

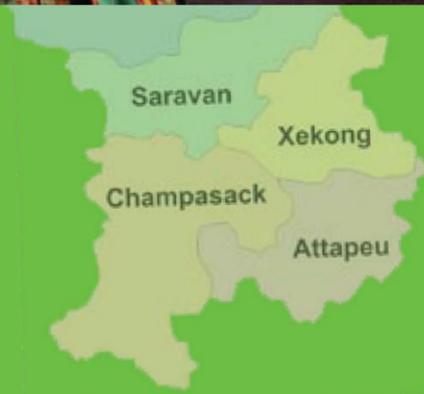


Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Customary Law and Practice in Lao PDR

July 2011

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Foreword

After proclamation of Lao PDR in 1975, the country opened new era of independence and true national ownership by Lao and Ethnic People. At the first stage, it was necessary for the Party and Government to primary focus on the rehabilitation of the national unity and economic recovery by implementing two strategic missions, namely: protecting and developing the Nation and the administration of the state was ruled by resolution, orders. After the Party has completely moved toward the new market economic policy in 1986, from central planned economy to market based economy, where variety of economic sectors encouraged; thus, the administration of the socio-economic by resolutions and orders was required to govern by the constitution and laws. Until 1991, the first constitution of the Lao PDR was promulgated, which was historical event to gradually move Lao PDR develop its legal system toward.

In order to ensure in a comprehensive building and systematic development of the legal system, in 2003, the Ministry of Justice, the Supreme People's Court and the Office of the Supreme People's Prosecutor and the Ministry of Public Security, thus, initiated the expedite the development of the Legal Sector Master Plan (LSMP) toward the year 2020. At the sametime, the VIIIth Party Congress (2006) also sets the policy: to "gradually develop Lao as the rule of law state". Therefore, initiated LSMP was adjusted accordingly. The legal sector master plan toward the year 2020 was adopted formally adopted by the Government on 11th September 2009 by Decree No. 265/PM. The main spirit of the LSMP is: "aiming at creation of state of the Lao PDR to become state that secures legal responsibility toward its citizens and ensuring that the citizens fundamentally perform their legal obligations toward the state." The survey of the customary law and report, thus, becomes first activity program under the LSMP lead by the Ministry of Justice in collaboration with various agencies at the central and local level to compose in the survey' committee, namely: representative from the Lao National Front, the National Assembly, the Socio-science research institute, the Ministry of Information and Culture, Lao Women Union, the National Committee for advancement of women, the Supreme People's Court, the Office of the Supreme People's Prosecutor, the Faculty of Law and Administration, 3 Laws colleges. Besides that, there were two experts engaged: one Lao national as lawyer and one external expert as anthropologist included in defining the scope of survey of customary laws of Lao 49 ethnic groups.

This report on the survey of customary law of Lao ethnic groups is significant, due to the nature that Lao PDR composes of many ethnicities along with another throughout the Country from many centuries; they have been inherited a mutual solidarity and enjoying concord, a join social-economic foundation, have specific cultural characteristic and custom or practices. These customary rules and practices will become important elements for many purposes, especially in improving and develop of national uniform law that requires harmony and adherent with the customary laws and with international norms. In addition, the report will be basic document to promote equality, defining role and access to justice of the ethnic people in compliance with the international human rights standard that Lao PDR is a party to. This report and survey is the first conduct; thus,

there would be insufficient information gathered. It is expected that these report and information will be useful for following research and we open for comments and recommendations, especially from the officials, member of parties and each ethnic group, clans of different groups.

In this regard, I would like to congratulate and express my thanks to the UNDP for its generous supports to this project and my compliments to the project management team and other relevant people for their contribution in making this report and survey success in gathering first comprehensive ethnic's information.

We strongly hope to get more useful comments from all of you and relevant agencies to better improve the report and survey.

Minister of Justice

Foreword

With 49 officially recognized ethnic groups, Lao PDR is a multicultural and multiethnic society where customary law remains an integral part of people's daily lives. Traditional, informal rules and practices have developed over centuries and are being followed by people within their ethnic groups, with a significant impact on ways of thinking and behaving. These informal rules and practices constitute customary legal systems, which serve as conflict resolution mechanisms by means of mediation or arbitration. Often these customary systems are the most common access points to justice, especially for people living in rural and remote areas.

As the first of its kind, this survey report on customary law practices in Lao PDR represents a national milestone as it considers the role and impact of existing customary practices on the overall legal system. It "demystifies" customary laws and recognizes that this customary form of justice can coexist with and be integrated in the overall formal system. This survey also fills an important gap in providing reliable data and records of customary legal rules and practices.

The Ministry of Justice, in partnership with UNDP, established the Customary Law Project in 2008 with the central objective of fostering understanding and encouraging harmonization between formal and informal legal systems. The present report summarizes the findings of a wide-ranging survey on customary norms and practices, conducted in 2009, covering all 49 officially recognized ethnic groups in all 17 provinces of Lao PDR.

This comprehensive report shall promote the reorganization of informal legal systems as an integral part of the overall legal framework of the country. The findings of the survey will ultimately pave the way for developing a strategy to ensure that customary practices, including informal systems for the settlement of disputes, are harmoniously integrated with the state legal system, not only respecting cultural and ethnic traditions but also in line with international principles of the rule of law and human rights standards.

This report is an important first step toward developing and integrated legal system in Lao PDR that can meet the demands and challenges of a multiethnic society, respecting all cultures, heritage and histories. Achieving this will ensure that Lao PDR creates a legal system that is capable of providing justice for all people and communities in times of rapid change.



Minh Pham
UNDP Resident Representative, Lao PDR

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SUMMARY

The Lao People's Democratic Republic (Lao PDR) has made great efforts in recent years to improve its legal system - including the legislative framework, judicial mechanisms, and public legal awareness - in order to build up the Rule of Law, promote economic development, and advance its regional and international integration. Within the legal-judicial sector, formal, semi-formal, and informal systems of justice exist. The formal system encompasses national legislation, the courts, prosecutors, police, and other state organs. The semi-formal system is represented by village authorities and village mediation; whereas, the informal system encompasses the customary law and practice of the country's various ethnic groups.

Diversity

Laos is a country of rich diversity: with 49 officially recognised ethnicities and marked differences between rich and poor; urban and rural; lowland, upland, and highland; and remote or otherwise inaccessible communities. The role of the informal - i.e., customary - justice system is still very strong: reflecting the still limited penetration of the formal system in many areas, as well as the greater familiarity within - and confidence of the majority of people in - traditional structures and practices. Customary law remains an important part of people's lives, particularly with respect to dispute resolution in rural areas, and, therefore, also of the country's justice system. Nevertheless, there remains no official recognition of the customary law system in the national legal framework.

Nature of Customary Law

The nature of customary law itself makes it difficult to integrate into a formal legal system, as it is a kind of 'living law', subject to constant adaptation and based upon the consensus of the group and practice. It also differs in concept from the formal legal system and notions of 'Rule of Law', in that it tends to be more flexible, voluntary, contextualised, and without the procedural elements and distinctions between criminal and civil spheres. Customary Law also covers a much wider gamut of behaviour and relationships than state law; including, the locating of villages, auspicious dates for ceremonies and rituals, everyday actions, and relations with the spirit world.

Customary Law Project

Given the significance of customary law in addressing people's justice demands, its sometimes fraught relationship with national and international norms and standards, and its inherent ability to both reflect and promote cultural change, it was recognised by the Government of Lao PDR that, in order to improve governance and justice delivery, a modality for the effective co-existence of the formal, semi-formal, and customary systems needed to be found. Pursuant to this, the Ministry of Justice established the Customary Law Project, with the support of UNDP, in 2008. The objective of the Project was: to support the development of a strategy for linking customary systems with the state legal framework; to foster understanding and encourage harmonisation between norms, practices, and standards of the formal and informal systems, as needed; and to improve access to justice, legal awareness, and legal empowerment at all levels. Toward this end, the Project

carried out a wide-ranging and in-depth Survey of customary norms and practice throughout the country, encompassing all ethnic groups. The present Report summarises the findings of that Survey. Additionally, the full data gathered in the Survey is to be included in a database to be made accessible to researchers, policy-makers, and law-makers.

Contextual Rules: Gender

The Survey - as described herein - first examined the context for the exercise of customary law and practice, particularly as these relate to underlying gender roles and status; i.e., the types of residence patterns used by the various ethnic groups, child-birth practices, and the traditional division of labour between men and women. The models of intra-group governance and decision-making, including dispute resolution, are also studied: these are largely based upon clan structures - in groups such as the Hmong, Phounoy, and Khmu - or upon a council of elders, amongst the lu-Mien and Makong. Women have traditionally been excluded from such power structures and decision-making, albeit exercising ritual authority in many matters, but this exclusion seems to be softening; e.g., amongst the Khmu.

Sources

The sources of customary law are primarily oral, usually vested in prominent older men in each community, who may inherit the position or accede to it by reputation or community consensus. However, the lu-Mien have long had a written code - the 'Siaopholi' - which sets out guiding principles, rules, and teachings on life. Other groups have also developed written records or, as in the case of Mon-Khmer groups, attribute their lack of scriptures to accident; literally, "the dog ate my law code".

Procedural Matters

Tradition, therefore, largely dictates the choice of 'tribunal' - dependent upon the seriousness of the matter, with less serious matters being resolved within the family - as well as the forum: frequently in a specially-designated building or location, such as a meeting house or temple. Similarly, each ethnic group has its own set of procedures for composing the 'tribunal', conducting the 'hearing', and making a decision. They also have rules on related 'procedural' matters, such as compelling attendance, opening rituals, representation - often precluded when the 'litigants' are male, but encouraged or mandatory when a woman is involved - and women's standing in proceedings, which was generally very limited but is increasing gradually in some groups; e.g., the Hmong.

An important procedural aspect of customary dispute resolution is evidence-gathering and confessions, although the two are more or less one and the same. A wide range of inducements are used to solicit confessions or ascertain the truth. Some of these take the form of social/peer pressure. Others are threats, human or supernatural, or require oaths. A few methods are tantamount to (physical) torture; several more are variations of 'trial by ordeal'.

Substantial Law

The Survey found that, in all customary systems, there was no clear-cut distinction between criminal and civil cases. Customary mechanisms traditionally handle both, often using identical procedures. Each group does, however, make some distinction with respect to the severity of the offence or act. At the same time, conceptions of 'rights' versus 'obligations' differ from those in the formal system, with a greater emphasis placed upon obligations to family and community under customary law. Rights tend to refer more to entitlements to participate in community life or share in community resources and are contingent upon one's position and social status or social relationships.

The Report then sets out the specific practices of various groups. The section on 'family law' details questions of: marriage, residence, and lineage; pre-marital relations and paternity; divorce; the survivorship of widows/widowers; and inheritance or succession. The general 'civil law' areas described are land - communal versus private rights, acquisition and alienation, and dispute resolution - as well as contracts and debts.

'Criminal' matters described are: homicide, intentional or unintentional; incest and rape, although rape is usually considered more of a civil or family matter in most customary systems; adultery, which is criminal under both Lao customary and state law; domestic violence, again not traditionally deemed criminal, either between spouses or by children toward their parents; theft and property damage; and defamation and desecration.

Sanctions & Remedies

Remedies, sanctions, and the award of costs are also examined. Imprisonment is rarely imposed, while capital punishment is sometimes used. By and large, remedies aim to advance reconciliation, reciprocity, compromise, consent, and discussion between the parties, with an emphasis on the interests of the community as a whole, as well as on restoring 'face', both human and spiritual. As such, compensation or other restitution, ostracism, labour or community service, and some forms of corporal punishment are more common sanctions. Mechanisms to reduce or prevent bias, undue influence or corruption in proceedings - relying primarily on community pressure, but occasionally on fines, threat of removal, or otherworldly punishment - are also presented.

Pressure for Change

The Report then looks at the pressures currently being exerted upon customary systems. Factors that affect the strength of such systems include changing residence patterns: with resettlement, village consolidation, and urbanisation breaking down traditional community relationships, often creating multi-ethnic communities in their place. Government policies, regulations, and programmes continue to impact upon the customary mechanisms: e.g., the extension of exclusive state jurisdiction over serious crimes; new land management regimes; or attempts to infuse gender equity principles into family matters. Market forces are also radically - and often negatively - altering livelihoods, social relationships, and, as a result, customary institutions.

Relationship with National and International Law

Equally important, the interaction between the customary system and the formal (state) and semi-formal systems are proving increasingly problematic, as they come into more frequent contact and often conflict. At the same time, there are numerous examples where a modality for cooperation has developed in practice. More problematic is the relationship of customary law with the international standards that Laos is now obliged to implement. In particular, a number of (potential) clashes between customary practice and human rights' norms are identified: i.e., the Right to a Fair Trial or Right to Life, under the UDHR and ICCPR; women's rights, under CEDAW; and children's rights, under the CRC.

Regularising the Interface between Systems

The human, social, and economic cost of failing to regularise the interface between customary, state, and international norms and systems is then recounted. While acknowledging that there are serious shortcomings in customary systems, particularly in the face of modern society's demands, it is recognised that internally-driven and culturally-adapted change - often utilising the very flexibility that is a characteristic of such customary systems - is more likely to produce effective and deep-rooted results. Survey participants themselves indicated a number of areas where reconciliation might be achieved; including, a clearer demarcation between, but integration of, customary norms and systems with the national legal framework; improved legal education, including for outsiders, on customary practices; and official recognition of vital community rituals, assets, and practices. Various means for balancing and linking systems - including delineating or delegating jurisdiction or creating hybrid bodies, akin to the Village Mediation system, and promoting 'change through culture' - as well as the possible pitfalls and caveats in any solution, to produce an overall strengthening of justice, are discussed.

Recommendations

The Report concludes by setting out steps to build upon the empirical data and contextual analysis produced as a result of the Survey. These include: the clarification of the relationship and respective jurisdictions between the various justice systems; integration of customary law considerations into policy and legislative development processes; and development of methods to encourage internal community change in order to harmonise customary practice with key national and international standards. Another recommendation is for further research and analysis, using the accumulated data, on a number of issues: e.g., specific clashes between norms from the different systems or unmet justice demands. Finally, the Report notes the importance of follow-up programming - linked to the Access to Justice Survey and Legal Sector Master Plan implementation - and need for concrete initiatives to improve justice delivery for all, but especially for vulnerable or marginalised groups, in the near-term.

ACRONYMS

A2J	Access to Justice
CASS	Chinese Academy of Social Sciences
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFV	Case-Free Village
CLP	Customary Law Project
CRC	Convention on the Rights of the Child
EFEQ	École Française d'Extrême Orient
FGD	Focus Group Discussion
GBV	Gender-Based Violence
GDG	Gender Development Group
ICCPR	International Covenant on Civil and Political Rights
LBA	Lao Bar Association
LFNC	Lao Front for National Construction
LRICI	Law Research and International Cooperation Institute (MoJ)
LWU	Lao Women's Union
MIC	Ministry of Information and Culture
MLSW	Ministry of Labour and Social Welfare
MOJ	Ministry of Justice
OSPP	Office of the Supreme People's Prosecutor
PAR	Participatory Action Research
PPA	Poverty Participatory Assessment
PSC	People's Supreme Court
RoL	Rule of Law
SSI	Semi-Structured Interview
TRI	Tribal Research Institute
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
VASS	Vietnamese Academy of Social Sciences
VMU	Village Mediation Unit





A

CONTEXT &
BACKGROUND

1. Country Context

Lao PDR is a single-party¹ socialist constitutional republic, which has increasingly strived to establish a state governed by the rule of law and to promote the principles of human rights. Lao PDR has promulgated a substantial body of legislation, has become a party to six core human rights conventions and two optional protocols², and is working to align its domestic law with these international obligations. Lao PDR has a multi-tiered system of courts. Judicial independence and equality before the law, both of which are guaranteed by the Lao Constitution, are being strengthened and the capacity of judges, prosecutors, and the legal profession enhanced. However, the entire legal sector remains in a nascent stage of development and legal literacy, awareness, and empowerment of the population is still relatively low.

At the same time, in Lao PDR, a range of justice mechanisms co-exist. Some are based on state authority; others customary and religious authority. As such, there is a hybrid legal environment: three inter-related systems exist. Informal - or customary - mechanisms include negotiation and traditional mediation, conducted by a Council of Elders (Samthao Sikae) or the heads of clans (Chao Kok Chao Lao).

Semi-formal mechanisms are comprised of local mediation services conducted by individuals or bodies vested with state authority, such as the naiban (village chief) or the village administration. The most prominent example of

a semi-formal mechanism is the Village Mediation Unit (VMU), promoted by the Government in a large number of villages to mediate resolution of civil and minor criminal disputes. These bodies attempt to achieve mediated outcomes based on principles of national (state) law, but also take into account 'good' local traditions and practice. The VMU has additional functions, such as assisting the village administration to enhance knowledge of, and compliance with, state laws in the village. It also coordinates with judicial and other relevant bodies.

Finally, there are the formal justice mechanisms, including the aforementioned courts. Formal mechanisms also include the prosecutors, police, administrative dispute resolution, arbitration, and the National Assembly petition process. The Lao court system is divided into four levels. There are 39 'Area' Courts, with jurisdiction to consider civil cases of value up to 300 million kip (USD 36,500) and criminal cases with a maximum sentence of less than three years' imprisonment. Eighteen Provincial Courts and the Vientiane Capital Court have jurisdiction to hear more serious criminal cases and civil cases involving more than 300 million kip. Both the Area and Provincial Courts serve as courts of first instance. The Provincial Courts also have appellate jurisdiction over cases from the Area Courts. Then, there are three Regional Courts - the People's Court of the Northern Region, the People's Court of the Central Region, and the People's

¹ Under the guidance of the Lao People's Revolutionary Party

² International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD); Convention on the Rights of the Child (CRC) and the Optional Protocols regarding the Sale of Children, Child Prostitution and Child Pornography, and the Involvement of Children in Armed Conflict. Lao PDR has also signed the Convention for the Protection of All Persons from Enforced Disappearance.

Court of the Southern Region - which consider appeals from the Provincial Courts. The fourth and highest level of the court system is the People's Supreme Court (PSC). This is the court of last resort. As well as having final appellate jurisdiction, it is responsible for issuing legal instructions and supervising the other courts. It can also serve as a court of first instance in exceptional cases.

For a variety of reasons³ - including familiarity, confidence, cost, and physical access - the public are much more likely to resort to informal - i.e., customary law - mechanisms than to the semi-formal or informal ones. According to an Access to Justice Survey carried out by UNDP and the Lao Bar Association (LBA) in 2009, people were twice as likely to use a customary mechanism as they were the VMU - and five times more likely than they were to go to court.⁴ This demonstrates that customary law systems remain very important to Lao PDR's populace, especially those living in the most remote areas of the country.

Despite the change and upheaval over the last century, many groups within the country have maintained lifestyles predominantly based upon customary norms and practice. In addition to physical manifestations of culture, such as architecture and costume, in many cases the social structures, languages, and cultural practices of many smaller ethnic groups continue to flourish. Thus, for many Lao PDR citizens, customary laws remain the dominant system of norms and rules that govern and regulate their lives: with state laws, courts, and other dispute resolution mechanisms playing a subordinate role.

Nevertheless, despite being the most familiar and trusted justice mechanism in Lao PDR, customary law is not currently recognised under the state's legal framework.

1.1 Ethnic Diversity

Laos is the most ethnically diverse country in mainland Southeast Asia. The population is over 7 million and, within that, 49 ethnic groups. Many of these are, in fact, transnational groups that also live in neighbouring countries.

Until 2001, the Government of Laos (GoL) officially used a tripartite classification system - Lao Loum, Lao Theung, and Lao Soung; respectively, lowland, upland, and highland Lao - related to people's ecological niche. These categories tended to oversimplify complex cultural and economic differences, crucial to development planning and socio-economic analysis. Consequently, in July 2001, the Lao Front for National Construction (LFNC) announced the use of four ethno-linguistic categories: Lao-Tai (8 groups), Hmong-Mien (2 groups), Mon-Khmer (32 groups), and Sino-Tibetan (7 groups). Therefore, a total of 49 ethnic groups are now officially recognised. This new classification was formally adopted by the National Assembly in early 2009.

The GoL does not, however, recognise the existence of any indigenous people in the country. The terms 'xon phao', 'banda phao', and 'paxon banda phao' - 'phao' can be translated as 'tribal' - are used instead and refer in general to smaller ethnic groups.

³See : Daviau, S. *People's Perspective on Access to Justice Survey in Lao PDR, December 2010.*

⁴*Ibid.*

Ethno-linguistic Families, Ethnic Groups, and Demographic Representation

No.	Ethno-linguistic Family	Number of Ethnic Groups	Percentage of National Population
1	Lao-Tai	8	64.9
2	Mon-Khmer	32	22.6
3	Hmong-Mien	2	8.5
4	Sino-Tibetan	7	2.8

Laos is a veritable crossroad of migration in Southeast Asia. Three main migration waves contributed to the current population and account for its great cultural diversity. Each of the cultural groupings displays distinct customary practices linked to particular kinship systems and types of social organisation. From an ethnographic perspective, key distinctions in Laos, as for the whole Southeast Asia, exist between literate, centralised, and sedentary groups, on the one hand, and acephalous lineage societies - such as the Mon-Khmer, Sino-Tibetan, and Hmong-Mien - on the other. Even within this latter categorisation, however, the Sino-Tibetan and Hmong-Mien are distinguished by strong patrilineal clan systems; whereas the Mon-Khmer is a territorial group.

1.2 The Main Ethnic Groups

Mon-Khmer

Mon-Khmer groups were the first inhabitants of the territory that is now modern-day Laos. They share customs, such as the exchange of great wealth at marriage, post-partum rituals, cemetery burials, sacred forests, and festivals for the territorial spirit at the end of the agricultural year. They believe in divinities, *yang*, which are located in specific areas and are personal. They distinguish domestic spirits – of inhabited space, space built or used by humans – from natural spirits- of nature or the forest.

Their beliefs establish strong moral codes within the community and help to delineate boundaries between villages and communities. They play a part in marriage practices and gender relationships, as well as figuring prominently in beliefs concerning health and illness. Apart from strong beliefs in animistic spirits, Mon-Khmer groups also practice ancestor worship.

They normally engage in swidden cultivation on the higher lands. A field is cultivated one season and then left fallow. Communities split into smaller production units living in their fields during the agricultural season in the North; while in the South the abundance of land allows periodical migration of the whole community to new productive land within a circular trajectory, which marks the limit of each village's land.

This group includes the Khmu, Pray, Lamet, Makong, Tri, Tarieng, Brao, and Kri, as well as twenty-four others.

Lao-Tai

Their system is characterised by a sedentary geographical frame, allowing permanent paddy cultivation farming in the Mekong Valley and on its tributaries. The system also allows for swarming migration patterns, linked to land pressure, and strategies to get closer to trading crossroads. Hence, their residence is not really

fixed: a fact attested by the migration history of villages in Laos. Members of the Tai-Kadai group are mostly Theravada Buddhist.

The group is comprised of the Lao, Tai, Phou Tay, Lue, Nyouan, Nhang, Sek, and Tai Neua.

Hmong-Mien

Settled mostly in Northern Laos, they traditionally practice pioneer swidden cultivation, in which land is cultivated until soil exhaustion forces the community to move to a new location.

Ancestor worship is widespread among such patriarchal clanship structures. Apart from Buddhism and animism, ethnic Mien also observe Taoism. The Lu Mien believe there are thirty-three levels of heaven protecting the human earth. In Lu-Mien societies, leadership structures combine both secular and religious functions. Therefore, the religious leader and the head of the tribe are the same person: a leader or clairvoyant, who has responsibility for worship of place spirits.

The Hmong usually distinguish political from ritual leadership, with the head of the clan being a different person from the Saengxao (or leader of beliefs). However, sometimes, the political leader is also invested with responsibility for beliefs and traditional customs.

The Hmong and Lu-Mien are the only members of this group.

Sino-Tibetan

They also traditionally practice swidden cultivation, cultivating soil until it is exhausted and

the community must move.

This group is composed of the Akha, Phounoy, Lahu, Sila, Hanyi, Lolo, and Ho.

1.3 Codification

As will be examined below, customary practice - and, particularly, customary law - is difficult to document or regulate. During French rule in Indochina, a number of initiatives were undertaken with respect to customary law. As French administration extended into highland areas in the late 19th Century, a largely unsuccessful attempt was made to establish tribunals and procedures based on the French model, but cognisant of customary law and practice.

