by the United Nations Framework Convention on Climate Change (UNFCCC), http://unfccc.int/land_use_and_climate_change/redd/items/7377.php). Although REDD+ has developed from being a mechanism purely aimed at reducing greenhouse gas emissions from forested areas, it has, as its full definition above reveals, evolved into a development package that

requires reporting on how biodiversity conservation, livelihoods and access to land for local people are safe-guarded. However, multi-country studies indicate that REDD+ activities may be unable to solve important tenure conflicts (Larson, 2011; Sunderlin *et al.*, 2014), and there also are serious concerns that REDD+ may potentially lead to greater exclusion, rather than increasing access to natural resources, contrary to the good intentions spelled out in the texts emanating from the UNFCCC negotiations (Cotula & Mayers, 2009; Karsenty & Ongolo, 2012; Moore, Hansel, & Johnson, 2012; Naughton-Treves & Wendland, 2014; Ribot & Larson, 2012).

We begin by framing the theoretical landscape that we use for exploring access and exclusion, examining it through a lens of legal plurality. We outline the land use planning history in Laos in order to clarify how the current situation of uncertainty has evolved. Using the case of a district in northeastern Laos, we subsequently analyze the outcomes of multiple land use planning efforts in terms of land access and exclusion. Finally, we explore some potential implications, should REDD+ activities be implemented in the area.

2. PROPERTY RELATIONS, ACCESS AND EXCLUSION

Property is embedded in social, political and economic institutions and in order to create rights in practice, property must be recognized by others; a recognition that is expressed through enforcement of customs, conventions or laws (Macpherson, 1978; Rose, 1994). Without such recognition, property rights expressed in a law or a title have no practical meaning (Lund, 2002). Thus, property is essentially a relational concept (Berry, 1993, 2009; Roquas, 2002) *between* people *about* things (Bromley, 1989; Rose, 1994).

Property relations are dynamic, open to negotiation and renegotiation through social practices, and they form part of broader political, economic and cultural relations (Sikor & Müller, 2009, p. 1311). Mandates to define land rights may be shared or claimed by multiple authorities, whether formally or only in practice. The legal pluralist viewpoint pays attention to the coexistence of many types and sources of law used for claiming rights (Meinzen-Dick, 2014). It emphasizes that “state law is just one source of regulatory norms” (Adler & So, 2012, p. 85), that rights are negotiable (Benda-Beckmann, 1995, 2001; Berry, 1993), and that property and authority are mutually constituted (Lund, 2002, 2006; Sikor & Lund, 2009). From this viewpoint, regulation and law are not just a question of the written law(s), but as much about interpretations thereof, negotiations and persuasions (Rose, 1994). Property practices shape, and are shaped through every day practices of dealing with land and people, as well as through court rulings and political debates (Benda-Beckmann *et al.*, 2006; Sikor & Müller, 2009). However, rarely does the abstract state concepts of space and property fit with use of space in practice (Vandergeest & Peluso, 1995), and the “state” is not a single entity, because multiple sectorial agencies (each with multiple administrative levels) influence and have authority with regard to property (Geisler, 2006; Peluso & Lund, 2011; Sowerwine, 2004). This leads to situations where a dispute may potentially be settled within one of multiple regulatory frameworks or fora. Claimants may thus be able to “forum shop” and persuade the relevant audiences and authorities that the dispute must be settled in the forum (or regulatory framework) which is most positive toward their claim (Benda-Beckmann, 1981; Meinzen-Dick & Pradhan, 2002).

There is a subtle, but important difference between having a formal right to property and being able to exercise that right

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