A renewed attempt was made prior to the Second World War, including the 'codification' and 'modification' - as regards to ordeals/torture, slavery, and warfare - of customary laws. The system of customary tribunals was revamped to reaffirm the prerogative of local customary law authorities to deal with 'minor' cases, handle serious cases at the provincial level, establish a separate tribunal to deal with cases involving outsiders, and register and regularise judgements; i.e., to determine which decisions were mandatory, as well as to ensure that a party could not seek to reopen a decided case. Surveys of customary law were also undertaken, with more than 5000 judgements or judgement extracts compiled by 1941.

Ironically, the development of the Civil Code, under the French, was not an effort to codify the 'laws' of the ethnic Lao or any of the

smaller ethnic groups in the country. Rather, its principles and provisions were modelled on, and sought to implant, the Napoleonic Code in Laos.

2. The Nature of Customary Law

2.1 Definition - or Lack Thereof

While, there is no universal definition of ‘customary law’ agreed by lawyers, jurists, social anthropologists, and others,⁵ customary law is often referred to as a system of ‘living law’. It is something that:

“... grows out of the social which a given community has come to accept as obligatory. It is a pervasive normative order, providing the regulatory framework for spheres of human activities.”⁶

Legal pluralism perspectives recognise that states do not monopolise sources of law and that non-state sources can also produce ‘law’. This includes customary law systems, which commonly co-exist within a single geo-political sphere, alongside state law systems. The term ‘customary law’ is said to have its origins in Roman law and refers to a system of customs, norms, uses, and practices repeated by a particular people for such an extent of time that they consider them mandatory (*consuetudo veterata*).⁷ The source of the customs or norms may be lost in time, but the body of customs remains a living system because people

enforce and recreate the norms through practice and adherence to them.

Customary law is a term mostly used to refer to legal systems considered politically subordinate to formal state justice systems, but able to survive due to their flexibility and capacity to adapt to changed circumstances, especially in their relationships vis-à-vis the state. In states with limited penetration into rural or remote heartlands, customary law systems are often especially strong and may provide a legal and normative framework against which state systems are unable to compete. Even where state organs are present, creating a more competitive legal environment, customary law systems may still thrive because local communities frequently prefer them.⁸

2.2 Characteristics of Customary Systems

Customary law systems commonly share a range of characteristics, which include:

- They are often orally-based and orally-transmitted.
- They are not fixed or static. Customs are dynamic and constantly evolving, even if they are often perceived to be ‘traditional’. Attempts to codify customary laws characteristically result in reductionist understandings of customary law: at best creating a static snapshot of customary practice at a given time, but producing a version unable

⁵ White, 1965.

⁶ Bennett, 2006: 641.

⁷ ajardo et al, 2007: 34.

⁸ Ibid.

to adapt to changing conditions and community needs. Thus, it becomes something quite other than itself.

- While they have their own authorities, rules, and procedures - so, in that sense, they are 'formal' justice systems too - disputes tend to be resolved more flexibly and taking into much greater account the respective positions and interests of the parties. That is, the social relationship of the litigants influences the type of rules applied to the dispute and the scope of the hearing. Conversely, state justice systems aim to be rule-based and seek to achieve consistent outcomes in all similar fact patterns, irrespective of the parties' identities; i.e., in accordance with the concept of 'equality before the law'.
- Customary law systems emphasise social/communal responsibilities, rather than individual rights or powers. While a dispute may directly involve only two disputants, the problem is treated as that of the community as a whole and strong consideration is often given to the collective interests at stake in the dispute. As a consequence, great importance is attached to seeking compromise solutions by agreement, with a view to restoring social harmony and, where necessary, applying restorative sanctions. Customary law authorities normally seek to mediate - although sometimes they arbitrate - disputes in search of such consensual solutions, without resort to imposed decisions or judgements.
- Participation in customary law proceedings is most commonly voluntary and enforcement of customary law decisions is usually secured through the exertion of social pres-

sure. Linked to this, customary law systems often involve a high degree of public participation, upon which their legitimacy and authority rest.

- Hearings are often presided over by customary authorities appointed from within the community, primarily on the basis of their status or lineage.
- Parties to customary law proceedings are usually not entitled to engage professional legal representation or, in many systems, have any third party representation.
- Customary law systems deal with both criminal and civil cases - and rarely distinguish between the two. Judicial power, exercised through the customary law system, and executive power, exercised through local governance structures, are often vested in one and the same person. This is not considered a conflict of interest or deemed likely to impair accountability; i.e., the concept of separation of powers has little traction in many customary law-based societies.

2.3 Local Terminology & Concepts

The Ministry of Justice of Lao PDR uses the term *khotpapheni* to refer to the customary laws of smaller ethnic groups, while *hiit khoong papheni* refers to the customary laws of the ethnic Lao.

However, most ethnic groups have their own distinct concept and terminology for referring to customary law, as an integral aspect of their broader worldview. In the Lolo language, customary law is called 'Leet lei Lixing'; in Phounoy, 'Ang Hiid Ang Khong'; in Kri, 'Houa

Chak Mi Chong Hor’; and, in the Then language, ‘hiit preum’. Basically, these translate as “governance in accordance with laws and traditions or beliefs”.

Customary law is understood by the Hmong to mean an obligatory system for a society, based on previous practice, and an original way of life having been passed down for thousands of years - since the age of ‘Kab Li kev cai’. Aside from embodying customary beliefs, customary law provides Hmong people with a mechanism for dealing with violations of the Hmong way of life. It also provides a framework for all important aspects and stages of life; including how people worship, marry, create their families, cultivate, and deal with death.

The Khmu Rok Krong term for customary law is ‘Riid Krong’. ‘Riid’ has a meaning akin to “rules and regulations laid down for everyone to follow”. If anyone breaks the rules, something bad will happen to that person and s/he will be fined in accordance with the seriousness of the transgression.

Ethnic Lao usually refer to the ‘Hiit Khoong’ when talking about justice. ‘Hiit’ means old law, rules or ruling system. ‘Khoong’ means customs, laws or rules.⁹ The sources of Lao customary law include Lao folk tales, Buddhist precepts, Jakata tales, and some Panchatantra tales.¹⁰

For ethnic Makong, customary law is a belief system manifest since ancient times, which has been preserved and passed on until the modern day. Rules for ceremonial practices have

become principles for regulating the lives in the ethnic group and for governing relations with spirits, who punish or take action or revenge against humans who transgress against these principles or rules.

In the Lu-Mien language, customary law is called ‘Leuy’ or ‘Chongcheuy’, which means “rules of governance”. This includes governance by state-based regulations, as well as by traditional customs or beliefs.

2.4 Scope & Functions of Customary Law

Customary law provides the rules and regulations for establishing a village according to principles of geomancy.¹¹ This prerogative of selecting an auspicious site, based on its orientation, astrological principles, divination methods or other customary requirements, is a primary function of customary law. These rules aim to ensure that communities settle on sites in safe locations, which will provide them with good health and avoid epidemics or other natural, spiritual or mythical calamities. Orientation of the village in relation to natural surroundings - e.g., mountains or rivers - the dispersal and positioning of houses and collective buildings, the orientation of entrance doors, and the sites where rituals are implemented, are all carefully taken into account. For instance, in the case of the Lolo, the community must first set up a sacred space called Maesima, prior to selecting the actual site for the village.

⁹Tossa, 2001:295.

¹⁰Ibid.

¹¹ Geomancy is known as fengshui by the Chinese and means “wind and water”. In the Greek tradition, geomancy - or *geōmanteía* - literally means “foresight by earth” and is a translation of the Arabic term *ilm al-raml*, or the “science of the sand”, and refers to “earth divination”.

Customary law provides a temporality or vernacular calendar that enables communities to calculate and determine when specific events must be held: e.g., weddings, agricultural activities, collective rituals or calculating if two people are an auspicious marriage match. All ethnic groups in Laos follow the lunar calendar, observing variations in its cycles, and most distinguish between the waxing and waning of the moon. Ethnic groups have varying calendars: e.g., the ethnic Pray have 10 days per week and three days off per month, while the Khmu calendar works on a 60-year cycle.

Customary law covers rituals and behaviour associated with each major event of the human life, from birth to death. It also prescribes how different categories of persons, groups, and relations should relate within the community, family, lineage or the clan. It covers practices concerning religion, traditions, beliefs, and rituals, as well as defining penal and judicial rules to prevent social and political conflict, regulate conflicts, and restore social harmony and peace. It further provides a system for the management of community land and all resources.

Customary laws also govern people's daily lives: prescribing, for example, when, where, and how forest has to be cleared and burned, how rice and vegetables have to be planted and harvested, how hunting must be performed, how villages and houses must be founded or built, how husbandry tasks must be allocated and performed, how game and animals must be slaughtered and divided, how food is to be cooked, how children are conceived and raised, and how transactions are managed, to give a few important examples.

It also meticulously describes proper daily behaviour: e.g., when to get up in the morning and in which order to proceed; how to allocate labour; how to hold a bamboo teacup or whisky container; which line males, and which line females, have to follow when weeding the fields; in which direction to hold a dibble-stick while making holes (for males) and how to place the rice seed in the holes (for females); or how to hold a machete or sickle when walking to the fields. In other words, it contains a complete and elaborate system of etiquette.

Also, as will be described in more detail below, customary law provides rules governing such practical domestic matters as the marriage patterns allowed, the amount of any dowry, conflict resolution within the household, the roles and responsibilities of spouses, and inheritance patterns between offspring or siblings.

Finally, it determines who is eligible to hold a position of authority and describes the modalities of the transmission or succession of power.

2.5 The Demand for Justice

An important backdrop to consideration of the role of customary justice systems is the community demand for justice or, rather, the issues or problems considered in most need of redress by the community. In any society, some kinds of disputes are considered justiciable, while others are not. In assessing community demands for justice, it is important not to assume that the demand is comprised only of those kinds of cases considered justiciable under the available justice mechanisms. It is critical to assess and then keep actual demands in mind when considering the capacity of justice

providers to provide, effectively, accessible redress.

Studies of customary law systems reveal how they are more dynamic, flexible, and less ‘traditional’ - or based on ancient static practice - than is often assumed. Examination of the internal dynamics of supposedly ‘traditional’ communities reveal how community customs are never a unanimous ‘whole’ but, rather, represent a dominant interpretation of culture at a given point in time. Cultures are in a constant state of flux, responding to both internal and external pressures, and are driven by changing social norms and needs.

Customary law systems in Lao PDR are no exception and face both challenges and opportunities created by the various forces of change. One is the impact of state law and decision-making, which may - to varying degrees - interrupt customary practice and result in multi-ethnic communities more detached from their customary practices. Another is the multi-dimensional force of modernisation, including: trends of urbanisation and migratory work patterns; individualisation leading to the weakening or breakdown of communal social-welfare safety nets; and globalisation, with the impact of human rights discourse with its emphasis on individual over collective rights. This may represent a threat to local and cultural power structures, which often perpetuate social and economic inequality and may deny opportunities to vulnerable groups; such as women, children or ethnic or religious minorities.

The idea that any ethnic group in Laos lives in a hermeneutically-sealed environment, governed by rigid customary practice, is an outdated fiction. The reality is much more

complex: with internal and external forces of change playing greater or lesser roles in particular community contexts, creating a multifarious justice landscape that is far from uniform. Any engagement with customary law systems needs to be based on this nuanced understanding of how customary law systems interact and coexist alongside other normative systems and how they respond to the broader social, political, and global contexts.

A further dimension is how descriptions of cultural practices struggle to capture the fluid dynamics within communities that maintain customary practices. Rather than providing a ‘flat’ description of cultural practices, any effective study should try to assess the degree to which dominant articulations of ‘culture’ continue to receive support from a broad spectrum of community members. Not everyone within a community shares a common understanding of what constitutes ‘authentic’ customary practice. Accounts of ‘culture’, which are most often sought from and provided by customary authorities or other cultural elites, can never be neutral or objective, but present one of many possible versions of customary practices in a given community.

Uncritical adoption of descriptions of ‘culture’ or ‘customary practices’ may have the effect of justifying or further entrenching existing inequalities or of masking egregious practices that may, in reality, have diminishing or dwindling support within parts or even the majority of the community. This should be borne in mind when reading accounts of ‘culture’ or ‘customary practice’ that purport to present an uncontested single truth.

One common dilemma is that, while states

can create on paper uniform, consistent, and predictable laws - including those aimed to meet obligations to protect human rights, a responsibility primarily shouldered by states - implementation and enforcement of such laws often lag far behind. This can be for a range of reasons. Even in states politically motivated and committed to implementation of the 'rule of law', state law is often inaccessible. Aspects of its substance may fail to resonate with the norms of sections, or even the majority, of the community. Moreover, states are often poorly positioned to socialise norms contained in their laws, creating a normative gap between state law and co-existing 'living' - or non-state - legal systems. Customary or religious authority may remain more compelling than state authority in some communities. As a consequence, state law is unable to project effectively its norms.

Customary - and religiously based - law systems are usually embedded in processes of normative production, making them ideal entry-points for wider social reform. Additional strengths commonly observed are: their resonance and familiarity to local populations; greater accessibility and local proximity; operation in local languages; promotion of forgiveness, reconciliation, and community harmony; low costs; immediacy and efficiency in resolving disputes; achievement of consensus-based decisions, thereby reducing the prospects of ongoing or retributive violence; and their adaptability and flexibility, making them ideal vehicles for reform.

While these general strengths may impress, customary law systems also carry with them inherent risks. These include the likelihood of further entrenching existing power relations in rural communities based on acceptance of

inequality, at the expense of more democratic nascent alternatives. Other risks include: the difficulty of establishing reliable and robust human rights safeguards; the potential for abuse and corruption; and the lack of certainty and consistency in decision-making. Although customary law systems often deal with cases expeditiously, the degree to which they handle cases equitably, in accordance with basic human rights standards and their capacity to deliver not only quantity, but also quality justice, is much less certain.

When prioritising community harmony, customary law systems frequently ride roughshod over the rights and interests of vulnerable individuals and groups. They are often criticised for failing to provide a level of fairness, consistency and certainty in decision-making necessary to attract and sustain development. While human rights implications of customary law systems are often identified theoretically as a critical matter, in practice, inadequate attention and effort is often invested in developing effective safeguards and mechanisms capable of monitoring customary law systems' protection of basic rights.

3. The Customary Law Project

3.1 Establishment

Several years ago, Lao PDR recognised the importance of engagement with customary law systems and consideration of the broader question of how state and customary law could most harmoniously and productively co-exist, with a view to improving governance in the country. This was because, as noted, the customary law system remains a key justice mechanism for much of the population. The

development of such a strategy clearly necessitated the acquisition of a body of research and knowledge concerning the operation of customary law systems and their interaction with state law. However, little substantive research or public debate existed on this issue. Therefore, the Government identified this knowledge vacuum as a critical area to be filled.

Reflecting this concern, the Legal Sector Master Plan (LSMP), first drafted in 2006 and adopted by the Government in 2009, called for empirical research into the application of customary rules as a source of law: through the documentation of customary rules, especially those used by smaller ethnic groups. A programme to support implementation of the LSMP was initiated by the Ministry of Justice and UNDP in 2008 and included the Customary Law Project (CLP). This was linked to the Access to Justice Survey, funded by UNDP and implemented by the Lao Bar Association, which explored justice options and preferences of poor, vulnerable, and disadvantaged community members.

3.2 Objective

The objective of the Customary Law Project is to support the formulation of a national strategy on customary law and to develop guidelines on the reconciliation of customary laws with state laws. This will serve the ultimate goal of ensuring that customary rules and practices are linked with the state legal normative framework. This should also lead to a better understanding and harmonisation of customary legal practices, as well as improved access to justice, legal empowerment, and legal education to vil-

lagers in remote communities and, in general, to the poorest and most vulnerable population groups. It should also extend the reach of the state's application of international human rights standards - contained in the treaties that Lao PDR has ratified, especially CEDAW - as well as the pursuit of gender equality.

3.3 Survey

The initial output of the CLP was the delivery of a survey collecting local customary rules/practices. The data collected is to be used as the basis for creating the concrete strategy to ensure that customary practices, including informal systems for the settlement of disputes, are better integrated into the Lao legal system - or can be combined with it, so as to respect the cultural traditions of the various ethnic groups, but also in line with the general principles of a Rule of Law state.

Based upon consultations with the Law Research and International Cooperation Institute in the Ministry of Justice, it was agreed that a customary law survey ("the Survey") would be conducted and would cover six main areas of investigation:

The present Report is based on the findings of five main reports, translated into English, produced from two weeks in the field with each of the five ethnic groups selected for particular focus under the Survey. Additionally, it incorporates selected data from more than twenty Participatory Action Research (PAR) reports, which were also carried out as part of the Survey.

Area of Investigation	Issues covered
1 Cultural configurations, including indigenous concepts of rights	Religious beliefs & practices; Indigenous conceptions of rights; Leadership & decision-making structures
2 Conceptual aspects and scope of customary law	Basic concepts & definitions; Family obligations & rights; Marriage; Inheritance; Community level rights & obligations; Land ownership & access to resources; Contracts; Conflict resolution & adjudication.
3 Procedural aspects of customary law	General. Access; Bias & corruption; Appeals; Participation & representation; Content of decision-making; Punishments & sanctions; Prejudices.
4 Substantive content of customary law	Issues related to children; Marriage; Homosexuality; Inheritance patterns; Land ownership & access; Offences against individuals; Offences against assets & reputation; Family obligations & rights; Social or community obligations & rights; Contracts.
5 Interaction between customary law/state law	How customary & state laws interact; How customary & VMU systems interact; What cases customary law cannot resolve.
6 Changes in customary law	Trends concerning customary law; Main influences shaping customary law; New issues & challenges emerging for customary law; How customary law has adapted & changed over time; Impact of government policy on customary law; Impact of the market economy on customary law.

The Survey was carried out in 2009. (See Appendix I: Survey Methodology.)

3.4 Database

A further element of the CLP research was to create a database to compile all the data obtained from the Survey on customary practices, allowing partners and law practitioners to analyse further its contents and conduct in-depth research. At the time of this report, the database has been setup and MoJ staffs are entering the data. A website is expected to be established soon, making the database accessible online.



B

CUSTOMARY LAW
& PRACTICE

1. Contextual Rules & Practice: Gender

Although not ‘law’ in the classic sense, a variety of customs, rules or practices in a given community will shape or determine the framework in which procedural or substantive rights develop, are exercised, and evolve.

1.1 Residence Patterns

The household is the primary social unit for Laos’ ethnic groups. Marriage is also a cultural lynchpin for all ethnic societies in Laos. Knowing marriage customs and patterns are key to understanding the relative status of women and men in society,¹² as well as for guiding the possibilities and entry-points for incremental improvements in gender equality.

Residence patterns and modes of marriage have a tremendous impact upon women’s status within the community. Generally speaking, women have a higher status and greater decision-making powers in matrilineal systems because the house and property belongs to her family. This places the woman in a central

position, bestowing upon her more power in economic and social life. If she co-resides with her own family, she is also much less vulnerable to mistreatment by her husband or his family, as the presence of her natal family can act as a strong deterrent. If abuse does occur, her family is then more likely to intervene on her behalf.¹³

1.2 Birthing Rites

All groups have gender-related spatial restrictions. These are often related to women’s status in the household or connected to a specific time: e.g., menstrual periods, when women are forbidden to visit places of worship; or after giving birth, when the new mother is forbidden to visit others’ houses and pregnant women are prohibited from entering the house of a new mother. In some groups, women are also forbidden from entering houses through a men’s entrance or approaching the household spirits or ancestors’ altar.

Residence after Marriage and Inheritance Patterns

Residence Pattern	Location	Inheritance Pattern	Ethnic groups
Matrilocal	The husband comes to live with his wife’s family.	Matrilineal (from parents to daughters); bi-lineal	Lao, Phouthay, Leu
Patrilocal	The wife comes to live with her husband’s family.	Patrilineal (from parents to sons)	Hmong, Makong
Bi-local	The couple can go to either to the husband or to the wife’s family.	Bi-lineal (both to daughters and sons)	Khmu
Neolocality	The young couple settle in a new home.		Urban Areas

¹² LWU-GRID, 2000.

¹³ LWU-GRID, 2000.

Each community also has its own distinct cultural attitudes and practices relating to pregnancy and childbirth, which are reflected in diet, work patterns, use of herbs, traditional healers, and healing ceremonies. Childbearing practices occur in accordance with the cultural norms of that society. The Lao, Hmong, Khmu, and Xouay deliver their babies in houses; whereas, Khmu women give birth in small houses next to the main house. The Taoi, Katang, Makong, and Tri, on the other hand, traditionally deliver in the forest.

While the relevance of such practices to matters such as health policy is more readily apparent, the link with justice is less so. Nevertheless, as with residence patterns, these practices affect - and reflect - subtle differences in women's status and rights, as well change in this regard over time. It should also be noted that none of the ethnic groups studied in the Survey have the tradition, or the contemporary practice, of having women as customary decision-makers. While women are largely excluded from wielding power in the political sphere, they often play important roles in rituals: especially those associated with health, traditional attendance practitioners, divination or healing.

1.3 Division of Labour

Similarly, but more obviously, a gender-based division of labour is linked to (women's) economic and social well-being and status in a community. It may influence the nature, content, or exercise of men and women's respective rights, as well as their demands for justice.

In general, in Laos, across all ethnic groups, men perform tasks that are considered heavy, dangerous, solitary, done at night or that require short bursts of energy. Such activities include: clearing the land for swidden cultivation, warfare, preparing agricultural tools, hunting, trapping, and fishing, as well as organising religious ceremonies, giving alms, organising weddings, constructing a house, and - as noted above - governing the household, family or village.

Women carry out most domestic chores and provide much other labour input; ranging from collecting firewood and water to production activities that can be done simultaneously with childcare, which require longer periods of time and usually done in groups of two or more. Such activities include: clothes production, cooking, taking care of children, washing clothes, and feeding domestic livestock. Sons are generally given more opportunities and rights compared to daughters, including for education and social involvement, in part due to the demands upon girls' - and women's - time because of their workload.

Women shoulder a much greater burden of labour than men, but higher social and economic value is attached to men's work than to women's. These two factors create and entrench gender inequality because the division of labour is not based on being "different but equal". Rather, it systemically elevates and privileges men's roles: endowing men with economic and social power, while concurrently devaluing women's roles. Thus, men and women operate on an uneven playing field, where access to power, resources, and opportunities are not balanced.

2. Power & Decision-Making Structures

The village is traditionally the primary political, economic, and social unit. Ethnic communities in Laos observe one of two systems, or structures, of power: one is clan-based and, the other, on a council of elders. Hmong-Mien and Sino-Tibetan groups follow a patriarchal clan system, while Mon-Khmer groups are generally led by a council comprised of older males and presided over by members of the ‘founding lineage’; i.e., the family or descent-line that founded or established the village.

As noted in the previous section, none of the ethnic groups have either the tradition or the current practice of having customary women decision-makers.

2.1 Clan-based

Hmong

The Hmong ethnic group consists of three original groups: the Hmong Khao and Hmong Lay; Hmong Khiew and Hmong Leng; and Hmong Dam and Hmong Xi. In each group, there are twenty-two clans or Saengxao.¹⁴ Hmong customary leadership consists of: the head of the ethnic group, who is the general leader in that locality; the head of each clan (Saengxao), the leader and protector of the clan’s interests; the head of each family, responsible for protecting the interests of all family members; and spiri-

tualists, clairvoyants, and traditional herbal practitioners, who are responsible for healing people or conducting funeral ceremonies. Persons occupying any of these roles must be knowledgeable, competent, and honest. He or she - though the ‘political’ heads are usually male - must not lie and should be ready to sacrifice his or her own interests for the common interests of the whole family and relatives and set a good example in his or her own personal behaviour. There are certain circumstances in which a position may be acquired by a majority vote of the people.

Hmong men, as hereditary agents transmitting the ancestral line, play the principal political role. Only men participate in meetings related to the governance of the group. Women are permitted only to attend as observers, but not to speak or vote.¹⁵ Old men cast the deciding votes. Those men with the greatest experience and considered the wisest, wield the most influence and their recommendations are almost always followed. Hmong leaders are to be nominated from among the clans’ most intelligent, capable, generous, influential, and, generally, oldest members.

Traditionally, each hamlet or village is led by a headman, assisted by one or two notables.

Phounoy

The Phounoy recognise clanship affiliations based upon five main clans (Xing).¹⁶ Each sub-

¹⁴ The clans are : Saengva, Saengli, Saenglao, Saengheur, Saengxong, Saengya, Saengmua, Saengtho, Saengveu, Saengkeu, Saengkreu, Saengpa, Saengkha, Saengkong, Saengha, Saengxeng, Saengchao, Saengcha, Saengcheu, Saengpha, Saengheu, and Saengyeng.

¹⁵ Yang Dao, 1993:25.

¹⁶ The Tongxeu, the original and first group of the Phounoy; Tongxam, people of another line of the Phounoy ethnic group who were residing in another place and then moved in; Phounglang, people from various places who gathered in one village with a similar language; Salang, a group of people coming to reside with another group who settled there before; and Lavab or Phouvab, a small group living together with a bigger group.

group has differences in its religious ceremonies, food preparation, and (lunar) methods for calculating auspicious months and years for special events.

For the Phounoy, the appointment of individuals to positions of power is linked to their social influence, religious role, and personal reputation. Those selected as leaders are expected to be knowledgeable, competent speakers, honest, diligent, and willing to sacrifice their own interests for community or mutual ones. Phounoy leaders need to be confirmed by the government, so that they will have more formal power.

Khmu

The Khmu Rok Krong recognise nine main clans ('Ta').¹⁷ The Leukounkoug is the head of a Khmu clan and is usually an older man who commands admiration and respect in the community. When the Leukounkoug retires or, more unusually, loses the confidence of the community, then senior villagers will choose a successor. Ordinarily, this would be his son or brother.

Whereas, previously, women were not considered eligible or qualified to participate in clan decision-making, these views have softened in recent years. Nevertheless, informal cultural barriers to their participation in community decision-making remain and still greatly constrain their involvement.

2.2 Council of Elders

Iu-Mien

Iu-Mien groups rely upon a committee to en-

force customary law and govern the community. The committee is composed of respected elders and the village administrative body. Parallel to this committee, rule enforcement concerning governance of the 'spirit of the land' is done by a master clairvoyant who has the supreme power in deciding rules regarding ceremonies for offerings to the spirits. Due to good cooperation between the two groups, both customary and religious rules are coherently carried out. An elder will have a more important role and influence than the state-based village chief in decision-making with respect to beliefs or customary laws.

Power or authority at the community level is shared both by the customary holder of a position of power and, also, by the mass organisations presided over by the village chief. Both bodies have important roles and influence in the enforcement of customary laws or in the referral of cases to state justice mechanisms.

Changing a person in charge of customary governance is not an easy task. The replacement of a leader, master clairvoyant or head of prayers to the 'spirit of place' will be made only if that person is old and can no longer perform their duties. Changing the head of prayers to the 'spirit of place' may occur once or twice a year, if necessary. However, replacing the master clairvoyant will not occur as frequently, as the ethnic group believe that the master is very important in leading prayers for the 'spirit of place' in order that the community may be peaceful and prosperous. People believe that the master must have merit, knowledge, and ability in religion, as well as be of outstanding personal character and willing to make self-

¹⁷ *Ta Teuva Muchma, Ta Teuva Treulairting, Ta Rich, Ta Treukok, Ta Treumong, Ta Reuyay, Ta Xim-om, Ta Xeuchang, and Ta Ien-ok.*

sacrifices for the broader community benefit.

Makong

In Makong communities, senior people, considered competent and who command respect within the community, take on roles of conflict resolution and leadership. Ritual specialist roles - such as leaders of worship of a 'spirit of place' or ancestral spirits, clairvoyants, or charm practitioners - are inherited by sons and grandsons who are believed to be endowed with special powers to communicate with, and mediate between, ghosts or spirits.

Some ethnic groups mentioned the existence of leadership structures above the village level. For the Lolo in Nyot Ou district, Phongsaly Province, the ultimate leader of the five Lolo villages in Laos was called the Lao Phia, the second level was the khasime (i.e., naiban or village chief), and the third level was the Xaghorthe.

3. Sources of Customary Law

3.1 Authorities

Hmong-Mien and Sino-Tibetan Groups

As with political authority, men exercise a dominant role and are usually the decisive authorities in customary law matters. The headman of each hamlet or village will seek an amicable settlement of disputes among members of the community. Hmong governance is carried out in accordance with a well-defined and well-respected hierarchy:¹⁸ "A clan chief can rule over an entire region, thanks to the influence he ac-

quires through the mediation of his clan and his clientele."¹⁹

In traditional Akha villages, the dzoema is the village administrator and the ultimate decision-maker in conflict resolution, as well as arbiter of disputes. He is also the shaman and guardian of traditions.

Lao-Tai Groups

Elders recognised by the whole community act as the leaders, but usually the function is not hereditarily transmitted. This is not the case amongst the Tai Leu, however, whose authorities are the Sen (secretary), Cha (chief), and Panya. All these positions are hereditary, but are open both to males and females. In Phouthai communities, the leader is also in charge of community rituals in the village sacred forest ('pha mahesack').

In situations of conflict, people usually refer to appointed representatives from both sides called sam tao si kae. The Tai Neu use a draft system to select elders. This process is not open to women, who are not allowed to participate in meetings or in conflict resolution committees.

Mon-Khmer Groups

Mon-Khmer groups are generally led by a council comprised of older males. The council is presided over by the representative of the founding lineage, which established the village, in charge of community rituals: the Leukoukoug, for the Khmu, and Takong Riayh, for Katuic and Baharic-speaking groups. This council of elders is the decisive body in charge

¹⁸ *Yang Dao, 1993:24.*

¹⁹ *Morechand.*

of regulating conflicts within the community or with neighbouring communities.

In relation to everyday dispute resolution, clan elders will consider and resolve disputes. In more serious or unresolved cases, the Leukoukoug will become involved and decide the case along with the clan elders.

3.2 Written Records

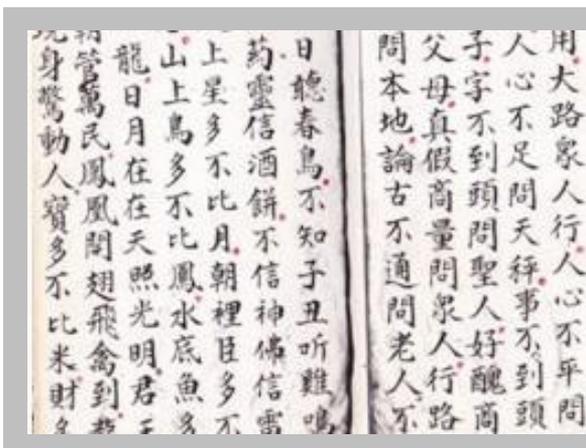
Most of the smaller ethnic groups in Laos are oral societies. They have handed down their indigenous knowledge, customary law, and practices orally from generation to generation. Traditionally, they did not have written records or draw upon written texts.

The Lu-Mien are an exception, having a book called 'Siaopholi', which literally means "explaining laws". The book is in two volumes and does not attempt to codify customary law in detail. Rather, it provides guiding principles, laws, and teachings on how to live life in all its aspects. Lu-Mien customary law authorities draw principally upon this book when render-

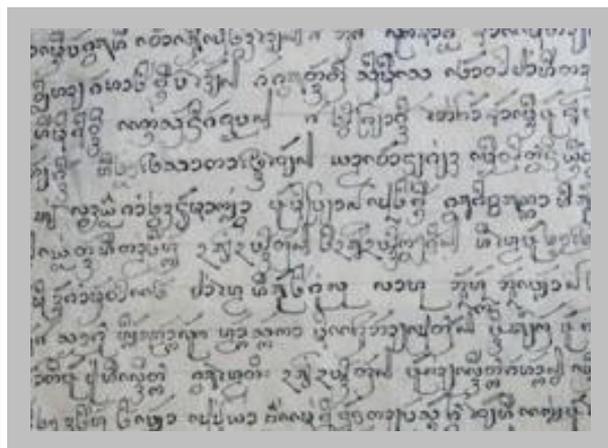
ing decisions and judgements. It is also used to aid in the selection of auspicious dates and months for each Xair: to calculate the most auspicious timing for important occasions, such as wedding ceremonies, the construction of houses, new house celebrations, the relocation of the family or religious ceremonies.

The Tai Leu and Tai Ngouan have since recorded their customary laws by themselves and compiled them in a book.

Hmong informants explained that, in their long history, the group has relied on different types of scriptures: including, Han Chinese characters; various phonetic alphabets romanised by different religious congregations; and scripts invented by Lao Hmong leaders, such as Lobyliao. The Lao national language is currently used to document officially the Hmong language. The non-homogeneity of Hmong scripts has resulted in a loss of written material on customary practices.



Picture 1 : Ethnic Mien's 'Siaopholi'



Picture 2 : Tai Leu palm leaf manuscript



Transmission of Akha oral archaic text from the Phima to the Phiza

Some of the groups have specialists - or reciters - responsible for the oral transmission of the customary law embedded in oral archaic texts. For Akha groups, the transmission of the customary law from the Phima (reciters or teachers) to the Phiza (students) may take ten years or more and requires a literal, word-by-word, concentrated, 'meditative' type of memorisation. The language of these oral archaic texts is not understandable to lay-persons and, interestingly, even in the case of population segments separated by hundreds of years, the texts share a high degree of mutual intelligibility (Van Gesao, 2000:132). This suggests a high cultural and structural unity of the group.

Many Mon-Khmer groups share a legend explaining the loss of their script. It is said that it was carved into buffalo skins, which were then eaten by dogs. This purports to explain why these groups rely on oral transmission of their customary heritage.

Similarly, the Lolo have a myth regarding ancestors who wrote their customary laws on an edible item (khaonoum) that was eaten at some time by a starving person.

4. Jurisdiction

4.1 Choice of Tribunal

Before whom and how a case is resolved depends upon a range of factors. The forum or theatre of resolution is contingent upon the seriousness or degree of the violation and the identities of the parties; e.g., whether they are relatives or not. Cases considered to be 'less serious', or which involve related family members, are more likely to be dealt with 'in-house' between the families or parties, with senior family representatives undertaking educational roles or imposing fines.

'Serious' cases, or those involving unrelated parties, usually will be dealt with by customary law authorities at various levels; including, the ethnic group head. If still unresolved, such cases will be referred to the state justice system via the village committee. In addition, the village chief continues to play an important role in conflict resolution.

In sum, cases involving family members are usually resolved within the household. Cases involving people sharing the same ancestry are usually resolved by their clan. Cases involving people from different clans, or who are not blood-related, are normally resolved by the village chief or elders. Finally, cases having a potential impact upon customary village rules are usually resolved by the village leader.

Beyond this general description, individual ethnic groups have their own processes and means of deciding the appropriate forum to hear a case.

Khmu

Different types of cases are solved at different levels: within the household, by the clan leader, by the village leader or by consensus.

Khmu Structure for Conflict Resolution

	Authority	Type of case
1	Head of household	Dispute involving family members
2	Head of lineage or clan	Violation of tradition having an effect on ancestry (rape, fighting, murder)
3	Traditional community leader and <i>Leukounkoug</i>	Cases where there is a violation against the customary rules of the village
4	Committee with representative from both sides and/or community elders	Rape, adultery, murder, robbery, cases between husband and wife
	Majority vote by all families	“Burning down village” case

Respected village elders preside over cases, although, in recent times, cases may also be considered by the village unit: i.e., naiban, kumban, VMU, village administration or the district or provincial courts.

4.2 Selection of Venue

Most ethnic groups have a specially-appointed place for conducting customary law proceedings. Ordinarily, ethnic Lu-Mien hear their cas-

es at the house of the village chief or a senior person who is a head of the ethnic group. The Phounoy hold inquiries or investigations at a designated place, called the ‘Heurnchoum’ or ‘meeting house’. Mon-Khmer groups have a community house, usually located in the centre of the village. The Khmu traditionally call such a community house a chong; whereas, Katiuc-speaking groups call it a roong. Lao and other Buddhist groups often use the village pagoda to hold meetings; including, conflict resolution meetings.

Mon-Khmer Community Houses



5. Procedure

5.1 Dispute Resolution Processes

The following are outlines of typical customary dispute resolution proceedings of different ethnic groups:

Process for Resolving Cases in Khmu Communities

- 1) A person responsible for a violation will usually confess or admit his or her story to his or her relatives.
- 2) Relatives and senior people in the village will have a discussion and agree upon a date to consider the case and inform all relevant parties of the proposed hearing date.
- 3) Both parties will be present on the agreed date.
- 4) Both sides appoint a mediator who has experience to consider the case and make a decision. The mediator must not be a relative of either party. The mediator can originate from the same village or another village.
- 5) After mediation, the parties are brought together at an appointed time to hear the final decision and to agree on implementation of the decision.

Hmong

Hmong procedure involves collecting information, investigating, and, sometimes, appointing an assistant or mediator to assist the parties in solving their case. Generally, parties first attempt to resolve the dispute themselves. If they cannot, then they will ask their relatives to become involved. If the relatives cannot settle the dispute, it will be submitted to the Saengxaor the head of the ethnic group. This process may not be followed step-by-step: the parties and the head of the Saengxao both participate in choosing which step should be applied. The head of the ethnic group has supreme power and responsibility for governing and keeping the peace and security within the ethnic group in each locality. As such, he may settle any unresolved disputes, but most cases will be resolved at or before this stage. Increasingly, however, more and more cases are being referred to the courts.

lu-Mien

The lu-Mien establish an ad hoc hybrid commit-

tee to consider each individual case, no matter how serious. The committee is composed of a village authority, a group of senior people, and a head of the ethnic group. In addition, each party will bring their elders to hear the consultation or to represent them, if necessary.

Makong

Their system of dispute resolution is also a hybrid one, integrating customary and state law and practice. While the Makong rely heavily upon a village chief to resolve a case, the chief's decision is based upon the views of a group of elders who represent a wide range of interests: customary, religious or state-based power sources; including, leaders for household spirit worship, clairvoyants, charm practitioners, fortune-tellers, people knowledgeable about customary practices, village chiefs, and heads of village mass organisations representing the national authority. Often, a vote of these committee members is taken and the presiding chief ordinarily accepts the decision of the majority of members.

Procedures for a lu-Mien Dispute Resolution Committee

- 1) A committee or a village authority will give an opportunity to each party to present their comments and opinions and to address the case.
- 2) The committee will then present options or inform the parties of their preliminary decision.
- 3) Each side will then comment on the options or preliminary decision.
- 4) The committee will then consider all the comments presented by each side in order to make their final decision.
- 5) In case one or both of the two sides do not agree to the decision, the committee will ask each side to reconsider and then make another appointment to hear and decide the case again.

Makong Dispute Resolution Procedure

- 1) A complainant approaches the village chief and offers him/her a pair of candles and a pair of flowers, places a piece of cloth on the chief's shoulder, and then sits down and greets the chief.
- 2) Then the complainant tells the chief about the facts of the case and presents evidence or witnesses.
- 3) Once the village chief agrees to help, the chief will go to the senior's group to report the case.
- 4) The group will then hold a meeting and agree upon a date for both the plaintiff and defendant to give their testimonies before the group.
- 5) On the appointed date, the group sit together with the heads of village organisations for the hearing (*ke-ungraotamanay*).
- 6) During the hearing, the parties will present their testimony and any supporting evidence. The group and representatives will listen carefully and sometimes interject with questions. If the group deems the information insufficient or unclear, they will ask the parties to provide more information and appoint a new date for resuming the hearing.
- 7) When both parties agree that sufficient information has been put forward, then the panel will make a decision.
- 8) The party found at fault must provide a pig, a chicken, and alcohol to the group of seniors as a service fee.
- 9) If the case cannot be settled, the village chief and the group of seniors will prepare a case document to be submitted for review to the village-group dispute settlement body, which will apply both customary and national law.
- 10) Should the case still remain unresolved, it will be referred to the district authority.

Phounoy

They conduct an inquiry or investigation at a designated place: the 'Heurnchoum' or meeting house. The investigation is led by the Kuan, a person of high-standing with strong conflict resolution skills, who is appointed by the Phia (customary leader) and has the role of judge. The Kuan is joined by people from each side with high qualifications and seniority. These people can be appointed either: by the village organisation; by a group of senior people who, ordinarily, are already organised into a panel; or upon the request of one of the parties that a particular individual help decide the case. Such persons would ordinarily be high-standing relatives of the party proposing them.

5.2 Attendance

According to Hmong practice, if a person does not attend or participate in a case proceeding or dispute settlement involving them, the head of the ethnic group will assign a person to summon that party. If they still fail to appear, the non-attending party will automatically be judged at fault in the case. This rule deters non-attendance. Thus, it is very rare for a party not to attend a case proceeding, especially one conducted by the head of the ethnic group, or to refuse to participate in settling a case.

Under Khmu customary law, a person cannot be forced or coerced to attend and will not face punishment if they do not. In a case where a party does not attend, the hearing will usually be postponed. It is unclear, however, how long a party can avoid judgement by repeatedly failing to appear.

In the Phounoy tradition, if a party does not attend a hearing, then a group of people will

be assigned to bring him or her to the meeting house. If a party is unable to attend, a good reason must be presented and another person must provide a guarantee that the party will attend as soon as possible. If that party later fails to attend, then he or she will be required to provide labour in compensation to the community.

5.3 Opening of Proceedings

A common opening proceeding for many ethnic groups is the presentation or offering of a tray to the decision-makers. The tray may contain flowers, candles, chicken, and money - or currency used for ritual compensation or fines, such as the mun, an Indochinese coin. It may also include cotton or tobacco and its presentation might be accompanied by special gestures; for example, by whistling or dancing.

Amongst the Hmong, who have diverse ritual requirements during proceedings, a party must provide a tray containing a chicken, one bottle of alcohol, and four mun, before the proceedings can commence.

5.4 Representation at Proceedings

Some ethnic groups allow certain forms of representation, but most do not in disputes involving only men. On the other hand, most ethnic groups require female parties to be represented by their male relatives.

According to Hmong customary law, it is permissible to have a representative for each party speak on behalf of that party. Usually, the representative will be a relative or a head of the Saengxao of the party to the dispute. Most

cases are resolved by a head of Saengxao or between relatives. Sometimes, even the parties themselves are not privy to the settlement until afterwards. They must, nevertheless, follow or implement it according to the Saengxao's decision. A case is not named or identified by reference to the parties, but to their Saengxao. Therefore, it becomes the whole Saengxao's responsibility. As a result, many Saengxao are reluctant to represent an individual party in their dispute or to provide advice on customary or national laws. If a case cannot be resolved by the Saengxao, it will be submitted to the head of the ethnic group.

A hearing is conducted in which the representatives, advisors, and assistants, the head of the Saengxao, and the head of the ethnic group will discuss the case amongst themselves. Then they will unanimously assign one person to decide the case. The role of the head of the ethnic group is to monitor, supervise, and provide advice; whereas, implementation is the responsibility of the head of each Saengxao. Khmu customary law does not allow a representative or third party to present a case on behalf of another, unless the party suffers from a disability. In this situation, a close person or friend can represent them.

Aside from the aforementioned instances, neither are other forms of legal assistance provided, nor any legal advisors involved, in dispute resolution in the customary law systems in Lao PDR.

5.5 Women's Standing in Proceedings

Women are traditionally excluded from participating as parties in conflict resolution processes amongst Laos's ethnic groups. In some groups, if a woman wishes to bring a case, she asks a male relative to bring it on her behalf. In cases where women are pitted against men, their veracity is more likely to be questioned and less weight attributed to their testimony. In short, the words of a woman have much less credibility than those of a man. A woman is usually discredited when it is her word against that of a man.

In the past, Khmu women did not have a right to present a case. Women's participation would be contingent upon her having a supportive husband, who would speak on behalf of his wife. If she had no husband, then another male relative - such as an uncle or brother - could present the case for her, although she was entitled to be present during the hearing.

Traditionally, Hmong women had no right to be involved in customary law decision-making because Hmong society "believes that women's words are worthless". Evidence of such an attitude can be heard when a woman has a quarrel or is otherwise involved in a dispute and the head of family, usually male, tells the other party: "You should not take this as a wrong because it was a woman who is the person who spoke."

Now, however, Hmong women have a right to bring a case when their rights or interests have been violated. Women also have a right to give comments or express their opinions in meet-

ings and the right to be represented. Nevertheless, in practice, women rarely bring claims. For example: no women had ever brought a claim before the customary authorities in the two Hmong villages surveyed for this report. If a Hmong woman is the household head - i.e., either widowed or divorced - she can bring an action herself, provided that she has evidence to support her claim.

5.6 Evidence & Confessions

While, often, confessions are readily offered by suspects, there is a range of involuntary means for obtaining confessions from suspects or for deciding which party's account is more truthful. The methods vary between ethnic groups.

lu-Mien

They have the most extensive and developed methods for fact-finding and extracting confessions. First, a suspect will be investigated and witnesses sought to provide evidence concerning the suspect's innocence or guilt. Where there is insufficient evidence, the suspect may then be threatened by senior family or community members, or by a village authority, to confess to the transgression. They might threaten the victim with the following words: "If you do not admit the wrongful conduct, may a tree fall upon you when you clear the slash-and-burn area and may a tiger eat you when you go hunting... If you travel by boat, may the boat overturn and sink and may a water snake eat you...".

If the suspect still refuses to confess, he or she may be subjected to one or a number of types of torture. Such methods include immobilising the suspect by 'clutching' their forelegs, having

their fingers nailed onto wood, or having their limbs tied and then being placed outside in the sun or rain and deprived of food.

A number of religious-based ceremonies are also used to obtain confessions or assess the veracity of a suspect's testimony. One such is "swearing by drinking water"; a technique also used by the Hmong. A charm-practitioner blows charms into water and the parties are then required to drink it. If a person is innocent, it is believed that nothing bad will happen to that person. If the person is guilty, but refuses to confess, then some misfortune will befall that person's family, such as sickness or a death. A variation of this is that the water is used to boil rice cakes. Each party is required to wrap a rice cake and, if a party is guilty, their rice cake will not be cooked. Another method is that a large pan of pig oil is brought to the boil over fire. The charm-practitioner will blow the charms into the oil and then the suspect must dip his or her hands into it. If the person is guilty, they will either refuse to immerse their hands or their hands will be burned immediately upon submersion. If the oil explodes when a suspect is approaching it, the person will be immediately deemed guilty. It is believed that an innocent person's hands should emerge from the oil unscathed.

Hmong

First, witnesses are sought. A suspect may then be confronted with all the available evidence and strongly pressured to confess. Stories concerning the ill-fortune that befell guilty parties who refused to confess in the past are commonly used to induce confessions. Failing that, a suspect may be required to take an oath by drinking holy water.

Another method is to force a suspect to drink the blood of a chicken, with the 'local-spirit' as a witness. In most cases, the suspect will confess. The Hmong may also require a suspect to immerse his or her hands in boiling oil, as a means of determining guilt. In the Hmong version, before the suspect immerses his or her hands, a clairvoyant and the victim have to dip their hands in to demonstrate their own innocence. Informants insisted that this method had been successfully used to solve a number of cases. Some maintained that they had observed this technique and witnessed hands emerging from the oil unscathed: a phenomenon that the informants admitted they could not readily explain. In some cases, the Hmong will hold a competition, using charms or firing arrows, to decide which party's evidence is correct or true. However, this is a rare practice.

Khmu

The Khmu first seek witnesses or physical evidence linking a person to a crime. In many cases, suspects will confess without being induced. Suspects may be required to take oaths or subject themselves to tests, such as "swearing by boiling lead" (kongcheun). In this ceremony, senior committee members will call upon suspects and ask them to confess. If no one confesses, each party will be forced to swear by lead that is being boiled. Then, the suspects will dip their hands into the molten lead. The theory is that a guilty party will be burned, while an innocent party will remain uninjured.

Another method used by the Khmu is "swearing by drinking water" ("sa ban uerk om"). Two variants have been observed: The first involves

lighting two candles and going to swear at the holiest place. Before drinking the water, the person officiating will say, "If you are wrong, please accept it. If not, after drinking the water, your intestine will break, you will be hit by thunder, you won't be able to return home or some other terrible misfortune will befall you." The second involves the suspect swearing to holy things and then drinking water in which a gun and knives have been soaking.

Another means for determining truthful testimony is by "swearing by boiling rice" ("sa ban tom mach"). The Khmu believe that a person with sin, who refuses to confess, will be incapable of cooking rice fully.

Phounoy

In Phounoy communities, pressure is placed upon a suspect through the application of threats and lectures by parents, village authorities, and senior people. If this does not produce a confession, a suspect may be required to take an oath by drinking holy water in front of a large Buddha statue or at another holy place.

6. Substantive Customary Law

6.1 Shades of Meaning

All ethnic groups have their own concepts and words to describe specific infractions against customary laws.

None of the customary laws of Lao's ethnic groups provide a clear-cut distinction between criminal or civil cases. Customary law systems deal with both - and generally use identical procedures for both.

Classification of Violations

Ethnic Group	Term	English Translation/Meaning
Hmong	<i>txhaum</i>	To do wrong
Hmong	<i>txhuam kev cai</i>	A violation of law, beliefs or way of life - normally attracting a fine as punishment.
Khmu	<i>ah xeung krich/ah tod</i>	violation or infraction
Khmu	<i>xeung krich nair</i>	ordinary violation or infraction
Khmu	<i>xeung krich nam/xeung krich nak</i>	serious violation or infraction
Khmu	<i>xeung krich tamada</i>	medium violation or infraction
lu-Mien	<i>tongchongpan</i>	medium violation or infraction
lu-Mien	<i>tongleuy</i>	violation or infraction
lu-Mien	<i>tongheng/tongphaiphewsi</i>	ordinary violation or infraction
lu-Mien	<i>tongxum/tongho/tonghia</i>	serious violation or infraction
Lolo	<i>seusoua</i>	violation or infraction
Lolo	<i>so la</i>	medium violation or infraction
Lolo	<i>so lee</i>	serious violation or infraction
Lolo	<i>so ya</i>	light violation or infraction
Makong	<i>loi</i>	violation or infraction
Makong	<i>loibi</i>	very minor violation or infraction
Makong	<i>loikeury</i>	minor violation or infraction
Makong	<i>loipalay</i>	serious violation or infraction
Makong	<i>loipoud</i>	major violation or infraction
Makong	<i>talo</i>	wrongful conduct
Phounoy	<i>angphidangchai</i>	violation or infraction; i.e., to act against the rules and regulations of the village or beliefs
Phounoy	<i>chia phid chae</i>	ordinary violation or infraction
Phounoy	<i>phid chae ang nak</i>	serious violation or infraction
Phounoy	<i>phid chae pan kang</i>	medium violation or infraction

Most groups distinguish or categorise violations according to their perceived seriousness. Some groups distinguish between less and more serious violations or infractions. Some - such as the Phounoy, lu-Mien, Lolo, and Khmu - also have words to describe 'medium' violations, while others - e.g., the Makong - have even more graduated categories.

6.2 Rights & Responsibilities

Rights

The Lao language has a word for 'right': *sit*. The concept underlying and informing 'sit' is embedded in the customary law of each group and handed down through the generations. For the Hmong, a 'right' means that people can present their comments/opinions on the general work of the village, on the selection of the head of the ethnic group's successor, and

that they should help each other during ceremonies - e.g., a wedding or funeral - as well as other people who cannot help themselves. It might also encompass a right to use natural resources, such as forests or land for cultivation.

However, the understanding of 'rights' is ambiguous in Lao PDR. On one side, these are not 'rights' that are considered intrinsic and inherent to the individual but, rather, depend upon an individual's position and rank within his or her social structure. The concept of rights may be limited to the right to implement one's family or social obligations. While amongst Laos' ethnic groups there are cultural qualities, values or norms that correlate - or could be considered equivalent - to rights, but a key difference is that they do not emanate from the idea that certain entitlements are innate to human dignity and not dependent upon, or linked to, a person's social status or identity.

Arguably, therefore, it is considered acceptable, or even just, that those who wield power and wealth be entitled to use these for their personal benefit: suggesting that Lao communities do not expect "equality before the law". At the same time, the unfair or biased resolution of disputes and inequality are pressing issues facing communities. The use of clan affiliations to influence dispute resolution outcomes is a manifestation of this. Other manifestations include: poor households who do not receive the resources and opportunities that they should, bribery and corruption in dispute resolution processes, legal impunity enjoyed by privileged community members, and obstacles to women's participation in commu-

nity decision-making.²⁰ The articulation of such unmet justice demands may be suggestive of greater rights' awareness and resonance in communities than is generally acknowledged.

Responsibilities

Concepts of 'social obligations' are more visceral, real, and relevant to Laos' ethnic groups than are 'rights'. Social obligations often refer or translate into labour input expected from them by community members - sometimes calculated on the basis of the number of labourers available per family - in order to organise weddings, funerals, construction of public buildings - such as schools - maintenance of access roads, digging wells, and other communal, shared responsibilities.

There is also a social obligation to assist vulnerable members of the community, such as those who are sick, suffer disabilities or are otherwise unable to provide for themselves - as well as to help each other in times of particular need - or participate in mutual assistance during peak labour periods; such as clearing the forest, planting or harvesting. No matter whether a private or a common task, everyone has an obligation towards their community or organisation to help, but especially in times of need.

Some communities, such as the Khmu Rok, have collective plots, where each household provides labour to produce crops used to ensure food security, supply grain to feed guests or for other social purposes. Social obligations also refer to respect for the community consensus about the holiness of places of worship and for rules to preserve forests, water resources, and other communal assets.

²⁰See: *People's Perspective on Access to Justice Survey in Lao PDR*.

6.3 Family Law

Marriage, Residence & Lineage

Marriages can be formed in a range of ways: on a voluntary, self-selecting basis; by arrangement, usually by the parents; by theft; by formal request; or, in some cases, “the woman runs after the man when the woman loves the man too much”.

While traditional residence patterns remain dominant in Laos, there are many social forces that impact upon the degree to which they continue to be observed, such as location, urbanisation, inter-ethnic co-location, and modernisation, with its emphasis upon individual choice.



ETHNIC

GROUP
Hmong

MARRIAGE/RESIDENCE/LINEAGE

Family units are large. Aside from the husband, wife, and children, they often also include parents, great-grandparents, uncles, aunts, and cousins. After marriage a woman moves to her husband's house. As children grow up and marry, they may move out of the family house, but usually build their own houses nearby. The elder and younger brothers in the family are treated equally. The elder one will assist the parents in caring for younger brothers. If the parents pass away, the eldest son becomes responsible for the whole family. The youngest brother will normally stay with parents, as the last one to marry, and live with them until their deaths. The family head is prohibited from selling or lending the property of his children to others. Children take on their father's family name.

Both men and women are expected to work. Women perform domestic duties; such as cooking, taking care of children, feeding animals, and agricultural work. Men are responsible for heavy tasks; such as building houses, collecting firewood, and cutting down trees, as well as making knives, earning money, hunting, and fishing.

Hmong boys and girls aged 14 – 15 or above, can marry. There are some girls as young as 13 who marry and cases where the parents betroth their daughters when they are aged less than 13. Aside from meeting minimum age requirements, in order to be eligible to marry, the bride and groom must not suffer from mental disability, must not share the same *Saengxao*, and must not be related, either vertically or horizontally.

Marriages can be formed in 4 different ways: The first, *Tshoob zawj* is where a woman is forced to marry a man. If she resists, the man may make payments to the parents to apply pressure on her and convince her to marry him.

A second form of marriage, which is not very common, is *Tshoob Thov* or "marriage by proposal based upon an official marriage request". The man's family proposes marriage to the woman and her family. The woman has the option of refusing.

A third means, which is still common, is: *Tshoob zii* or *nqug quas puj*; literally, "to pull a lady/wife", or bride-theft. The traditional approach is for the man first to offer the woman a small present and then, if she accepts it, this is considered her tacit consent to the 'theft'. Marriage then follows. However, often the practice involves no element of the woman's consent. In short, the man kidnaps the woman and takes her to his house with the intention of marrying her. Sometimes girls as young as 12 or 13 are kidnapped from their families without warning. In the worst cases, a girl may discover that the man is already married with children and she, herself, is relegated within a new clan order, where she is a servant to the man and his relatives. In some cases, kidnapped girls or women may resort to suicide. In this case, the man is responsible for bearing all expenses relating to her funeral and payment of the bride-price to her family. Despite the great unhappiness this practice often causes to kidnapped girls (or women) and their families, marriage by theft is still considered acceptable or even as a way of honouring a woman's dignity.

Finally, there is *Tshoob sib caum*, which is the most frequent pattern of marriage in which the man and the woman are a self-selecting love match. The young couple move into the man's family house and inform the bride's parents of their planned union. When the woman arrives at the man's house, the man's side must quickly appoint a representative from their *Saengxao*, who will negotiate a wedding date with the woman's relatives as soon as possible; i.e., within 3-5 hours of her arrival. When the husband visits the woman's family, he must bring 12 *bia* of money. In the marriage ceremony, a contract is concluded between the two sides, outlining obligations for the new couple in building their family. If any party breaches the contract, the measures prescribed in the contract will be applied. The man's family pay a bride-price to the woman's family. During the wedding ceremony the couple will take an oath in front of relatives from both sides. The man's representatives will vow to the woman's relatives that, in order to secure the rights and interests of the woman, she will become part of the husband's *Saengxao* and worship the spirit of that *Saengxao*.

ETHNIC GROUP	MARRIAGE/RESIDENCE/LINEAGE
Khmu	<p>Bride-theft is known, but rare, and it is not usually dealt with by the body of customary law. When it occurs, the man kidnaps the woman and brings her to his house, where a small <i>Soukhuan</i> or apology ceremony is held for the woman. She is then considered his wife. The woman's parents are informed and the two sides discuss a wedding ceremony.</p> <p>Sibling marriage is prohibited, as is marriage between the children of brothers or sisters; i.e., first cousins. The grandchildren's generation can inter-marry, except in the case of "Konekeum Koneem".</p> <p>If a virgin man marries a widow, 1 pig must be slaughtered. If a virgin woman marries a widower or a divorcee, then 1 dog must be slaughtered. After marriage, the couple will live at the house of the husband's parents. The couple are not allowed to live with the wife's family.</p> <p>If any of these customary practices are not observed or are violated, then the 'household spirit' must be restored. It is expected that children will marry in chronological succession from the eldest to youngest. If a younger sibling marries first, then he or she must pay a fine to restore the face and pride of his or her elder siblings.</p>
Makong	<p>A family is called 'Dong' and is a small and tight-knit family unit comprised of parents, children, and, sometimes, parents-in-law. Across all four sub-ethnic groups, a woman will move to her husband's house after marriage (patrilocal). The wife must give up her own 'household spirit' and worship that of her husband. When the wife passes away, her husband or his relatives will make a <i>Lapeub</i> ceremony for her, as they would for other 'house' family members. In rare situations, such as when a man cannot provide a bride-price, a man may move to his wife's house and become a 'bought son-in-law'. More commonly, in such cases, the wife will still move to her husband's house and the bride-price will be paid in instalments.</p> <p>In families with many sons, all but one son will separate from the family and live in their own house after marriage (neolocal). One son, often the eldest or the youngest, depending upon which has the closest relationship with the parents, will remain in the family home to care for the parents.</p> <p>All siblings are responsible for caring for their parents and carrying out obligations and ceremonies for their parents, such as the ceremony of <i>Lapeub</i> in the event of sickness. All of them share the same 'household spirit', and their children and grandchildren are forbidden from marrying one another, as they belong to the same 'household spirit'.</p>
Phounoy	<p>The minimum age for marriage is 16. Men and women are free to choose their own marriage partners, although usually men are significantly older than women due to their need for female labour to work on slash-and-burn fields.</p> <p>To form a marriage: First, the man must work for at least 5 months for the woman's family to demonstrate his diligence, honesty, sincerity, and commitment to her parents and capacity to care for a family. He must inform his own family how he is spending his time. If the man and woman decide that they wish to marry, then the man will ask his parents to identify an auspicious day to propose marriage. To make the proposal, the man must be accompanied by a wedding negotiator, or close senior male relative, and bring a bowl of areca nuts, a bowl of Phou leaves, and 1L of alcohol. A man will pay a bride-price to the woman's parents. Following marriage, she will stay with his family and take on his ancestry. Normally, people will live in one house shared by many families, although cooking will normally be done separately.</p> <p>Children born of the marriage will use the family name of the husband and will be considered part of his ancestry and lineage.</p>

ETHNIC	
GROUP	MARRIAGE/RESIDENCE/LINEAGE
Phounoy	Husband and wife are jointly responsible for the family livelihood, particularly for children and parents-in-law. However, the husband is considered the leader of the family and ultimately responsible for providing for the family. Both husband and wife work hard in agriculture to earn a living. A wife is responsible for daily domestic labour, such as cooking, collecting water, milling rice, taking care of children, collecting firewood, raising livestock, washing clothes, and many other things. Furthermore, the wife is responsible for showing respect to and caring for her husband's parents. Conversely, the husband is obliged to care for his wife's parents and not to speak ill of them.
Pray	<p>Pray society has an exogamic clan system; i.e., one where couples marry outside of their clans. After marriage, the husband moves to his wife's house (matrilocal) and takes on her family name. Inheritance is through the female line (matrilineal). The history of communities often starts with the establishment of the 'first mothers' – referring to the mothers of ritual – that led their community to the site of the village.</p> <p>A woman's family pays a dowry. A young woman works for two years in her husband's field prior to marriage, then the husband will move to her house.</p>
Then	The young couple live with the bride's family for a few years. Then, they can either separate, build their own house on a piece of land provided by the parents, or stay in the woman's house.

ETHNIC	
GROUP	POLYGAMY
Hmong	<p>Men are allowed to have several wives, but women cannot have several husbands. Women are unhappy with the customary acceptance of polygamy by men; i.e., of polygyny. With respect to inheritance, or property division, the first wife has a claim to a greater share of the property than the second or subsequent wives.</p> <p>When conflicts arise between wives that cannot be resolved, then the women are to be accommodated in separate houses. Each strand of the family will live separately, with the man choosing which wife he will live with or alternating between them. There is no limit on the number of wives that a man may have.</p>
Khmu	When a woman is unable to bear children, she is culturally obliged or expected to agree to her husband taking a second wife to provide the family with an heir, although she cannot be forced to consent. Where there are several wives in one household, the first wife is considered the senior and can delegate work and tasks to other wives. She also has greater prestige and entitlements to manage and maintain property in the family. When the man dies, his children from different wives will have different rights of succession, with the children of the first wife receiving a greater share.
Makong	When a couple are unable to produce a male heir, a wife may permit her husband to take a second wife. There are also occasions when a man falls in love with another woman, or prefers to have a younger wife, and he may force his first wife to accept the new one. The first wife wields a lot of power in the family. If a man who has more than one wife passes away, the first wife will receive more marital property. Second and subsequent wives may only receive small shares - or none at all. All property inherited from the deceased husband can be used, but it cannot be sold, by the wives. The husband's brothers, not the wives, inherit such property.

Polygamy

Polygamy is still relatively common in Lao PDR, mostly in Hmong communities but, sometimes, also in Mon-Khmer villages; including

the Khmu and Makong. In these latter cases, this most commonly occurs when the first wife is unable to bear children. Other ethnic communities, such as the Lu-Mien, manage the

lack of a successor differently, by encouraging adoption. Adopted children have the same rights as natural children and, thus, can inherit and succeed their adoptive parents. In some cases, when the husband takes a new wife, he may renounce the old. It is reported that there is occasionally an increase in violence directed towards the first wife in order to pressure her to leave.

Pre-marital Relations/Paternity

Sexual relations prior to marriage that result in pregnancy will often lead to marriage. Also, it often necessitates a baci soukhoun ceremony to restore the face of the woman and her family and a sacrifice to honour the spirits of the ancestors. It additionally requires the payment of a fine to the village authorities.

ETHNIC GROUP	PRE-MARITAL RELATIONS/PATERNITY
Hmong	<p>If a couple has sexual relations prior to marriage and this becomes known to the woman’s family, then, providing they are both unmarried, they will often be forced to marry and the man will be required to pay a bride-price to the woman’s family. A marriage ceremony would not, however, be conducted.</p> <p>When a woman becomes pregnant and the man refuses to marry her, the man will be fined an amount agreed between the two sides or by the <i>Saengxao</i>. The woman will be barred from delivering in her parents’ house and must find somewhere else. Three days later, she can return to outside of her parents’ house, where she must remain close to the charcoal. She will not be allowed to enter the house until she stops fasting. A child born in such circumstances will have no <i>Saengxao</i> and will not be received in any ceremonies or beliefs or ritual practices of the spirits of the <i>Saengxao</i>. In effect, the child will be a social outcast.</p>
Khmu	<p>If an unmarried man and woman have intimate relations and that leads to a pregnancy, the parents of both parties will discuss and agree the conditions in which the couple shall marry. Such conditions might include a requirement that the newly-born child be sent to the man’s house. A 1-cow fine may be imposed on both parties to restore the face of the other party’s family. Separate wedding fees and bride-price must be paid.</p>
Lolo	<p>If a man agrees to marry a woman he has impregnated, then she can deliver the baby in his house. If no one will assume responsibility for the child, then she will be compelled to deliver the baby in the forest and is not permitted to return to her village for 1 month. During that month, her parents are permitted to search for her and care for her by providing her with food and other necessities.</p>
Makong	<p>When a woman becomes pregnant, but the identity of the father is not known, the woman’s parents will restore the ‘household spirit’ and the ‘village-spirit’ themselves - with a pig or a buffalo to remedy the wrongful conduct. If the parents know the identity of the father, then he will be fined one buffalo to restore the ‘village-spirit’ and the ‘household spirit’ of the woman. He also is responsible for caring for the child until the child is 18 years old.</p>
Phounoy	<p>Should it become known that an unmarried couple has had intimate relations, then 1 pig must be sacrificed to the ‘household spirit’ and to their parents. In some cases, marriage will be arranged quickly. Should the couple have a child before marriage, this is known as “<i>Loukthang</i>”. The couple will need to conduct a ceremony and sacrifice a pig to ask for forgiveness from the ‘household spirit’, the parents, and relatives, as well as pay 17 <i>mun</i> in money. The couple are expected to marry - or the man must accept that he is the father and be responsible for the child’s maintenance.</p>

Divorce

ETHNIC GROUP	DIVORCE
Hmong	<p>Before a divorce is granted, a couple is expected to try to live together. If that fails, then a divorce will be granted, so long the parents and the heads of the <i>Saengxao</i> of both sides, as well as the couple, all agree voluntarily. However, such agreement is rarely achieved. When a man wishes to divorce his wife, he must pay 12 <i>bia</i> to his wife and return her to her family. He must pay an additional 12 <i>bia</i> to her parents to restore their pride and return any property given to him by her parents. When a woman seeks a divorce, which is extremely uncommon for the reasons outlined below, the woman relinquishes all assets earned after marriage and must pay the man 12 <i>bia</i>. However, she will not be required to pay anything to his parents to restore their pride.</p> <p>There are two types of divorce: one where the woman retains her husband's <i>Saengxao</i> (<i>Nrauj cuab tsis rauj xeem</i>) and, the other, where she does not (<i>Nrauj cuab thiab rauj xeem</i>).</p> <p>It is very advantageous for the woman to retain her husband's <i>Saengxao</i>, as the woman and her children will then still be eligible to participate in important ritual ceremonies, in the event of sickness or death, or to worship its spirit. If the woman does not retain her husband's <i>Saengxao</i>, then the woman and her children will not be able to attend such ceremonies and will not receive the protection and care that inclusion in these aspects of life bring. This leaves her outside of the whole customary life framework, as she is unable to return to her own <i>Saengxao</i>. Thus, when she dies or is sick, no ceremonies will be conducted for her; the same applies to her children. For this reason, the risk is particularly high for a woman if her husband divorces her. If a woman remarries, then she can be accepted into her new husband's <i>Saengxao</i>.</p> <p>Men sometimes abuse their wives' vulnerability with respect to divorce to obtain their consent to the husband taking a second or more wives. Women can also be vulnerable to other tricks by their husbands; e.g., a new wife is brought to her husband's house, participates in a ceremony at the backdoor, irreversibly committing herself to her husband's <i>Saengxao</i>, and then discovers that he has lied to her about some important matter; e.g., that he already has other wives. The woman is, thereafter, trapped as his wife and stuck with his family.</p> <p>The Hmong have a saying that captures the permanence and irreversibility of a woman's membership of her husband's family: "When she is alive, she is ours; when she dies, her spirit is also ours."</p>
Khmu	<p>Whichever party seeks divorce must pay 1 pig, 90 <i>mun</i>, and provide 1 jar of alcohol to the spouse's family. Additionally, 12 <i>mun</i> must be paid to the customary authorities who resolve the case. The woman must leave her husband and cannot return to their house or worship her husband's spirit or <i>Xing</i>. If a divorced woman wishes to marry another man, the amount of bride-price is determined by her first husband. The Khmu Rok Krong customary law does not permit divorce easily. After marriage, a couple are expected and strongly pressured to continue living together until death. If they do divorce, the children must live with the father. The person divorcing will be fined 1 buffalo and 90 <i>mun</i> of money. The person seeking divorce will also be required to pay to each of the two senior representatives (1 for each family), a pig, 12 <i>mun</i>, and 1 jar of alcohol.</p>
Lolo	<p>Grounds for a wife seeking divorce are that her husband is lazy, violent to her or the children, or has a drug addiction. The man is then considered to be a bad husband and will not receive a refund of the bride-price. Infidelity is another ground for divorce. Whichever party is at fault loses their half of the marital assets and, if it is the husband, the bride-wealth is not refundable. If the parties are equally responsible for the divorce, then marital property is equally divided - or apportioned according to degree of fault. Ordinarily, sons will live with their father after divorce, while daughters can choose with which parent they wish to live.</p>

ETHNIC GROUP	DIVORCE
Makong	<p>If a man seeks to divorce his wife, he must pay 3 million kip (Lao currency) and a buffalo. He will lose any assets or property acquired since the marriage. If a woman seeks divorce, she will be required to pay 2.5 million kip and a buffalo. She will also lose her share of marital assets. In either case - i.e., if the divorce is being initiated by the woman or by the man - grounds for divorce must be established. If the party seeking the divorce does not establish grounds, then a man must pay 5 million kip and a woman 2.5 million kip, and that spouse would lose his or her share of the marital assets. If the divorce is by mutual agreement, then no fines are imposed and the property is divided in half. The couple's children can choose with which parent they wish to live.</p>
Phounoy	<p>Couples rarely divorce. At the time of marriage, both sets of parents will provide advice and education to the new couple on how to have a successful marriage, develop their family, and contribute to the community. Their advice is usually as follows:</p> <p><i>“Chaothalobou, chaothalounnaechao, boumaekhomthalobou”</i>; meaning: “after marriage, husband and wife should share their shelter and food. They should eat and earn their livings together”;</p> <p><i>“ Chabeunbeunnachou, tangbeunchaenachou”</i>; meaning: “do not be stingy, share equally, do not be jealous, forgive one another, and do not yell at the family after drinking”; or</p> <p><i>“Angbiangmew yamachachamang, khoutoumlachasangyi, langtuchacharoyi”</i>; meaning: “after marrying, a couple should grow old together, build up a family together, drink water from the same well, and be faithful to each other. As the proverb says: ‘eat from the same tray of food, fish from the same trap, share the same banana flower, eat bananas from the same bunch...’”</p> <p>In the event of divorce, children can choose with which parent they wish to live.</p>
Pray	<p>If the wife initiates the divorce, she must pay a fine of approximately 50,000 Kip. When a husband initiates divorce, he must pay the fine but, in addition, must reimburse the woman for the cost of her 2 years of labour: estimated at 3,000 Baht. The additional costs are a strong disincentive to divorce.</p>

Survivorship

Ethnic Group	SURVIVORSHIP: Widows/Widowers
Hmong	<p>A widow or a widower will retain full control over any property acquired during the marriage and is eligible to re-marry. If an elder brother dies, his younger brother has the right to marry his widowed sister-in-law. She is obliged to accept, if the younger brother wants her. Conversely, if a younger brother dies first, his elder brother does not have the right to marry his younger brother's wife, even if she wishes to do so.</p> <p>A widow is expected to wait between 3-12 months before marrying anyone other than her brother-in-law. There is no expectation or obligation for a widower to marry his wife's sister. The wedding ceremony of a widow or widower is a relatively simple affair. Usually, no bride-price need be paid and small trays of food are served to representatives from both sides to acknowledge the wedding. A widow's male children will ordinarily stay with the deceased husband's family, while the female children are taken by the mother into the new marriage.</p>
Khmu	<p>A widow will continue to have the same responsibilities, social status, and family. Ordinarily, she will continue to stay with, and be considered a member of, her deceased husband's family. If she wishes to return to her own family, her parents must slaughter a buffalo and offer the head to the 'household spirit' before she returns. A widow is entitled to re-marry but she must wait 2-3 years. However, in practice, this is usually closer to 1 year. A widower is entitled to marry one of his wife's sisters. The wedding procedure is small and simple, requiring the slaughter of 1 pig, 1 buffalo, and alcohol, but there is no requirement to pay a bride-price.</p>
Lolo	<p>Widows are not permitted to return to their parents' house. They are eligible to remarry 1 year after the death of their spouse.</p>
Makong	<ul style="list-style-type: none"> Widowers and widows can remarry 1 year after their spouse's death. Before doing so, they must hold a <i>Lapeub</i> ceremony. The parents-in-law of the widow will ask the widow whether she wants to continue living with them or to return to her own family. If she chooses the latter, then she is permitted to leave and will then re-join in the worship of her parents' 'household spirit'. Half of the assets or property earned during her marriage will belong to her and the other half will belong to her husband's siblings. If she has children, the children will continue to live with her husband's family. If she re-marries, then her bride-price will be paid to her ex-husband's family.
Phounoy	<p>A widower or widow is entitled to remarry but must wait at least 2-3 years from the death of their spouse. A child born to the previous married couple is entitled to inherit from the new one.</p> <p>If a husband dies, his widow can continue living with her parents-in-law. However, if she wants to return to her own parents, she must obtain permission from the husband's parents first. Usually, the parents of the husband will take her on as their own child.</p> <p>As evidence of the durability of such a mother-daughter-in-law relationship, an example was given in which the husband left the village to live in Vientiane for over 30 years and remarried. His former wife continued to live with his parents, who can bequeath their 'estate' to their daughter-in-law, as she is the one taking care of them. The husband's siblings agreed with the decision made by the parents in this regard.</p>

Inheritance

The ramifications of inheritance patterns go well beyond the transfer of material property rights after death; extending to “the reproduction of rights, obligations and feelings between relatives as well as the reproduction of property relations, and hence social hierarchies based on gender and class, from one generation to the next.” Inheritance patterns shape the whole template or terrain upon which family relations are based.

Inheritance is closely related to patterns of residence after marriage. Matrilocal residence is usually linked to matrilineal inheritance, where the land and property are inherited by the daughters: in the Lao case, usually by the youngest, known as ultimogeniture, who is then responsible for caring of her parents until their death.

Conversely, patrilocal post-marriage residence systems usually entail patrilineal inheritance patterns, where land and property are inherited by the sons. In patrilineal groups - such as the Hmong, Phounoy, Makong, Mien, and Lolo - sons inherit the land and the parental house. The son caring for the parents until their death will receive a larger share of the inheritance, as well as the house.

There are also bi-lineal inheritance systems where either daughters or sons, or both, can inherit.

Matrilocal residence patterns or bi-lineal residence and inheritance patterns create powerful economic, religious, and public roles for women; enabling them to play greater roles in the economic and political realms and to participate more in public decision-making. In Laos, the Pray ethnic minority of Sayaboury province is matriarchal and matrilineal.

ETHNIC GROUP	INHERITANCE/SUCCESSION
Hmong	<p>All the children of the deceased gather the day before the funeral to make offerings to the deceased, in accordance with their means. The inheritance will be also divided on that day, pursuant to any oral will made by the parents. If there is no will, the children will decide among themselves. The mother's property earned before marriage will be divided between those children born to her - not the children of other wives.</p> <p>A younger son, who is ordinarily the last to marry, is most likely to be the successor. However, if several siblings stay in the family home and care for the parents, then the inheritance will be equally shared. Usually, the son caring for the parents automatically inherits the house. The division of land amongst siblings depends upon the size of the land parcels. Large areas may be divided but, where holdings are small, the son caring for the parents may receive it all. The son taking care of the parents will also be responsible for his deceased parents' debts. All debts must be cleared before the funeral or they will no longer be valid. Therefore, if creditors do not ask for repayment before the funeral, then the heir will not be responsible for the debts.</p> <p>Even before they die, the parents are not permitted to sell or lend property, which the children are to inherit, to other people.</p> <p>An adopted child also has an equal right to inherit, as if she or he was the deceased's natural child.</p> <p>There are a range of perspectives regarding a daughter's inheritance rights. According to one view, she receives her inheritance from her parents upon marriage. Then, she takes on her husband's <i>Saengxao</i> and 'household spirit', thereby severing any entitlement to her parents' property when they die. However, this view is not unanimous and there are cases where sisters have filed proceedings against their brothers in relation to inheritance. Sometimes, when older sons move out of the family home, their inheritance is also provided to them then. Thus, they also may receive nothing when their parents die. This can result in strong inequalities within a family; whereby, the youngest son receives a large inheritance and other sons - and daughters - do not receive anything.</p> <p>While these may be the common arrangements, division of inheritance remains a discretionary right of the parents, who can divide their property amongst their children as they wish. Usually, an oral will is witnessed by senior community members before the person's death. When that person dies, the witnesses inform the children of the will's contents and the inheritance is divided accordingly. If the deceased has no spouse or children, then the person responsible for the funeral ceremony and making offerings will inherit.</p>
Khmu	<p>The inheritance goes to the eldest son because he is responsible for the family and considered to be acting on behalf of his father. An adopted child is considered just as entitled as a natural child to inherit. The youngest son receives a smaller inheritance because "he came late". Daughters, who have married and left the house, are not entitled to any share. If there is no son, a daughter and her husband who are taking care of the parents and house, will inherit both the house and land. If the deceased has no child, natural or adopted, the deceased's other relatives will inherit.</p> <p>Property earned before marriage - e.g., house and land - can be inherited but cannot be sold. Wealth acquired through an inheritance before marriage must be preserved and passed on to future generations. However, self-earned property can be sold. If the parents incur debts they are unable to pay, or die leaving debts, the children are responsible for them, if there is proof that the debts are legitimate. Where there is no proof, then the children are not responsible for them.</p> <p>When the first-born is a daughter and has remained, with her husband, in the family home to care for her parents, she will inherit. If she has married and left the house, then the eldest son of another wife of her father, if there is one, will receive the inheritance and take responsibility for the parental home.</p>

ETHNIC GROUP	INHERITANCE/SUCCESSION
Lolo	An adopted child is equally eligible to inherit as is a natural child. When a deceased has no child, natural or adopted, the estate will go to the deceased's younger brother.
Iu-Mien	<p>Mien do not traditionally have written wills but, usually just prior to death, call all their children to witness their oral will and allocate inheritances face-to-face. Generally, a son taking care of his parents will receive a greater share - approximately double - than the other children. Moreover, both the eldest and youngest sons will receive more than their siblings, although it is up to the discretion of the parents as to the division of estate.</p> <p>Where there is no child to inherit, the family will adopt a child - often a son, who can come from any ethnic group - to fulfil this role and ensure the perpetuation of the lineage. The child is eligible to inherit and exercise any other rights or obligations of a son, once his name has been entered into the ancestry register book. This is widely-practiced and considered quite normal.</p> <p>If the family has no sons, or have a very young son, but have a daughter, the daughter's husband may move into her parents' house and care for his parents-in-law. He will be exempted from paying them the bride-price. The son-in-law will have his name erased from his own ancestry register and it will be inscribed in his wife's ancestry book. He will, thereafter, worship her 'household spirit'. He will inherit and continue his wife's family lineage.</p> <p>If the parents have a son, but he is too young to care for the parents, then the daughter's husband will be obliged to care for the parents for 12 years, after which time this obligation ceases. The daughter's husband will be exempt from paying them a bride-price. After 12 years, the minor son will take over responsibility for his parents.</p> <p>Children are obliged to re-pay the debts of their parents, including those left at death, out of kindness and respect to the parents. In some instances, children will contribute to their mother's bride-price, if the father's family has been unable to pay. A person who inherits is considered fortunate. They will have more resources to increase their wealth and status in the community and may be viewed as entering a higher class, thereby entailing greater community responsibilities.</p>
Makong	<p>Inheritance is called "<i>itgreng moun</i>". If a mother dies first, then the father inherits and continues to retain control of the marital assets. However, if a father dies first, the children divide the inheritance amongst themselves. The mother will continue to live in the family home but has no involvement or control over decisions relating to the estate.</p> <p>The eldest son generally receives double what the younger sons receive. Where there is no son, then the eldest daughter will receive the bulk of the inheritance. If she is already married and living with her husband, she will receive a lesser share. In this case and, where there is no son, the deceased's brother would lead the worshiping of the 'household spirit' and in organizing <i>Lapeub</i> for the father. Where there is no natural-born son, a son-in-law, an adopted son, or a cousin have the right to inherit and must, thereafter, worship the deceased's household spirit.</p>
Phounoy	Usually, the first-born son will stay in the family home and care for the parents. The first-born son will be the successor of the lineage and heir. He will divide his inheritance into fair and equal propositions - in accordance with the parents' wishes, which ordinarily would have been communicated orally to all of their children prior to their death - with his siblings (<i>Ji yi ang deur</i>). When a family does not have a son, the daughter will inherit and her husband will be the successor to his wife's lineage. The heir/successor is also responsible for paying any debts that the parents incurred in order to support the family, of which he has been previously informed. Otherwise, the debt is void.
Then	Only natural, not adopted, children have inheritance rights. Children are responsible for their parents' debts only if they have been told of them by their parents before their death.

6.4 General 'Civil Law'

Land

Land is, of course, the most valuable and, often, a sacred asset held by communities. Access to land and resources are traditionally associated with particular ideas of territorial-

ity; whereby, land is managed by a community that has exercised communal rights over that land. In essence, management of land is governed by the consensus of the socio-political group - or emanates from the group it governs. Concepts of land ownership and entitlement to land use vary from ethnic group to ethnic group.

ETHNIC GROUP	LAND (I)	
	Communal Land	Private Rights
Khmu	<p>Known as <i>Peu tae kung</i>, <i>Peu tae louam</i>, communal land includes village land, cemetery land, market land, school land, meeting hall land or land where other public resources are located. Any person is free to hunt fish and trap where they choose, but are prohibited from destroying or stealing crops.</p> <p>Currently, the district agriculture officer is the person responsible for marking the boundaries between villages. In the past, communities made <i>Taleo</i> - goats' ears and tails attached to trees - to mark land boundaries and asked the 'place-spirit' to bear witness. If anyone violated a boundary, that person would be punished by the spirit.</p> <p>To resolve contested land boundaries between villages, two customary methods were used. The first was the pig-walk method: both villages would agree a meeting point between the two villages. Then each village would have a pig walk from its own village towards that meeting point. The village (pig) reaching the point first would have the larger land portion. However, some villages cheated by carrying the pig and running to the meeting point, placing the pig on the ground just before they arrived, and, thereby, unfairly acquiring a larger area of land.</p> <p>The second method required each village to boil <i>Orlam</i> (soup), place it in a tube, and walk to an agreed meeting point. The successful village was the one with the hottest tube of soup upon arrival. Again, some villages would cheat and heat the soup on the way.</p>	<p>Private land is known as <i>Peu tae meu</i>, <i>Peu tae te</i> and can include cultivation land and land for house construction. Land can be bought and sold. However, land sales are unusual, as people fear they will be left with insufficient land for cultivation. On the other hand, land for growing maize can be rented. Any contract to sell land must first be approved by the customary elders.</p> <p>If valuable trees - such as <i>Maidou</i> or <i>Maitair</i> - or other valuable woods are located in a cultivation area that the owner of that land regularly farms, the owner of the land will have title to the trees and a right to use the trees. Where there are valuable natural resources beneath the land - such as salt orpoung - these resources belong collectively to the village and the state.</p>

ETHNIC GROUP	LAND (I)	
	Communal Land	Private Rights
Iu-Mien	Termed: “ <i>Tomchuangdao</i> ”, meaning collective land in which everyone has a right to use resources together. Individuals cannot own communal land or use it for profit. Various symbols and signs can be used to indicate the boundary between private land, group-owned land, and communal land, including natural or human-made markers.	Private land is a place owned by an individual who has the right to use it or do any activities there, individually, based on his/her wants and objectives. An owner, or relative of an owner, is, of course, permitted to hunt or trap on their own agricultural land. In the event a person wants to hunt or trap on someone else’s land, the outsider must obtain permission from the owner first and then share the game with the owner.
Makong	The forest and all natural resources within village boundaries are common property and are customarily managed by the founding lineage (<i>kuya</i>) according to the principle of territoriality and the ancestral right of the first inhabitant. The <i>Kuya</i> must also be consulted about timber extraction, farming or any production activities occurring within village boundaries.	Private ownership, or customary individual-use rights, is usually recognised in the case of paddy fields, houses, teak plantations, gardens or land reserved for rice paddy cultivation. The paddy field can be inherited, and also sold, to villagers or outsiders, but taxes must be paid to the village. Land can be loaned or rented to others for cultivation, but the right of ownership remains with the owner. In Thaklachanh village, Boualapha District, any claims over land suitable for paddy cultivation, or individual use of common property, must be made in public before the whole community. Once obtained, private ownership may be secured and the owner must pay taxes. Regarding land for rice cultivation or to establish orchards, the person to develop the rice field or orchard has the right to use it and deem the land his own. Whereas, previously, trees growing in a person’s cultivation area were not considered theirs - only trees growing around their houses were - the understanding has changed. Now, any trees on a person’s cultivation land are also considered theirs. If a person wants to cut down trees on their cultivation land, they must pay the village security unit a tax to help cover the costs of a tree cutting machine.
Phounoy	Collective land in which everyone has the right to manage and use resources together. It is not an area for an individual to own or use for individual profit. They demarcate an area above the village, which is the same width of the village, and consider it a community resource forest. Symbols or signs indicate boundaries between private land, group-owned land, and communal land; these may include natural markers - such as streams, rivers or mountains - but, also, human-made signs, such as scratches on trees, <i>Santaleo</i> (a type of handicraft), fences or poles.	Land owned by an individual who has the right to use or do any activities individually on that piece of land.
Then		Individual land includes paddy fields, gardens, and also reserved land (<i>din chap chong</i>).

None of the major ethnic groups in Laos allow for the private ownership of water resources. There may be restrictions on the removal trees upstream or trees close to springs used for human consumption, as well as using poison or explosives in fishing. There were no other restrictions concerning access to water.

Land disputes form a major part of the justice demand across Lao PDR. Unresolved land disputes within communities, or between communities, can threaten to spill over into interpersonal or communal conflict or violence.

ETHNIC GROUP	LAND (II) Acquisition & Transfer	Dispute Resolution
Hmong	<p>In the past, little attention was paid to land ownership and control issues because there was never a shortage of land and cultivation was always shifting and not permanent. New land was always being cultivated and used. When it was not being used, it was available for anyone to use or live on. Once a person left their house, then that land was available for use by another.</p> <p>There were no mechanisms for the more permanent control of land, such as buying or selling of land. There were no terms distinguishing between common land, collective land or private land. Land exchanges between ethnic groups did not occur. Rather, land was considered as “Av” (general land).</p> <p>There was no specific area of land for a head of the ethnic group or a head of the <i>Saengxao</i>. There was no title to trees or natural resources. Villagers were free to pass on or exchange land.</p> <p>A community’s territory, and individual land use, would ordinarily be bound by natural markers: such as, streams, mountain ranges, boulders or giant trees. A person was entitled to use or control land for as long as these natural markers remained and as long as they wished. Conflicts over land were very rare. There was no restriction on water usage, which was considered a collective asset. Villagers, usually men, were free to hunt, fish, and trap.</p> <p>Now, land use is more controlled. Individuals own particular pieces of land and develop them for the cultivation of crops - such as, bananas, sugarcane, and cassava - or for building houses or fishing ponds.</p>	

ETHNIC GROUP	LAND (II)	
	Acquisition & Transfer	Dispute Resolution
lu-Mien	<p>The understanding of land is that it was created by nature and bestowed by heaven, which remains the real owner. Humans can only ever temporarily use and occupy it. A title to land or ownership can be acquired through ‘booking’, development (use), allocation, inheritance or by transfer, such as buying or selling. Such titles have no time limits and, in accordance with customary practices, the succession or title will be passed on from generation to generation along ancestral lines. They can buy or sell land to members of other ethnic groups without discrimination. The key issue is that the parties must agree on price. Historically, land was rarely bought or sold, but community members would borrow land when they needed it, at no cost, based upon principles of reciprocity and kindness between the parties.</p>	<p>Senior people and a village authority will consult together and then order an investigation into the causes of the conflict, as well as canvas options for a solution. When settling conflicts, both parties will be invited to sit face-to-face to discuss the problem and to reach a resolution based on compromise.</p> <p>For conflicts concerning the boundary between collective and private land, the village dispute settlement body, and senior customary law authorities will discuss the problems and establish general rules to regulate these issues, so as to prevent more land conflicts arising.</p>
Makong	<p>Brou Makong, and Katuic groups share a common notion of <i>ku-ruang</i>, in which the first inhabitant of the land, owns the land. According to this system, the founding lineage takes possession of the land, setting its <i>ku-ruang</i>. Thereafter, this founding lineage can exercise rights over the land and all its resources. Each traditional village is composed of several lineages, with the founding lineage owning the land and the later lineages forming part of a larger communal structure of land rights that still revolves around the original inhabitant’s ownership of the land. The founding lineage is also credited for having unlocked the human and natural fertility of the land (<i>Yiang Su</i>), which presides over the <i>Yiang</i> of all the forest and natural spaces controlled by the community.</p> <p>“<i>Pen eun chao ka tair nurng ith ka tair e ta e cha</i>” refers to customary titles over rice fields and long-established orchards. Anyone developing the land has a right to use it. Sometimes, the person developing the land allows other people to work on his land, but the land is still his. Those permitted to use the land will not acquire a right to sell it, because only the original land developer has that right.</p> <p>Ownership or control rights are not exercised over other land, which is considered “land for the village’s garden” and is available to anyone wanting to clear an area for plantation, providing that no one has previously marked the territory. Once seasonal cultivation is concluded, the land is left fallow and automatically reverts to the collective land pool of the village.</p>	<p>The village dispute settlement body and senior village authorities meet to discuss the case and establish rules to prevent an increase or escalation in land disputes.</p>

LAND (II)		
ETHNIC GROUP	Acquisition & Transfer	Dispute Resolution
Makong	<p>At present, no land registration system exists in the Makong areas. However, people have already begun to pay a land tax, although they mainly pay a production tax to the government. Lands along main roads which are in high demand, have started to be booked as private land, but without any land registration document. There are major legal problems with respect to such lands because they are not following the rules of inheritance from ancient times.</p> <p>With respect to trees growing on a person's cultivation land, in the past, when anyone wanted to cut down a tree, they could do so. Land owners did not consider trees as their personal or private property, except in relation to fruit trees planted in the field or around their houses. But now there is a provision that states that all trees in a person's field are the responsibility of that person. When such trees are cut down, the owner must pay a tax to the village, as well as to the village's security unit for a tree-cutting machine.</p> <p>Few people sell their rice fields, gardens, or land for construction, except in the Yommalath area, where a lot of land was sold due to construction of the Nam Theun Hydropower Project. This led to an increase in land prices and the number of land conflicts. Requests for land registration have currently increased.</p>	
Phounoy	<p>Aside from a land title acquired through inheritance, allocation, or purchase, a person can book and develop another piece of unused land in accordance with his or her own capability to use it.</p>	<p>In the past, if there was a land conflict, senior people - i.e., those with high qualifications - and the village administrative authority would discuss the case together and try to determine its cause and solution. Parties would then meet to discuss the case and try to find a solution together.</p>
Then		<p>The village administration and village elders are in charge of resolving cases of land conflict and ensuring social harmony and peace.</p>

Contracts & Debts

ETHNIC GROUP	CONTRACTS & DEBTS
Hmong	<p>A contract will be made orally, in the presence of witnesses. Written contracts are not deemed necessary because most people are considered straightforward and honest. In the event of a contract breach, the parties will discuss the problem and make an agreement as to what fine or compensation is necessary. Loans are often made without interest and contracts are not used for property rental or services.</p> <p>Property that can be loaned includes: livestock, tools or materials used at home. Special tools of worship, such as “<i>xwm kab</i>”, cannot be loaned or borrowed.</p>
Khmu	<p>Prior to 1955, a contract for a loan, or for settling a case, was made orally. Since then, all such contracts must be done in writing. If parties are illiterate, they request someone else to help them draw up the contract.</p> <p>People make loans to one another to assist in times of emergency. Loans are mostly in the form of husked rice, milled rice, salt, livestock or tools. It is understood that loans will be repaid within a season or a year. When money is loaned between people in villages, they may charge interest: for example, repayment of a 100-<i>mun</i> loan may be 120 <i>mun</i>; or repayment of a 5kg pig may be with a 6kg pig.</p> <p>Culturally, the Khmu are averse to taking out loans and usually save before they spend. Some Rok Krong villagers of Chantai village, Houn district, Oudomxay Province, are an exception. Since 2000, they have taken out loans from traders or private companies from other villages (<i>Yae Peul</i>) to purchase particularly productive maize seed varieties. However, many villagers are struggling to repay these debts, especially as some are not regulated and have very high interest rates. For example: a loan of 1 million kip might have to be repaid within 1 year in the amount of 1.5-1.8 million kip.</p> <p>Land rental for cultivation has a long history. High-ranking or rich villagers would book large areas of land as their own ancestral land. This would include the plateau and highlands. As the cultivation season approached, villagers would rent according to their cultivation needs and, after harvest, the villagers would repay in crops, termed “<i>Fengprae</i>”. Once the rent was paid, the land owner would kill 1 pig and 1 chicken and share a jar of alcohol for a public feast. This system was retained until the establishment of Lao PDR. Now, land rental to plant maize is still common, but the rent is usually paid in money. After harvesting, the rent charged may be between 800,000 and 1,000,000 kip.</p>

6.5 'Criminal Law'

This section examines customary rules dealing with offences against - or injuries caused to - persons, property, the community or even spirits; including, sexual and domestic violence. Many of these 'criminal' offences have civil law

aspects and are handled as such. Domestic and other gender-based violence tends to be considered a family matter under customary systems; whereas, it clearly falls within the scope of the criminal law in the formal system.²³ Conversely, adultery, which is not a crime in many foreign jurisdictions, clearly is, in both customary and state law in Lao PDR.

ETHNIC GROUP	CONTRACTS & DEBTS
lu-Mien	<p>To enter a contract, the contents are written onto jute paper in the presence of all contracting parties. In the past, the contract was made on a single piece of jute paper, in Chinese characters, with the contents written identically down both the left and right sides. The paper was then torn down the middle, so that each party had an identical copy, and so that the copies would fit perfectly together. This technique was used as a precaution against fraud or the falsification of contracts.</p> <p>While the lu-Mien do not have a loan system per se, people commonly lend or borrow property, livestock, rice or tools between their friends and relatives, in order to provide each other with assistance as necessary: such as in the event of illness. Such arrangements are not usually documented and do not incur interest payments or the like. In the event of an alleged breach, the case would be heard before senior people and the village authority. The party found in breach is fined in accordance with the seriousness of the case, although a common basis for calculating the fine is half the value of the contract. The breaching party may also be reprimanded, have to pay a fee to the village authority or provide a meal to them: symbolising restoration of the party in breach's face or reputation.</p>
Makong	<p>While they do not often use contracts, there are many debtors who fail to repay debts or return borrowed items. Without a contract it is difficult to have clarity or achieve a settlement of the issue. Community members are more reliable in buying and selling - or in paying tax to the village for removing trees or selling land.</p>
Phounoy	<p>When borrowing property, a deadline for return of the property without interest is set. When a contract is breached, a penalty double to the value of the contract will be imposed. Contracts are made orally and in the presence of at least 2-3 witnesses.</p>
Then	<p>A contract between two parties is sealed in the presence of a witness. If a conflict arises, the witness is called upon to clarify the terms or understanding of the contract. Interest is not normally charged between relatives, but between others some additional payment may be expected: e.g., a loan of 2 kgs of rice seed might require repayment of 3 kgs.</p>

²³ With the exception, perhaps, of marital rape, which is not a crime under state law in Lao PDR.

Homicide

ETHNIC GROUP	HOMICIDE	
	Intentional	Unintentional
Brao	A fine - the price of the head - must be paid and a soma ritual to the family of the deceased conducted. If the murderer does not have money, he may have to become a servant or may simply be killed.	
Hmong	<p>In the past, this would usually result in capital punishment. Now, there is only compensation and it includes a 'head' fee (blood-money) and a fee to compensate for the sense of loss and injury caused to the victim's family. The quantum of compensation is normally decided through negotiations between the two sides. A head of the ethnic group or the <i>Saengxao</i> may be involved in deciding compensation and conveying an apology to the victim's family, although this is exceptional.</p> <p>Infanticide (killing a newborn) is common and deemed a private act not warranting any sanction. (This is in contrast to the Khmu, Phounoy, Makong, Mien, and Then, who consider infanticide intentional murder; irrespective of whether the baby is wanted, there are twins or the child suffers from a disability.)</p> <p>Suicide is not considered a transgression or offence against customary practice.</p>	<p>In such cases - e.g. manslaughter - the compensation to be paid is comprised of a "head" fee (blood-money), plus funeral expenses. In cases of serious injury, the offender will be fined and required to organise a <i>Soukhuan</i> ceremony to apologise to the victim and restore his or her wounded pride and hurt. Such cases occur infrequently.</p>
Khmu	The offender must pay 150 <i>mun</i> and slaughter 1 buffalo and 1 cow. In addition to customary penalties, relatives of the victim may seek to have the case prosecuted in court.	The fine would be 9-10 <i>mun</i> , 1 buffalo, and 1 cow, plus the offender would be responsible for the costs of a ritual ceremony.
Lahu	The killer must pay 60 <i>mun</i> , 1 chicken, 1 pig, 1 jar of cooked rice, and 4 bottles of alcohol.	The offender must pay 30 <i>mun</i> , 1 chicken, 1 pig, 1 jar of cooked rice, and 2 bottles of alcohol.

ETHNIC GROUP	HOMICIDE	
	Intentional	Unintentional
Iu-Mien	<p>The perpetrator would be fined and have to compensate the victim's family with a 'head' fee agreed by both sides. There is no fixed fine but, ordinarily, it will be based upon previous cases or, in the case of female victims, the bride-price of the woman: i.e., between 6-10 <i>hang</i>.</p> <p>Some types of homicide are allowed - e.g., the killing of relatives - under certain conditions.</p>	<p>This is resolved by negotiation of a payment between the parties. In addition to money, the offender must participate in the funeral and alms-giving ceremony to demonstrate his or her contrition and regret.</p>
Phounoy	<p>In the past, there was no distinction made between intentional or unintentional homicide - or whether the perpetrator was from within the village or an outsider. Any time a person caused another's death, capital punishment would be imposed. This is no longer the case.</p>	
Tarieng	<p>There is distinction between intentional or accidental killing. In both cases, the offender must pay with his or her head (<i>kha houa</i>).</p>	
Then	<p>The offender would be liable to capital punishment. In addition, the family of the victim would declare their loss to the elders who would order that compensation, usually around 100 <i>mun</i> - the "cost of the head" or <i>kha houa pien houa</i> in Lao - be paid. An additional fine of 25 <i>mun</i> would be imposed to cover costs for the ritual for the village-spirit. If the murderer has no funds, he or she would pay with his or her life: "a head for a head".</p>	<p>Compensation of 100 <i>mun</i> must be paid by the offender, but there is no fine. If the offender cannot pay, then he or she can pay in installments or in labour for an undefined period. Such debts cannot be transmitted to others.</p>
Yang	<p>The fine is 120 <i>mun</i>, the cost of the funeral, and the killer is responsible to care for the household of the victim.</p>	<p>The fine is 60 <i>mun</i>.</p>

Rape & Incest

Many ethnic groups in Lao PDR understand rape as sex occurring outside of a socially-sanctioned relationship. This is often remedied by requiring the marriage of the parties, which is deemed to cure the relationship deficit.

Ethnic Group	RAPE & INCEST
Hmong	Someone committing rape will be fined in accordance with the seriousness of the specific case, based upon an agreement between the two sides. If the perpetrator and victim are unmarried, and if the woman consents, the perpetrator may be required to marry the victim. This occurs only in rare cases.
Khmu	<p>In cases of rape, the rapist is fined 12 <i>mun</i> - approximately, 1,000,000 kip -and must also provide 1 pig and 1 jar of alcohol.</p> <p>If the rape is also incestuous, the family will also need to conduct ceremonies for the 'village-spirit' and 'household spirit'.</p>
Lolo	A rapist is fined about 30 <i>mun</i> . If he fails to pay, he will be subjected to daily visits from the village elders, who will demand meals, for as long as it takes for the offender to accept responsibility for the crime and pay the fine. The rapist must also restore the household spirit where the rape occurred and pay the victim 7 <i>mun</i> and a pig. In cases where the woman consents to marrying the offender, then negotiations for the bride price would commence.
lu-Mien	In cases of rape, the parents of the victim, the village authority or senior people will summon the suspect and call for an investigation to determine what happened. If the suspect is found guilty, he - or she - will be reprimanded and 'educated', fined, and will have to hold a <i>Soukhuan</i> ceremony to restore the name and reputation of the victim and her family.
Phounoy	In a case of incest, the offender must sacrifice 1 cow, 1 chicken, pay a 30 <i>mun</i> fine, and undergo public rebuke and instruction.
Then	In a case of incest, the offender must conduct a ritual for ancestral spirits, pay a fine of 4 <i>mun</i> , and sacrifice a pig.

Adultery

Adultery is considered a very serious offence; although, in groups such as the Hmong, men are incapable of committing adultery, as fidelity - or monogamy - is not required of them.

ETHNIC GROUP	ADULTERY
Hmong	Adultery applies only to women. Women are expected always to be faithful to their husbands. If they are not, then an adulterous wife can be banished from the house and not receive any property or means of support. In addition, she is considered an outcast, as she is no longer part of her husband's family and she will not be accepted back into her natal family. Men, however, are not sanctioned when they have intimate relations with other women. This causes a lot of tension between husbands and wives.
Khmu	<p>If a man commits adultery with a married woman, the man must pay 90 <i>mun</i> to the adulterous wife's husband and, also, provide a pig and a jar of alcohol to the person from each side who resolves the dispute. The adulterous woman's parents must give 12 <i>mun</i>, 1 pig, 1 jar of alcohol, and provide a <i>Soukhuan</i> ceremony for their son-in-law.</p> <p>If two married women have intimate relations, their husbands must each be paid by the wives' parents 120 <i>mun</i> and be given a pig and alcohol for a <i>Soukhuan</i> ceremony. The in-laws of the women can also demand a restoration payment of not less than 20 <i>mun</i>.</p>
Phounoy	Men and women may equally be found at fault for adultery, which is considered a very serious, even 'animal-like' or debasing, offence. Adultery also brings shame upon the parents of those involved. Adulterers are forced to eat animal food from a pig's tray, as an act of public humiliation, and provide for ceremonies to restore the pride, face, and reputations of their parents. They are also reprimanded and warned not to engage in such behaviour again.

Domestic Violence

Whereas attitudes amongst many ethnic groups in Laos toward domestic violence are ambiguous, and it may be considered more of a ‘family matter’ rather than a criminal one,

the respect for and care of parents remain a strong, common feature amongst them all. Insulting, abusing or failing to meet the expectation of care for one’s parents is considered a very serious violation of customary norms.

DOMESTIC VIOLENCE		
ETHNIC GROUP	Spousal	Children Insulting, Abusing or Abandoning Parents
Hmong	<p>If the parents-in-law ignore the violence of their son against his wife, the victim’s options of escaping from, or taking action against the violence, are very limited. If the parents-in-law become involved, then they may be able to discipline their son, as well as provide moral support to the woman and some ongoing oversight of his treatment of her.</p> <p>If a woman flees to her relatives, a <i>Saengxao</i> representative from the husband’s side, with the husband, will ask her to return. The husband will be reprimanded and have to accept fault for the harm done to the woman. He may also be fined an amount varying from 3-12 <i>bia</i>, which is paid to the woman’s parents to restore the offence caused to them.</p> <p>If a woman’s situation becomes unbearable, she may seek a divorce. However, divorce is very difficult and requires the support of her family, which may not be forthcoming due to fear of having to refund the bride-price. In addition, she can never retrieve membership of her own family’s <i>Saengxao</i>: she can physically return to her parent’s house but will never be ritually accepted back under the patriarchal ancestor worship system.</p> <p>Cases of wives injuring their husbands are rare and usually a husband will not pursue compensation from her, providing they continue to cohabit. Men seek to project a proud and strong image of masculinity and do not like to admit that they have been hurt by a woman.</p>	<p>If a child offends or hurts his or her parents, the child will be obliged to hold a <i>Soukhuan</i> (apology) ceremony for the parents. When children abandon their parents by fleeing to another place without making arrangements for their care, the head of the <i>Saengxao</i> will gather those concerned and force the children to pay compensation to their parents for their milk and care from birth, as well as to pay alms at the time their parents die. This effectively extinguishes the relationship between parent and child and occurs only very rarely. Filial duty remains a strong cultural norm.</p>

DOMESTIC VIOLENCE		
ETHNIC GROUP	Spousal	Children Insulting, Abusing or Abandoning Parents
Khmu	First, there will be a consultation amongst the relatives. Then, the offender must provide 1 buffalo and he will also be required to provide for a <i>soukhouan</i> (apology) ceremony. In addition, he must present his apologies to the elders.	Infractions by children against their parents have, in the past, resulted in fines of 12 <i>mun</i> , 1 pig, and 1 jar of alcohol. A child harming his/her father is considered a particularly serious offence. Traditionally, such a child offender would be considered a sinner for the rest of their life and would be required to provide a buffalo for <i>Soukhuan</i> (apology), 1 jar of alcohol, and take actions to restore the father's pride. In addition, the elders would reprimand and instruct the offender, as well as warn him/her against future offences. If a child committed a further offence against his/her father, he would be referred to the state justice system for prosecution and jailed.
Makong	In the past, senior village members would reprimand, instruct, and educate the offender, so that his attitude to women improved. Now, an offender will be arrested by the village security unit and "educated for 3 months."	A son-in-law is prohibited from cursing or spreading rumours against his father-in-law or wife's siblings. If he does so, he will be fined by his in-laws and required to restore their dignity through the payment of buffaloes, pigs, money, and jarred alcohol. Should he continue to abuse his in-laws, he can be forced to return to his parents' house - either with or without the bride-price, depending upon the severity of the case.)
Then	Elders reprimand the offender. If the violence involves an outsider, then a <i>soukouan</i> , an apology ceremony, has to be provided; for which the offender must provide a pig and 2 <i>mun</i> in compensation.	The children must conduct a <i>somma</i> - a ritual of respect for the parents - and provide 5 flowers and 1 <i>mun</i> . In addition, they must organise an apology ceremony that entails the provision of 2 <i>mun</i> and 1 pig.

Theft & Damage to Property

ETHNIC GROUP		THEFT & PROPERTY DAMAGE
Hmong	In cases of theft, offenders are fined in accordance with the seriousness of the offence. Theft from a house, or from in or outside the <i>Saengxao</i> , requires the payment of compensation and a fine. Previously, only compensation need be paid. Attempting to conceal stolen property is a further offence and may attract an additional fine. If rice is stolen, then the rice should be returned and the culprit given a warning.	A person destroying another's property is cautioned and given instruction. If a person kills or harms livestock, they are liable to pay compensation to the value of the loss. If wandering livestock damage crops or land, the owner of the animals must compensate the affected party for their loss.

ETHNIC GROUP	THEFT & PROPERTY DAMAGE
Khmu	<p>In cases of theft, usually a fine double the value of the item stolen - whether it be livestock, rice or other property - is imposed. Taking wild game is not considered theft and does not attract a penalty. Theft of property by siblings is usually dealt with by parents giving the offending offspring a warning.</p> <p>When wandering livestock cause damage to crops or property, the owner is responsible for compensating the injured party for the loss. In addition, for a first offence, the owner will receive a caution. For a second offence, the damage will also be reported to the village authority. However, for a third offence, the victim is entitled to retaliate by killing the owner's livestock. Present day compensation is calculated in cash.</p> <p>In a case of arson, the offender must, firstly, compensate the victim for their loss and, secondly, conduct a ritual to honour the 'spirit of the land' and the 'household spirit'. If arson results in damage to a forest, the offender must conduct a ritual to honour the 'forest-spirit'. In each case, this involves the sacrifice of an animal. When arson results in the destruction of the village, the offender must, additionally, sacrifice a buffalo to honour the 'village-spirit'. Whether the offender is held to have deliberately lit the fire and caused damage, or not, is determined by a majority vote of villagers.</p>
Lolo	<p>A thief is required to walk 3 times around the village with the items stolen on his/her shoulders, while community members heckle him/her. When livestock is stolen or property destroyed, the fine is double the value of the property damaged or stolen.</p>
lu-Mien	<p>If property is stolen or damaged, a number of approaches may be taken: one is that a fine of equal or higher value than the loss is imposed, depending upon what the victim demands. The committee will oversee the case and negotiations between the parties until agreement is reached on the fine. Another option is that, while the fine imposed may equal to - or even be less than - the amount of the loss, the offender will be required to conduct a <i>Soukhuan</i> ceremony to restore the face of the victim. The offender will also receive a reprimand and instruction from the senior people or authority of the village. The third option is that the offender be required to take an oath before the authority that s/he will not steal or damage property again. Should further incidents occur, the offender will then face a stiffer penalty.</p> <p>A thief can also be ordered to pay a fine double the value of the loss. He must also walk around the village 3 times carrying the stolen property, so as to publicly acknowledge his/her crime, and then restore the 'household spirit by sacrificing a pig, paying 7 <i>mun</i>, and returning what was stolen.</p> <p>If a person borrows a large amount of money and does not repay it, the elders can order capital punishment. If a house is burnt down, the arsonist must compensate for the value of the house and also conduct a ritual involving sacrifice of a pig and 7 <i>mun</i>.</p> <p>Should straying livestock cause damage, the first time, the offender must reimburse the value of the loss. If there is a second incident, the victim will warn the offender and, the third time, the victim can kill and eat the offending livestock without compensation having to be paid to their owner.</p>
Phounoy	<p>In cases of theft, the stolen items must be returned, an apology must be provided to the victim, and the offender will be reprimanded, warned, and receive instruction.</p> <p>When wandering animals destroy crops, the owner of the animals is liable for the cost of the loss. If a person harms livestock, they are responsible for treating or paying for the treatment of the animals. If the animals die, the owner is entitled to compensation from the person who hurt them, according to an amount agreed by the parties.</p>

Ethnic Group		DEFAMATION & DESECRATION
Khmu		For desecrating a coffin or a corpse, the sacrifice of a pig is required for the spirit of the cemetery. A similar penalty applies when a household spirit is offended (“ <i>Reu lak Peu Tae</i> ”). The death of an outsider in the village, an undisclosed pregnancy, or vandalism in the cemetery are all examples of insult to the village-spirit, or “ <i>Phan Reu lak</i> ”, and are penalised by the sacrifice of 1 dog, 1 pig, and a fine of “ <i>Tou 16 Yok 12</i> ” (in current terms, 600,000 kip).
Then		The penalty for defaming an individual involves covering expenses for a <i>Soukhoun</i> ceremony, a pig, 2 <i>mun</i> , and providing an official apology. When a household spirit is defamed, the penalty is 7 <i>mun</i> and a pig, and, if a village-spirit is defamed, the penalty is a pig and 4 jars of alcohol.

Defamation & Desecration

Injuries to the reputation are often solved with the payment of a fine negotiated between both parties before the village authority and senior people. The offender is usually warned, educated, and required to cover the cost of water and food for those considering the case.

7. Remedies, Sanctions, and Costs of the Proceedings

The rationale and content of penalties and remedies under customary law systems are specific to their particular cultural context and may depend upon a range of factors: e.g., social structure; the worldview of the group; the kinship or other group-based identities of the individuals involved; the status, age, and gender of each party; and his/her family’s relationship to the community.²⁴ Remedies in customary law systems are often based on concepts of reconciliation, reciprocity, compromise, consent, and discourse between the parties, while emphasis is placed upon the interest of the community as a whole.

Imprisonment is rarely imposed as a remedy under customary law systems. Compensation, restitution, social ostracism, community service, labour or, under some systems, physical punishment, are remedies more commonly used in customary law systems. Conversely, state penal systems have quite different objectives. Firstly, they aim to treat similar cases consistently irrespective of the offender’s identity. Secondly, they usually involve issuing non-negotiated judgements that, primarily, seek to punish offenders and deter other potential offenders.

There are various approaches to the remuneration of decision-makers and imposition of penalties amongst Laos’ ethnic groups. The most common approach to covering the costs of the process, or compensating the decision-maker, is that the party bringing the action must pay upfront the cost of hearing the case. Payment may include alcohol, chicken, a certain amount of money in kip or mun, tobacco or a number of days’ labour for each member of the panel. The plaintiff will be reimbursed later, if the other party is found to be at fault.

²⁴Kuppe (2001:63)

The specific practices of different ethnic groups will now be examined:

lu-Mien

Costs of the hearing process are decided according to the type of case. A principle underpinning lu-Mien remedies relating to property loss or damage is that a fine will be imposed double or two thirds of the value of the property damaged or lost. Half of the fine will be paid to the decision-makers and the other half given to the victim. In addition, the party at fault must pay all expenses in relation to the process; such as, preparing meals for guests and for the closing ceremony, in which one chicken and one bottle of alcohol must be provided in order to chase away any bad spirits lingering from the case. If this ceremony is not completed, it is feared that bad luck or negative spirits will return. Often the parties will first submit to instruction from the authorities and then publicly reconcile with each other. Both parties will then convey gratitude to the decision-makers for resolving the case and make vows not to become embroiled in a dispute again. In a debt case, a person helping to collect the debt will receive a third of the fine. Expenses are the debtor's responsibility, upon a request by the creditor.

Serious cases often require the payment of compensation which can take a range of amounts or forms, depending upon agreement between the parties. Compensation can be in the form of money, with or without interest, physical belongings, seizure of land or livestock, the provision of labour for a fixed period, or, more worrying from a human rights perspective, by providing a servant, agreeing to provide a child for adoption, or betrothing a child into marriage with the victim's family.

For serious infractions not punishable by compensation, as per above, a monetary fine might be imposed, plus the obligation to hold a ceremony of Soukhuan for restoration of the victim's pride, feelings, and reputation in the community. Following this, the wrongdoer will be required to take an oath before senior people and the village organisation that s/he will not re-offend. For less serious violations, education or reprimand and instruction are often provided by the village organisation.

When a person violates a traditional belief or desecrates a holy place, they may be required to pay a fine to restore a holy place, to worship gods or the spirit of the place, cemetery, Pho tree or Hai tree. The fine may include covering the costs of chicken, alcohol, incense sticks, candles, and payment for a clairvoyant to hold a ceremony to ask for mercy from the holy place.

In very serious cases that cannot be resolved, as a last resort, individual members of the lu-Mien community may seek out and use black magic or curses against an offender. Such a punishment is used if a point is reached where the victim believes that his or her entire ancestry is contaminated by the dispute. On the rare occasions when individuals seek to use black magic as punishment, they aim to make all members of the offender's family sick, poor or even cause their deaths. Predictably, use of black magic can trigger long-term campaigns of revenge. Elders and customary law authorities are never involved in using black magic as punishment. Clairvoyants usually deny their involvement in black magic, as it is against their professional ethics and they fear they, too, may become embroiled in revenge attacks. Mod-

ern day clairvoyants even deny knowledge of ancient and powerful forms of black magic.

Adultery is considered a very serious offence and fines in adultery cases can take a range of forms or have complex formulas. For example, a husband having an affair with the wife of another person will be required to pay an amount requested by the adulterating woman's husband - the 'victim-husband' - often around half of the adulterating woman's bride-price. One-third of the fine will be given to a group of senior people. The rest of the fine will be paid to the husband of the adulterous wife and a Soukhuan ceremony must be held for him to restore his pride and face in the community. The victim-wife may demand one quarter of the adulterous wife's bride-price. Thus, the man and woman adulterers must each pay the victim-wife and the victim-husband. A male adulterer may face additional fines from the village authority, equivalent to one quarter of the female adulterer's bride-price. There will also be a fee for settling the dispute payable to the village chief or senior people, as well as the costs of a Soukhuan ceremony held for the female wrongdoer's husband.

Makong

In the past, offenders would be punished in accordance with the rules of customary law, such as by paying the Heet of houses and villages with cows, buffalos, chickens, and alcohol (Ritgoong). The wrongdoer would offer a pig or chicken and alcohol to the victim and then symbolically tie the victim's wrists with a blessed rope in order to restore their pride and remove their hurt. This is called, cho ati preng ravay – preng meud peng lom. The offender (Krubtod) would pay compensation (tenla) in the form of a fine or animals. In cases of witchcraft or offences against spirits, con-

sidered very serious and threatening offences, an offender might be banished from the village (atui). Sometimes, the seniors group would tie-up the offender and put place him or her in a cage, until the offender agrees to change his or her behaviour.

In the present day, customary law is still used as in the past, but with some modifications. Offenders are no longer physically restrained or placed in a cage. Rather, if the victim or offender is not satisfied with the case decision, the case can be sent to the village authority or a provincial authority to review and resolve the case in accordance with state laws. In cases of witchcraft or offences against spirits, offenders are placed in custody in a district jail. Female offenders are also jailed.

In the past, if there was an offence but no complainant, then there would be no case (manay). Manay is also the term for a case where there is a complaint leading to an investigation but which does not then proceed to hearing. A case to be heard was called Tamanay but, in contemporary times, it is called 'case settlement'.

Hmong

Common remedies under Hmong customary law include verbal reprimands or 'education', fines in the form of money or livestock, labour or restitution to the value of the loss and the obligation to provide Soukhuan. In cases of very serious violations, a range of severe punishments can be used: such as, servitude, exile or, in the case of use of witchcraft or black magic, even execution by the villagers. Punishments are decided by the head of the ethnic group or Saengxao. In the case of offences against customary beliefs or desecration of

holy sites, punishment will usually take the form of education, compensation, restoration, apology, and conducting aSoukhuan for the house-owner suffering damage.

The parents and siblings of a convicted person will pay the fine if the offender cannot. There may be a punishment contract formed between the victim and convicted person. Contracts can be formed by the head of the ethnic group dividing a piece of wood into three pieces and giving one piece to each party, including himself. If the offender breaches the contract, the pieces must be returned and the offender fined according to what was agreed in the contract. Further breaches can result in multiplying fines.

In the case of the Hmong and the Khmu, decisions about remedies do not depend entirely upon the parties. For example, even if both sides agree to solve peacefully a conflict without the need for payment of compensation, if a case is considered serious, the elders can still require a fine to be paid. This is analogous to the decision-makers deciding to act in the public interest.

Khmu

The Khmu use many forms of remedies; including, compensation, fines or reimbursement. If there is a violation of customary rules, a fine will be imposed to restore the village spirit or the spirit of the cemetery. In cases of theft, a fine double to the value of the item stolen will be imposed. In the case of adultery, a monetary fine will be imposed, along with the obligation to hold a Soukhuan (apology) ceremony. As with some other groups, adultery is considered very serious. The offender must pay 90 mun to the victim-spouse - or spouses - as well as pro-

vide two pigs and two jars of alcohol to the decision-makers. In cases of repeat offences over a period of time against the Pobs spirit or Keunspirit, exile may be imposed. The authority responsible for imposing punishments is usually the head of the ethnic group, community elders, village authorities or, in family-related cases, the head of the household.

In relation to dispute resolution costs, sometimes a fee is not required. In other instances, 10% of the case's total value will be paid to those who settle the dispute.

Lolo

Their customary law often involves the imposition of fines, forms of social ostracism or, in cases concerning repeated serious offences, banishment or exile may be imposed. The council of elders decides the sanction. In criminal cases, the lao phia or head of village is responsible. In relation to dispute resolution costs, the guilty party must pay the costs of the hearing - including preparation of a food tray to honour the elders - and provide a monetary sum in mun.

Phounoy

In relation to dispute resolution proceedings, the person found to be at fault must pay the costs. This amounts to one day of labour per panel member.

8. Appeals

For patriarchal clan societies, such as the Hmong and the Mien, once the clan leaders have made a decision, individuals cannot challenge it. They must just implement it. The same is usually the case with Mon-Khmer

groups. Interestingly, ethnic Then in Viengkham district, Louang Prabang Province have the right to challenge a decision. If a party is not satisfied with the decision of the chao kok chao lao (community elders), that party can then appeal to the phialasa, whose authority is higher than the elders' in the hierarchy.

9. Bias, Undue Influence or Corruption

The public nature of customary law decision-making and the high level of community involvement in customary law processes - which endow these with both authority and legitimacy - provide an important protection against instances of corruption or bias.

Individual ethnic groups have their own specific mechanisms to augment these 'natural' corruption deterrents:

Khmu

Customary law practice protects against corruption and bias by ensuring that both parties are investigated and questioned, the mediator of the case takes an impartial position, and, if the customary authority is related to one of the parties, a person mutually agreed upon and respected by both parties is selected. Such a person will have a reputation for being fair. Where a decision-maker demonstrates bias or makes an unfair decision, other senior members of the community can fine that person one buffalo and exclude them from future participation in conflict resolution. There are, however, few reported instances of such a fine having been imposed in practice.

Phounoy

Customary practice provides that, if a person responsible for mediating or deciding a case sides with one of the parties, such behaviour is considered a violation or abuse of trust, especially if it results in an unfair decision. Such a person will be fined and reprimanded by the council of elders, according to the seriousness of the infraction and the case. If a high-ranking person demonstrates bias in carrying out their duties, this person loses their standing and credibility in the community and will be strongly criticised for awhile - or, perhaps, immediately dismissed from the position.

Makong

Fear of offending against and being punished by spirits can deter Makong people from obstructing customary law processes. Even if a person's refusal to volunteer information - especially against relatives - or false testimony is never discovered by customary authorities, that person will still fear punishment by the spirits. In this sense, customary law and traditional beliefs are stronger than national laws and state institutions, to which parties do not fear lying to the same extent.

Hmong

There is a lack of a clear mechanism to prevent decision-makers from favouring one side over another - or from being influenced if their close friends or relations are parties to the dispute. Informal pressures, such as community members gossiping and spreading rumours attacking the reputation of the person, will ordinarily be sufficient to induce the decision-maker to stand aside in cases involving close friends or relatives or if they might be compromised for another reason.

There are many Saengxao in the Hmong ethnic group and these can discuss issues of bias, as they arise, and vote on them. Those leaders voting on the basis of their close friendships or family relations will lose their credibility and standing amongst other leaders and in the community. Hmong leaders seek to avoid public criticism whenever possible; especially as Hmong communities are small and demand high levels of accountability from their leaders. This provides a strong disincentive to bias, resulting in very few known cases.

lu-Mien

Customary law requires all decision-makers to be neutral and to decide cases fairly. When parties feel that this has not occurred, they

can object to the judgement and appeal to a higher level for a review of the case. They can also bring an action against the decision-maker on the grounds of bias. Should that person be found to have behaved unfairly, aside from any penalty they might receive, their reputation and credibility in the community will also be adversely affected. This acts as an additional form of punishment.

Lolo

When a decision-maker makes an unfair or biased decision, the village will take him to a sacred place and require him to take an oath by drinking water. The person may also be forbidden from participating in any other conflict resolution processes.





C

EVOLUTION & EXTERNAL
INFLUENCE

As noted above, customary laws are not fixed or static, but dynamic, and subject to external and internal forces of change. This section examines some of the forces driving evolution or change in customary law usage and practice in Lao PDR.

1. Urbanisation, Resettlement & Consolidation

Changing physical locations and settlement patterns of many ethnic groups has also impacted upon, or accelerated the dissolution of, customary law and practices. Increased urbanisation has, naturally, resulted in the loss of many rural or remote communities' most productive - e.g., young or skilled - members to urban centres.

Resettlement - the physical relocation of villages from the highlands to the lowlands or within the highlands - has a similar effect to urbanisation, although the communities affected largely retain their members. Resettlement aims to reduce shifting cultivation, eradicate opium production, and improve access to government services by consolidating villages into larger, more easily administered units.

At the same time, resettlement - and, of course, urbanisation - hinder or prevent the holding of essential rural community rituals linked to the land or ancestral spirits. Traditionally, every year, before the beginning of the agricultural cycle, a community ritual is held in the sacred forest. The purpose of the ritual is to reassert the integrity of the land and its boundaries, to ensure a good harvest, the health of the people and their domestic animals, for security during the production cycle, and to seek permission from the spirits to use the land and other resources.

The cultural impact of resettlement goes beyond the disruption of particular rituals. In traditional villages, the organisation of public space and architectural style of houses all reflect the identity of the inhabitants and are designed on the basis of cosmological models. In resettled sites, communities are divided into individual houses in the lowland Lao style, stretched along a road. This affects not only social interaction and organisation, but the cultural reproduction of communities.

A further impact of resettlement, unlike urbanisation, is a diminished status for women. When major upheavals in communities are experienced, as in the relocation of villages, or when access to natural resources is denied, women lose control of agricultural land. This may cause them to cease to participate in rituals for ancestors or to preside over the agrarian rites. Women's power to preserve culture may be lost as a result; thus, denying them a key source of power and status in their communities and widening existing gaps of gender inequality.

The policy of villageconsolidation - establishing minimum population standards for lowland villages (1,000 households), mid-slope villages (500 households), and upland villages (200 households) - has a related impact upon customary systems and structures. Hamlets are merged into larger units, so as to meet the demographic requirements. Thereby, small ethnic communities are often consolidated into large multiethnic settlements. Speaking

mutually unintelligible languages, the Lao language becomes the lingua franca. This leads to a blurring or loss of ethnic languages and identities. Traditionally, throughout Laos, ethnic groups would not mix within a single village unit: most villages were culturally homogenous. Urbanised, resettled or consolidated communities often combine different ethnic groups, stretching or rendering obsolete customary practices, which are not always compatible between different cultures.

2. Government Policies, Regulation & Programmes

Government bodies have increasingly engaged with the daily lives of people in all areas. Undoubtedly, a spectrum of views on the extent of cultural change occurring, and the impact of that change, exist within all communities. Some are open to the changes and take the view that greater engagement and investment from the government in local communities brings benefits and improved or accelerated development. For example, it is said that, generally, such change takes place with little resistance from the Hmong. This is because Hmong traditions are adaptive and open to change, except those relating to forms of dress.

However, others see the cultural and other alterations that are occurring as threatening to their identities, customary law and practices or way of life. They are dubious as to whether the purported benefits will follow and, even if they do, whether this will have a positive impact upon community living. They observe that there are no mechanisms or strategies to support customary leaders and their roles.

Without successors, they fear there will be no transmission of the customary practices and that irreversible cultural loss could occur within a single generation.

One specific area of change is the contraction of customary law jurisdiction over serious criminal cases. The most serious criminal cases are - or should be - forwarded now to the state authorities for prosecution in court. The Phounoy and Khmu identified murder as a type of case much more likely to be dealt with by the courts now. The Khmu also included manslaughter, drug-related cases, and treason as those where customary authorities did not usually exercise jurisdiction, possibly because they had not been offences under customary law. Hmong informants raised a related point concerning appeals from customary decisions to the courts. Whereas, previously, customary decisions were final, now some parties appeal to the state court and obtain a different outcome under national law. This, at times, does not accord with community values and can cause disquiet. There even have been cases where some Hmong have registered their protest by directly criticising court decisions in the Hmong media.

Another major area of change in customary practice concerns land management. In the past, the land was managed by heads of the ethnic groups. Now, individuals have rights to own and use the land and the government also plays a major role in the control and use of it. Informants highlighted how customary rules had changed regarding high-value trees growing naturally in cultivation areas. Previously, these were considered public resources available for all to use. Landowners are now

responsible for them. If trees are removed, the landowner must pay a tax to the village for the rent of a tree-cutting machine.

Some Hmong related how customary authority was being eroded by government efforts to regulate customary practices relating to the payment of bride-price and divorce. Whereas, previously, customary authorities had unfettered control over such matters, now the state seeks to influence practices to promote women's rights and gender equality. This is not viewed favourably by some sectors of the community.

In addition, customary law fact-finding methods have also undergone change: 'note-taking' and evidence-based fact-finding have supplanted ritual-based methods, such as taking a vow by drinking holy water.

3. Market Forces & Investment

Socio-economic change brought about by development and the penetration of capitalism is another key factor impacting upon customary laws and practices. Current development trends in Laos include investment in natural resources located in minority ethnic group areas. Increasingly, this takes the forms of land concessions - for rubber, cassava, mining or other resources - contract farming or hydro-electric dams. Accounts were given of some foreign companies taking more than what they were granted by the government - or of being allocated land belonging to individuals or communities. Villagers talk of bulldozers coming

during the night. When the villagers wake up, they discover that their garden or coffee plantation is gone. Sometimes, companies take advantage of religious festivals, such as Bun Phi Mai (Lao New Year) - when officials are on leave - to take land. These new market-driven forces negatively impact upon ethnic minority groups, who are especially vulnerable to loss of access to traditional productive land and forest resources.

Communities are facing a range of unprecedented pressures as a result of large-scale plantations at the local level. These include disputes over land ownership and labour, issues relating to compensation, out-migration and human trafficking, rapid social and cultural change,²⁵ decreased food security, pollution from agrochemicals, and the lack of consultation on concessions and establishment of plantations. Community livelihoods are going through tremendous shocks and changes. For the most part, communities receive few benefits from these investments, while their traditional lands and livelihoods are irrevocably altered and their customary structures break down.

In the past, communities would manage the entire land and resources located within their boundaries. Now, ancestral and community land is not recognised in the national law. This has resulted in loss of control of their primary means of survival and undermined their self-sufficiency, creating dependency upon bodies in which they have little trust, and leading to fear and uncertainty about the future.

²⁵Including: increased alcohol and drug use, domestic violence, and vehicle accidents.

Makong informants observed how concessions over land for tree plantations and tree exploitation, combined with the presence of foreign workers, whose behaviour is perceived as offensive - e.g., they do not share beliefs in the worship of ancestral ghosts or accept and respect the role of customary elders - have led to conflicts with local communities.

For instance, since the establishment of a rubber plantation in one area, local Khmu have been forbidden from raising cows or buffalos. When having ceremonies, people are now mostly forced to buy cows or buffalos elsewhere. They often have no choice but to use credit, creating spiralling debts and other problems. The plantation also directly jeopardises food security, as communities are unable to rely on forest foods, which have sustained the Khmu diet for thousands of years, due to the use of herbicides on the plantations.

Conversion from a subsistence economy to cash crops has also heavily impacted upon Khmu communities. In Oudomxay, in some instances, almost all households in the village have accumulated unmanageable debts, at high interest rates, to support the planting of maize. While villagers work hard, they effectively receive nothing in return. There was also a case where some villagers, whose corn fields were located next to a rubber plantation, were fined 300 million kip for accidentally setting fire to the plantation.

Mien communities explained how these socio-economic forces, including concepts of competition, negatively impact upon their cultural practices and assets. Their losses include: material culture - such as architecture, dress codes, and spoken and written language skills;

knowledge and competence in observing traditional customs, beliefs, and places of worship; and intergenerational loss of knowledge and competence for settling disputes in accordance with traditional knowledge and beliefs.

In the face of these investments - which involve powerful, well-resourced, and connected outsiders and very high stakes for communities - customary mechanisms of conflict resolution are at a loss to help their community members.

4. Social Implications of Weakened Customary Structures

As noted, communities are placed under great stress when confronted with cultural loss and rapid change. This can exacerbate existing, or create new, social problems and challenges. Customary law systems struggle to deal with all of these.

Some ethnic groups are undoubtedly doing better than others in meeting these challenges. The Hmong and Mien ethnic groups appear more resilient to external forces of change. Their communities are more functional, cohesive, and generally better off, than those of some other groups. The Iu-Mien have retained use of customary dispute resolution practices. These are still the most popular in all communities; including, those that have experienced many changes. Iu-Mien communities continue to have confidence in the effectiveness and efficiency of customary law procedures. They use their native language, save money and time, utilise civil remedies that are cheaper, ensure that victims' face, pride, and reputations are restored; thereby, achieving reconciliation be-

tween the parties and engaging communities in participatory justice processes. Moreover, there is little reported difference in the levels of customary law observance in urban versus rural Lu-Mien communities.

Makong informants stressed that neither the use, nor content of customary law has changed much in their communities. Investigation and case decision procedures remain the same. More superficial matters have changed. For example, fines have changed, both in terms of their value and their currency; i.e., from old Lao money to new bank notes. Before, they drank jarred alcohol and ate chicken and pork, but now they eat beef, buffalo meat, and drink white spirits or beer.

Conversely, it was observed that Khmu Rok Krong people living in urban areas rarely practice their traditional customs any more. Khmu informants reported that one of the greatest cultural losses for them, aside from abandonment of their customary dress, has been the loss of respect for elders and for their authority. Youth more frequently lash out at their parents or engage in petty theft, it is said.

Overall, ethnic communities face increased levels of alcohol abuse, drug-taking, and drug trafficking; including children and teenagers. This results in greatly increased health problems and higher levels of anti-social behaviour in some communities. The linkage between interruptions to male livelihood activities and alcohol abuse or domestic violence is strong. Men who are unable to fulfil the bread-winning role expected of them, often face self-esteem and identity conflicts. Also, they have increased discretionary time on their hands. Such conditions result in more men turning to alcohol as a prop and taking out their frustrations through violence against family members. Men are (allegedly) more likely to use prostitutes now, take on concubines or engage in polygamy; even amongst groups in which this is not customarily permitted. All of this further fuels conflict between husbands and wives. Women have to work even harder to compensate for their husbands' absences and lack of productivity, as well as cope with domestic violence and marriage breakdown.





D RELATIONSHIP
WITH NATIONAL &
INTERNATIONAL LAW

1. National (State) Laws & Institutions

Lao cultural traditions and Theravada Buddhism continue to be dominant norm-influencing institutions. Internally, 'win-win' solutions, which promote reconciliation and community harmony, are still preferred by communities. Numerous aspects of state law or policy clash with customary law values and norms; for example, in relation to concepts of equality, gender or intergenerational relations, fair trial standards, principles on land use and management, and market principles of competition and private ownership.

1.1 Informal, Semi-Formal & Formal Mechanisms

Informants in this research expressed the view that Lao PDR's Party rules and government regulations (labiebkhong lat lei nayobai khong pak) have a varying, but generally increasing, impact upon the customary laws and practices of all ethnic groups.

In resettled or consolidated villages, communities increasingly rely on state institutions for dispute resolution. For example, in one such Khmu community, villagers commonly turn to the Village Mediation Unit for conflict resolution. However this trend is not universal. In the two Mien communities studied, customary law systems remained dominant; including, in a community that had experienced disruption and where there was a Village Mediation Unit. The low uptake of the VMU in these cases was attributed to their limited expertise, authority, and capacity, as well as a lack of trust in the unit on the part of the people. Therefore, cus-

tomary mechanisms continued to dominate. A similar response from Hmong villagers in support of the continued use and integrity of customary law suggests that re-settlement/consolidation may have had a lesser impact upon customary law systems than is often assumed.

Another view provided by different Hmong informants emphasised that the leadership and decision-making roles of the head of ethnic groups, or of Saengxao, had undergone rapid, major change. Whereas, the head previously had the power to make decisions on any issue, which all people in the group had to follow, the head is now a member of a governmental dispute settlement body in the village and, thus, must share power. If parties to a dispute are not satisfied with the decisions made by the head of the ethnic group, cases will be sent to other relevant bodies to review and settle in accordance with national legislation. The head of the ethnic group works cooperatively with the LPRP and the government, but their role is undoubtedly declining compared to the previous situation.

Phounoy communities explained that they face a transition or transfer of responsibility for dispute resolution from customary authorities to Village Mediation Units. While, in the past, a village administrative committee (Kuan) had the right to consider a case, now there is a dispute settlement body for the village that involves highly-qualified people and customary elders in the process.

The boundaries between the three justice systems - informal, semi-formal, and formal - are porous, interdependent, and have a symbiotic effect upon one another. Cases move between the different mechanisms, as justice users at-

tempt to navigate their way to the best process and outcome for their case. Aside from ‘choice of forum’ decisions by parties - shaped by levels of legal literacy, access to alternatives, confidence, the views of family members, and other social and cultural expectations - justice actors within each strand also play key roles in determining the venue for resolving complaints. Customary law leaders may refer unresolved cases to the Village Mediation Unit, which can refer cases back to the customary system, or channel them to the village administration or into the court system.

1.2 Interaction with the Court

The boundaries between customary law mechanisms and formal justice processes are porous and imprecise. The most common and straightforward interaction between the systems occurs when cases unresolved at the community level are then referred to the court system for resolution. While this would ordinarily happen in cases where the customary authorities had not considered the case due to its seriousness, or been unable to reach a decision, there are also examples of where one - or both - of the parties does not accept the customary authority’s decision and turns to the court. Ethnic Mien informants provided an example of a case that had been decided at the village level but the parties did not accept the decision and ‘appealed’ to the court to proceed in accordance with formal legal procedures. In this instance, the court confirmed the original decision, which the informants felt was positive, as it instilled greater confidence in the customary authorities and reinforced their authority with-

in the community. Some community members expressed disquiet when customary law decisions are de facto overturned.

Sometimes referral from customary law mechanisms to state courts marks the end of the customary law system’s involvement; other times it does not. For example, a case described by Makong informants is illustrative of how customary and formal justice systems sometimes work together: The case involved the killing of a cow and as the customary authorities were unable to mediate the dispute successfully, they referred it to the district court. The elders provided the court with a written outline of the circumstances of the case and the efforts already taken to resolve it. The case was eventually resolved, but the court decision also recognised the contribution of the customary law system to its resolution. The owner of the trap - in which the cow was killed - was required to compensate the cow’s owners with 3.8 million kip and also ordered to pay one pig to the council of elders for initially hearing the case.

There are also instances in which cases filed in the courts are referred back to local mechanisms, sometimes with the court providing an advisory opinion for consideration by local authorities.²⁶ A further permutation of this court-customary law interface was illustrated by Makong inhabitants of Phaphiland Village, who described cases where customary law authorities had applied a combination of customary and national law when solving disputes. Thus, there is fluidity not just in the transmission of cases from one forum to another - e.g., from customary to state justice system - but also in law: where the content or contribution of cus-

²⁶According to Phounoy informants.

tomary law is recognised or applied within the state courts or vice versa.

A relatively common scenario with respect to cases tried in the courts is that the case is also resolved, separately, at the customary level. This raises some concerns about double jeopardy. For example, Khmu informants explained that, even when a person is jailed by the state, they must also be punished in accordance with customary law and are required to provide one cow and one goat to restore the village spirit. Lu-Mien informants made finer distinctions; such that, if a person's conduct for a particular offence has been judged by the court, then customary law authorities will not impose an additional punishment for that act. If, however, there were other offences not included in the state prosecution, which are considered judicable in customary law, then a separate customary law proceeding will be held to deal with those matters.

Makong informants explained that, in some cases, when the courts has decided a criminal case in a way unpopular in the community, the same case has later been reconsidered, applying customary rules, so as to ameliorate what was considered an unjust result. This, for example, might mean re-apportioning blame between the parties - albeit taking into consideration any penalty already imposed by the state justice system - when imposing fines or awarding compensation.

The lack of regulation of these movements from one system to the other means that decisions as to where cases should be heard are not handled consistently and often rely upon the subjective judgement of local justice or court officials. On one hand, this fluidity may create opportunities for certain categories of justice users to exercise some choice over selection of justice forum. On the other, for the poor, uneducated, women or other vulnerable users - who are less likely to have the financial or human resources to navigate complex arrangements linking plural legal orders - it constrains their access to justice. Achieving a more orderly and clearly-demarcated legal framework, which recognises the potential complementary roles of both systems, might help to remove this as a barrier.

1.3 Interaction with Domestic Law

The clash between customary uses of land and the allocation or confiscation of customary land for development under state law or policy has had a deleterious, occasionally devastating, impact upon some ethnic communities. The lack of formal recognition of the full range of customary land usage practice means that ethnic groups have an inadequate legal platform for mounting their claims so they might be considered by courts. While there have been some adjustments made that allow for greater recognition of customary land rights - e.g., of subsistence needs in the Decree on the Management and Use of Forest and Forest

²⁷ This stipulates that the state recognises the right to use forests and forest land forest products in accordance with "the customs of villagers". In Article 10, the MAF Decree 0054 specifies that villagers have the right to harvest forest products for household use, the right to harvest for sale certain forest products "as specified in the district management contract which are abundant in the area in volume sustainable for the area", the right to hunt and fish in accordance with legal requirements, and the right to use degraded or barren forest land in accordance with the land use planning and land allocation process. Article 11 states that village authorities can adopt village regulations pursuant to the decree.

Land ²⁷ and the recognition of communal land contained in Directive 564 under the National Land Management Authority (NLMA) ²⁸ - there still remain large gaps, with the law only offering limited recognition of rights and reliable implementation of protections of customarily-managed land, as well as a lack of progress made in relation to informing and empowering communities to act upon their rights when land disputes arise.

Engaging with customary law authorities on the customary use of land, and achieving a clearer and more comprehensive legal regime protecting customary use of land, should contribute to the sustainability and stability of economic development efforts. Aside from causing great unhappiness and undermining ethnic communities' livelihoods and ways of life, the failure to provide due recognition of customary land rights, or just compensation, can create tensions that threaten to turn into protest or even criminal damage against state and commercial interests; potentially creating instability and making Lao PDR a less desirable place for investment and economic growth.

Moreover, some customary concepts of responsibility are not upheld in state law. One example offered by Khmu informants described how elders and villagers object to drivers who hit and maim or kill livestock, but do not compensate the owners for the loss. A further example was of when a child falls from a tree and is in-

jured. State law holds the owner of the land or house where the tree is located responsible for the accident and requires payment of the costs of medical care; whereas customary law holds the child to account by requiring the parents to conduct a ceremony to restore the house of the owner, as the child has acted against the spirit, leading to bad luck. Members of the Tarieng community pointed out that the onus, in the event of an animal destroying someone else's crops, is different under their customary law, which requires the owner of the field to erect a solid fence to prevent both domestic and wild animals from entering and destroying crops.

1.4 Use & Perception

According to the Access to Justice Survey, based upon actual use, twice as many people use customary law processes as the VMUs and five times more than use the courts. ²⁹ Community perceptions of appropriate justice venue reflect a more subtle picture, suggesting that the naiban (village chief) and the "khana ban/ amnad kan pokhong ban" (village administration) also play important roles in community conflict resolution. Given that both the village chief and administration derive their authority from the state, not customary structures, this suggests that, while customary law systems may more commonly be used, state-based village authorities may be perceived as the more

²⁸ This is a limited step toward legal recognition, though many advocate more extensive reform of the land law. Some INGOs in Oudomxay Province have tried to make use of Decree 564 to promote sustainable management of community land.

²⁹ Daviau, Steeve (2010) *People's Perspective on Access to Justice Survey in Lao PDR, An Assessment in Four Provinces of Lao PDR*. Ministry of Justice, Lao Bar Association, supported by the United Nations Development Project, Vientiane, Lao PDR.

appropriate forum for many cases. Phounoy informants explained that, previously, murder cases were settled under customary law with the use of capital punishment (Angkhanpeuthchae Yangnamxathyoyiew) but that, now, murder cases are submitted to a court and are no longer judged under customary law. At present, customary law still plays a significant role in settling a dispute at a basic level, but criminal cases - serious or not - will be resolved by the court only. Khmu informants identified murder, manslaughter, drug-related offences, and treason as those more likely to be dealt with under state law.

2. Potential Conflicts with International Norms & Standards

When considering possible models of official co-existence between customary and state legal systems, it is key to identify and consider areas or fields of law where customary, national, and international standards are most likely to clash.

Before focusing on conflicts between customary law processes and national/international law, however, it is important to note that there is also often a gap between international standards and national laws and, then, further discrepancies between the content of national laws and the implementation or effectiveness of those laws in practice. Thus, in identifying potential points of contention between customary and national/international law, it should not be assumed that the state is itself always in full compliance with applicable international standards or that there is perfect internal harmony between constitutional provi-

sions and all national legislation and practice.

2.1 Applicability of International Standards to Customary Law

At the heart of the tension in often ambivalent relationship between ‘human rights’ and ‘culture’ is that human rights advocates are accused of promoting a masked form of western imperialism that runs roughshod over the rights of culturally diverse peoples. Defenders of ‘culture’ are accused of projecting a vision with a moral vacuum at its core and are cast as apologists for egregious abuses of power and human degradation. While there is no ‘golden bullet’ to resolve what are often very real and complex tensions between human rights standards and ‘culture’, there has been significant progress on both ‘sides’ of the debate: with universalists maintaining the validity of human rights, while conceding that greater cross-cultural dialogue is needed to achieve higher levels of consensus to strengthen their cross-cultural legitimacy.

Human rights standards may be universal but, nevertheless, they are abstractly stated and require interpretation for their implementation within particular cultural contexts and to meet the differing social needs and demands of distinct societies. At the same time, those concerned for cultural diversity no longer assume essentialist understandings of ‘culture’ as a fixed and knowable entity, to be unquestioningly defended, but, rather, have assumed more dynamic and fluid understandings of ‘cultures’ as arenas of contest or sites of struggle that are continually evolving, changing, and subject to diverse influences, including internal contest and human rights discourse, as part

of their natural evolution.

Such debate aside, Lao PDR has adopted human rights standards in its Constitution and made sovereign decisions to enter into many human rights treaties; including, most relevantly, the International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC), and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). Lao PDR Constitution includes a number of fundamental rights and it is within this framework that Lao citizens are entitled to claim their human rights. Furthermore, many Lao national laws specifically reflect these commitments, such as the Law on the Development and Protection of Women, which explicitly recognises gender equality and non-discrimination as national goals and aims to promote the rights and roles of women throughout society.

While exposure to human rights' discourse may be more prominent at the state level, it is also widely experienced by local Lao communities through a range of mediators including the State - via treaty obligations - the United Nations - including UNDP and other UN agencies - other trans-national organisations with a field presence, civil society actors - such as international and local NGOs - local lawyers and activists, popular culture, and the media.

Those who conceptualise a dividing line between culture and human rights fail to acknowledge the contested and variable cultural

support - for a variety of 'cultural' behaviours - from different social groups within a given 'culture'. For example, some contributors to this research presented versions of their ethnic group's customary practices and characterised the pressure to change, on issues such as women's inheritance rights or marriage practices, as against their group's 'culture'. However, the results of the Access to Justice Survey indicated that many of these 'cultural' practices are in strong contest from within these ethnic groups, represented by the sizeable - and largely unmet - demand for gender justice.³⁰

Given that within ethnic communities, those who are culturally powerful often 'speak for' those who are culturally weaker and human rights violations, especially those against women, are frequently defended in the name of 'culture', such defences - in particular, when made by cultural elites - should always be critically examined and scrutinised. Rao postulates, as a starting point, a series of interrogative questions to assist in assessing the credibility of such claims:

"First, what is the status of the speaker? Second, in whose name is the argument in culture advanced? Third, what is the degree of participation in culture formation of the social groups primarily affected by the cultural practices in question? Fourth, what is culture anyway?"³¹

Awareness of the existence of real intra-societal oppression and the great danger of un-

³⁰ A2J Survey

³¹ Rao, A. "The Politics of Gender and Culture in International Human Rights Discourse", *WomenRights, Human Rights-International Feminist Perspectives*, Peters, J. Wolper, A.(eds), Routledge, New York London, 1995, p168.

critically accepting assertions of difference as a defence of violations of human rights not only helps to prevent reinforcement of such oppressive dominant articulations of culture, but can also illuminate pathways for shifting them.³²

2.2 International Standards & Pluralist Legal Systems

Human rights law is yet to address fully the structural consequences of pluralist legal systems. Thus, there are no specific international standards that relate to the operation of pluralist legal orders. The impact of legal pluralism upon the protection of human rights is a neglected theme in human rights instruments, jurisprudence, and commentary; despite the frequent and direct encroachment of pluralist legal orders upon many well-established areas of human rights law.³³ One reason for this has been the uncoordinated and parallel development of human rights standards: leading to fragmentation, gaps, and conflicts in interpreting how they should apply in pluralist legal orders; particularly in relation to resolving conflicts between gender equality and minority, indigenous, and cultural rights.³⁴ However, one basic principle, which is both

clear and relevant, is that the existence of a non-state legal system does not diminish the state's overriding responsibility to ensure that any decisions made within its physical territory, including those by non-state systems, operate in compliance with the human rights standards acceded to by that state. To synthesise, the state still maintains a central role in ensuring that non-state legal orders operate with oversight and within a common framework of rights.³⁵ Confirming this concept, the Human Rights Committee has recognised that non-discrimination and fair trial standards under the ICCPR apply equally to pluralist legal states and that decisions by non-state bodies cannot be considered binding if they fail to meet basic standards.³⁶

It is also relevant that protection from gender discrimination is recognised as a non-derogable right under the ICCPR³⁷ and reservations to this protection are not permitted.³⁸ The Human Rights Committee has made several relevant comments relating to conflicts between women's and cultural rights; noting, for example, that "State parties shall ensure that traditional historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and

³² *Ibid.*

³³ Such as the right to equality before the law, women's rights, the right to non-discrimination, minority and indigenous rights, fair trial standards and administration of justice standards, to name a few.

³⁴ For example, the production of new international standards, such as the Declaration on Indigenous People, which makes no reference to CEDAW and provides no recourse to indigenous women subjected to discriminatory decision making by male-dominated councils empowered to operate autonomously. UN Special Rapporteur on violence against women criticised the draft Declaration. The International Council on Human Rights Policy "When Legal Worlds Overlap: Human Rights, State and Non-State Law." 2009, Switzerland, p33 citing A/HRC/4/34, 17 January 2007

³⁵ International Council on Human Rights Policy "When Legal Worlds Overlap: Human Rights, State and Non-State Law." 2009, Switzerland, at p58.

³⁶ General Comment No 32, General Comment on the Right to Equality before Courts and Tribunals and to a Fair Trial UN Doc CCPR/C/GC/32(2007)

³⁷ Article 4(1)

³⁸ Paragraph 9 of the Human rights Committee's General Comment No. 24

to equal enjoyment of all Covenant rights” and also confirming that women’s right to non-discrimination cannot be sacrificed in the name of preserving other rights under the ICCPR.³⁹ Another international standard relevant to pluralist legal orders has been articulated by the Human Rights Committee, which limits the jurisdiction of non-state legal systems to deciding “minor civil and criminal matters”.⁴⁰ Thus, a state that provides customary law systems with more extensive jurisdiction, or that fails to prevent customary law systems from considering ‘non-minor’ civil and criminal matters, will fall afoul of this standard.

There is little international direction as to what constitutes ‘minor’ civil or criminal matters. Clearly cases of murder or other forms of unlawful death, torture, rape or other infliction of serious physical harm would be excluded pursuant to this definition. Rape and other forms of sexual assault are an especially tricky area. This is not because they are not clearly serious crimes, but because international and state concepts of rape, which revolve around the concept of consent to sex, often vary markedly from local understandings of ‘rape’. Many ethnic groups in Laos understand rape as sex occurring outside of a socially-sanctioned relationship.

Community and state perspectives often clash in deciding which legal forum should deal with such cases, not in small part because they are each talking about quite different concepts of offences. However, permitting such customary

‘solutions’ to rape, clearly violate the rights of the victim and should be challenged. Rape cases involving the additional abuse of incest are further challenges, due to the violation occurring between individuals with disparate social power, and within the ‘private’ sphere, which is often privileged and immune from scrutiny under both state and customary law systems.

As to what constitutes a ‘minor’ civil or criminal matter and, thus, can be resolved under non-state law: this distinction itself remains problematic and has highly-gendered effects. Often ‘minor’ civil matters are considered to be aspects of family or personal law - such as, marriage, divorce, guardianship, maintenance, custody, inheritance, and succession rights - and are considered less critical rights issues. Contrary to this assumption, such issues commonly go right to the heart of women’s status and human rights. Such laws can determine at what age women or girls can marry,⁴¹ who they can marry, on what terms they can divorce or be divorced, and, critically, to what degree they will, throughout their lives, be economically dependent upon men. All of these issues are factors closely associated with status and gender discrimination more generally. The dilemma is that it is very difficult for the state either to enforce respect for jurisdictional boundaries, when they do not also resonate with local values, or to intervene effectively to ensure that minimum standards are being met in customary law decisions.

³⁹ *Human Rights Committee General Comment No 28, paragraphs 5, 9 and 21.*

⁴⁰ *Human Rights Committee General Comment on the Right to Equality before Courts and Tribunals and to a Fair Trial, No 32, UN Doc. CCPR/C/GC/32(2007).*

⁴¹ *Thus determining whether a girl will be subject to child rape and exposed to the significant dangers of early and closely spaced pregnancy*

3. Procedural Rights

3.1 Right to a Fair Trial: UDHR Article 10; ICCPR Article 14(1)

International standards relating to fair trials assume the existence of a level of formality that often does not exist in customary law systems. Nonetheless, the Human Rights Committee has confirmed that fair trial standards must

be equally applied to customary law systems, if states are to be considered compliant with their obligations, especially those under the ICCPR.

This section examines areas where customary law mechanisms used in Lao PDR may struggle to meet fair trial standards:

Equality before the Law: ICCPR, Articles 14(1) and 26; Lao PDR Law on the People's Courts; Lao PDR Constitution Article 22

Customary law systems in Lao PDR are not based upon an assumption of equality, but rather generate mediated settlements of disputes that reflect the relative bargaining power of the parties, which is based upon gender, wealth, class, age, and other factors that determine the socio-economic status of individuals within a particular community. Where the power imbalances between parties to customary law proceedings are great, those from disadvantaged backgrounds are compelled to trade-off their basic interests and rights in order that 'common ground' or resolution may be achieved. This frequently results in decisions that are unfair to the weaker party and may breach basic human rights standards.

Presumption of Innocence: UDHR Article 11(1); ICCPR Articles 14 and 10;

Prohibition upon Torture, or other forms of cruel, degrading treatment or punishment: CAT, Article 2; UDHR Article 5; ICCPR Articles 7, 10, and 14;

Right to Silence: ICCPR Article 14(3)(g)

From various groups' descriptions of how they proceed in conducting customary law cases, including means to extract confessions, it is evident that a presumption of innocence is often not applied in customary law systems. Numerous ethnic groups use - or used - torture or other forms of physical mistreatment in order to obtain confessions or to assess the credibility of assertions of innocence. Many of these methods clearly fall short of international standards. The existence of these methods is indicative of an absence of the right to silence. In many instances, the onus may be on the suspect to prove their innocence and the idea that a party should not be required to provide their version of events - and, thus, possibly incriminate themselves - is contrary to the way customary law hearings operate. Additionally, a number of groups use punishments, which breach the prohibition against torture, such as the Lolo's use of physical restraint, cutting, and rubbing salt into wounds, as punishment in cases of murder.

Right to a fair and public hearing by a competent, independent and impartial tribunal established by law: ICCPR Article 14(1); Lao PDR Constitution, Article 68

While customary law proceedings are usually public, they are not tribunals currently recognised by law. Although customary law decision-makers are very often independent of the state, and indeed this is considered a drawing-card by community members, they are usually not impartial, in the sense of being at 'arms-length' from the parties. Customary decision-making often occurs within small, close-knit communities and decision-makers usually know both the parties personally and in great detail. Rather than being seen a defect, many community members consider this extensive knowledge of the parties' backgrounds, social status, and personal reputations, an asset that better equips decision-makers to arrive at more equitable decisions in the broader context. On the other hand, several ethnic groups identified procedures or expectations in the community that a decision-maker be required to stand-down in the event of being closely related to a party or if another conflict of interest existed.

Right to an Adequate Defence: ICCPR Article 14(3)(b) & (d); Principle 6 on the Basic Principles on the Role of Lawyers; Lao PDR Constitution, Article 69.

Professional legal representation is not a part of the customary law processes of any of the groups examined. Lawyers are more likely to be seen as a ruse to obfuscate the truth, which is deemed to be better ascertained through a direct exchange between the suspect and the decision-makers.

Prohibition on Double Jeopardy: ICCPR Article 14(7)

The lack of clear delineation and linkage between state and customary law systems can easily result in cases of double jeopardy, where the same offence is 'tried' by both systems and, potentially, the offender is punished twice for the same act.

Right to an Appeal ICCPR, Article 14(5)

While some ethnic groups have a customary appeals hierarchy - i.e., where dissatisfied parties could have their case reconsidered at a higher customary level - the right to appeal is mainly realised by parties appealing to the state courts when they are dissatisfied with customary justice results. One problem is that this may not be considered acceptable by some customary authorities or community members. They might consider the finality of customary law decision-making to be an important aspect to maintaining its authority within communities.

Right to a Reasoned Decision: ICCPR Article 14

The lack of formality in customary law mechanisms in relation to the collection and admissibility of evidence, the lack of written decisions, and the consideration of many factors - which in state courts might be considered hearsay, irrelevant, or prejudicial - may produce decisions that are not based on sound evidence or logical reasoning and, thus, not fair according to international standards.

3.2 Right to Life

Right to Life: UDHR Article 3; ICCPR Article 6.1

Right not to be arbitrarily denied life

Some ethnic groups use, in the case of intentional or unintentional homicide or even the failure to pay a large debt, capital punishment. Given the lack of procedural safeguards in customary law proceedings, capital sentences would undoubtedly be considered violations of the right to life. In addition, the Hmong/Mien grant immunities to persons involved in killing certain categories of relatives; such as, parents killing their children, especially infants; children killing parents; or siblings killing each other. To the degree that such immunities actually exist, the failure to treat such killings as murder clearly constitutes a violation of the right to life.

4. Women's Rights

4.1 CEDAW and National Law

The status of women and their rights under customary law systems presents one of the most glaring and obvious areas where gaps exist between international and national standards and customary law systems. It is a particularly thorny and contested interface, given that, as elsewhere, women in Lao PDR are commonly cast as central to the maintenance of culture: as custodians of culture, their behaviour and dress are perceived as the embodiment of cultural markers and expectations;⁴² as representatives of fertility and reproduction in their communities; and due to their common role as primary caregivers and, hence,⁴³ as inculcators of culture to the next generation. While these roles can extend women's social status, they also limit them to these roles. This casting of women as purveyors of culture and community identity fixes their identity and roles in ways that frequently conflict with the pursuit

of their right to equality.

Lao PDR is a signatory to CEDAW and is obliged to ensure that its standards are applied throughout the country, including under customary law systems. CEDAW prohibits all forms of discrimination against women (Article 2). It makes no exceptions for customary laws or cultural practices that are discriminatory. To the contrary, it particularly targets these areas, requiring states to "take measures to modify or abolish 'existing ... customs and practices which constitute discrimination against women'" (Article 2(e)), and "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (Article 2(f)). It also requires that women be treated equally before the law (Article 15) and includes several specific provisions concerning marriage, which prohibit forced marriage (Article 16(b)),

⁴² See Chatty, Dawn and Rabo Annika, *Form and Informal Women's Groups in the Middle-East* p1-22 in Chatty and Rabo (eds) *Organising Women: Formal and Informal Women's Groups in the Middle-East*, Oxford and New York, Berg, 1997. Enloe, Cynthia, *Making Feminist Sense of International Politics: Bananas, Beaches and Bases* 42-64, 1989.

⁴³ Rao, A. "The Politics of Gender and Culture in International Human Rights Discourse", *Women Rights, Human Rights-International Feminist Perspectives*, Peters, J. Wolper, A.(eds), Routledge, New York London, 1995, p169 and Niner, S *The contested place of women in post-conflict Timor-Leste*, June 2009, p5.

the betrothal or marriage of children (Article 16(2)), and extend to women the same rights as men during marriage and divorce (Article 16(c)) and as parents (Article 16(d)). CEDAW also obliges states to take into account the particular problems faced by rural women; including their under-recognised heavy workloads (Article 14(1)). The CEDAW Committee recommendation defining gender-based violence as a form of discrimination⁴⁴ also brings domestic violence clearly within the human rights rubric, reinforced by the adoption of the UN Declaration on the Elimination of Violence against Women.⁴⁵ As noted earlier, the right to non-discrimination 'trumps' cultural rights when they are in direct conflict.

Based on the revised Constitution (2003), Lao PDR has enacted legislation to provide women with land, family, and economic rights, as well as the right to make contracts (Article 7) and to take loans (Article 47). Others rights are provided under Article 260 of the Labour Law (1994), as follows: equal rights to employment (Article 2); equal salary (Article 39); and social insurance (Articles 47 and 54), as well as po-

litical rights to participate in the National Assembly, policy and law-making; mother's rights (Articles 17 and 34); and access to education, research and training (Article 25). The Law on the People's Courts specifically recognises equality before the law irrespective of gender. The Law on Family recognises domestic violence (Article 29), marriage, divorce - including in the case of adultery - and property division based on equality; while property laws grant women equal access to land and to own property.⁴⁶

The list of ways in which some aspects of customary law systems in Lao PDR do not yet meet these standards is long. While groups practising matrilineal inheritance and matrilocal residence systems may provide more power and status to women and, thus, greater protections of their rights - and be less discriminatory overall - discrimination against women remains a significant characteristic of all ethnic societies in Lao PDR and their opportunities, especially in rural areas, are often limited to traditional gendered roles.

⁴⁴ 1992

⁴⁵ 1994

⁴⁶ *Domestic Violence Survey in Lao PDR, Gender Empowerment for Poverty Reduction Project, Gender Resource Information and Development Center (GRID), Vientiane, Lao PDR June 2009 21*

4.2 Discriminatory Customary Practices

Discriminatory Practices against Women include:

- Lack of access to education for girls and, because they will not be heirs, prioritising their grooming for marriage over other life opportunities.
- During pregnancy, menstrual bleeding, and child birth - e.g., when a child is born out of wedlock - in some groups mothers are exiled from their sources of support and communities and face ongoing stigmatisation.
- Domestic violence and the lack of options for redress that will not come at an unacceptable price to the victim.
- The high value placed upon women's virginity and sexual double-standards, as well as the linkage between a woman's sexuality and family honour.
- Related to the above, tolerance of male infidelity - whether it be through prostitution, the maintenance of mistresses or polygamy - which is deeply unpopular with women and further diminishes women's standing and power within the household and society.
- Fixed gender roles that result in an inequitable division of labour between men and women, as well as exclude women from community decision-making and participation as parties or decision-makers in dispute resolution or from holding other public positions of power.
- Rape victims being forced to marry their rapist, or face ongoing stigmatisation and limited life opportunities.
- Child marriage, which de facto is forced marriage and results in child (statutory) rape, as children are deemed incapable of consent to marriage or sexual relations.
- Forced marriage, of which bride-theft is the most egregious form, which can result in marital rape - i.e., non-consensual intercourse - and high rates of wife suicide.
- Payment of bride price (dowry), which makes domestic violence more likely and creates a bond between families, making it more difficult for women to escape from violent or otherwise failed marriages.
- Rules regarding divorce or the non-availability of divorce in relation to some groups, as well as the social and economic exclusion of - and costs for women who do divorce.
- Inheritance rules, in patrilineal groups, which render women economically dependent upon their husbands.
- Rules in relation to property ownership or the registration of property.⁴⁷

⁴⁷ A 1998 survey by GRID, shows that land registration not necessarily matches land origin: only 16 percent of land was registered in the wife's name, although 40 percent of the land originated from the wife's parents; 58 percent of land was registered in the husband's name, but only 18 percent of the land originated from the husband's parents (GRID, 2005).

Challenges to traditional fixed gender roles generated through growing awareness of international human rights standards and greater government regulation of gender issues place new pressures upon, but also present new opportunities to improve, relations between men and women. Practices concerning bride-price and the division of inheritance are areas of customary law that are seen to be changing. Increased government regulation of customary practices, such as bride-price, causes disquiet in some quarters. Such issues are clearly part of the mainstream community demand for justice. Disrespect to women, in the form of denying them the right to participate in decision-making, at both the household and community level, or discrimination in employment or non-traditional vocational opportunities are also areas of concern.

The critical issue is how reform of customary law systems can take place, so that they eventually develop the capacity to take into account women's legitimate demands for gender justice; a change that would also benefit men and communities in general. Although development theories focus upon female empowerment by enhancement of women's life opportunities - through skills' acquisition, education, and economic independence - customary systems could potentially also play a positive role in achieving the broader and deeper normative shifts needed to achieve greater gender equality, without being framed as a foreign imposition or 'against' the local 'culture'.

5. Children's Rights

5.1 Convention on the Rights of the Child

Lao PDR is a party to the Convention on the Rights of the Child (CRC) and, thus, bound to ensure that these standards are observed through Lao PDR, including in customary law systems. While children are commonly the object of the customary law proceedings, they are seldom or never parties themselves. Thus, their interests are rarely identified or articulated, despite customary law practices and determinations frequently directly affecting them.

In customary systems, decisions concerning children are more commonly considered as part and parcel of the bundles of obligations and transactions involving their parents. The concept that children have rights in their own right - or that 'the best interests of the child' might not correlate with cultural practices - or which are independent from their parents, does not have resonance or traction in any Lao PDR ethnic groups. While children are considered cherished and precious in ethnic groups, they are not seen as rights' bearers. Rather, the strong cultural onus across all ethnic groups to show respect to elders and meet filial obligations, bind children into relationships with adults that are low on the power hierarchy. While major normative shifts in the way communities conceptualise relationships with children would be necessary to achieve broad ac-

ceptance of a 'rights-based' approach, parents do generally do the best they can to promote the interests of their children - such as, access to education and health - based on the limited resources that many have.

Many of the 'justice issues' that affect children - such as lack of access to education, bullying or corporal punishment by teachers - are completely unmet justice demands. They are sim-

ply not countenanced by any justice system. Neither customary systems, nor state ones are geared to identify and intervene in most of these issues; except, perhaps, in cases of sexual assault or extreme domestic violence. Even here, many incidents go unreported and unaddressed: e.g., incest, statutory rape of underage brides that is often tolerated or even sanctioned by customary practice, or, in the case of marital rape, even overlooked by state legislation.

5.2 Discriminatory Customary Practices

"Best interests of the child" to form the primary basis for decisions in all actions concerning children: CRC Article 3

This principle directly challenges ideas that children are subsumed within broader social organisational frameworks, such as those associated with matriarchal and patriarchal structures. For example, in the event of divorce, rather than customary practice that would award custody of children on the basis of pre-existing cultural rules - e.g., to the father's family in patriarchal societies or the mother's family in matriarchal societies - Article 3 requires that the decision be decided on the basis of the child's best interests. Of course, a child's cultural heritage will undoubtedly be an element to be examined in any assessment of their 'best interest', but there may well be other considerations that override this, such as the wishes of the child, which run contrary to customary rules and practice.

Practices concerning killing of children, the Right to Life: CRC Article 6(1)

Some ethnic groups' failure to punish or intervene in cases of infanticide or other instance of child-killing by parents, or inter-sibling killings, clearly constitutes a violation of the right to life.

Child labour: CRC Article 32

Customary law systems fail to intervene in cases of child labour; either with respect onerous domestic workloads or work for monetary gain. This is a complex issue, given the extreme poverty experienced by some families and the need for all family members to contribute. However, it is an area that customary law systems are yet to address in any meaningful way.

Discrimination against girls: CRC Article 2

In many ethnic groups, traditional gender divisions and roles have a major impact on the way that children are groomed for their future societal roles. This is especially the case in patrilocal/patrilineal communities, in which girls cannot inherit, and results in widespread discrimination in a broad range of areas. These areas include; boys being favoured in access to education and groomed for a wider variety of life opportunities, discrimination in access to health services, boys are sometimes given better or more food, boys are not expected to contribute to domestic work to the same degree as girls, and boys are given much greater freedom of movement and allowed to engage in interests outside of the house.

Under-age forced marriage/betrothal

Girls as young as 12 or 13 can be married in some ethnic groups, often against their will, either through arrangement by their parents or 'bride-theft.' Child marriage results in child rape, statutory or otherwise, and some customary law systems condone this. Some also permit or accept child betrothals, including in the context of it being a form of compensation by one party to settle an unrelated dispute.

Trafficking of children: CRC Article 34

A study of child trafficking in Lao PDR by the MLSW and UNICEF found that 60% of trafficking victims were girls between 12-18 years old and they were disproportionately from minority ethnic groups. All of the victims were from recently relocated villages or households. The children were trafficked for sexual exploitation or domestic service in equal measure, as well as for other forms of commercial labour. Many endured horrific abuse, died of HIV or simply disappeared.

It is clear that customary law systems are ill-equipped to deal effectively with this transnational issue, apart from warning families to be especially careful and suspicious of those who seek to take their daughters with a promise to give them greater 'opportunities', as well as by imposing harsh penalties upon parents who are complicit in trafficking of their children by accepting money or other benefits in exchange for them.

Corporal punishment: CRC Article 19 Prohibition of physical abuse by any carer.

Corporal punishment meted out by teachers is not uncommon. Physical abuse is often considered a legitimate form of punishment by teachers, who expect high levels of submission and respect from students. Aside from the injury and abuse of power involved in corporal punishment, it also contributes to a poor learning environment, based on fear, rather than one conducive to the critical examination of ideas and free expression of ideas, opinions, and questions.

Vicarious punishment of children: CRC Article 2

In some instances, a child born out of wedlock is denied membership of an ancestral line and excluded from the rituals associated with the worship of ancestors. This results in the child being considered a social outcast and reduces his or her life opportunities to marry or otherwise participate in community life. This, in effect, punishes a child for the perceived crimes of his or her parents. Similarly, any promise to provide a child, promise betrothal of a child, or promise the labour of a child, in the context of negotiating compensation in a separate dispute, clearly falls afoul of international standards requiring that the child's best interests to be at the core of any actions concerning them. A child is not to be traded in order to relieve his or her parents' difficulties.



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CONCLUSIONS &
RECOMMENDATIONS

1. Opportunity Cost of the Failure to Regularise the Customary Law Interface

It is evident that the principles and philosophies underpinning customary law systems and state law are on a different paradigmatic level. However, the fact that the sources and principles of law are so different, both between diverse customary law systems but, especially, between customary law systems and state laws, does not preclude harmonious co-existence.

In fact, the legal landscape in Laos already exhibits a high level of functional hybridism and interdependence between customary and state-based legal mechanisms. In the absence of a regulatory framework, individual justice users and customary or state justice actors navigate the contact-points between the systems on a daily basis and, by and large, manage to find acceptable operating modalities.

Nonetheless, this situation is far from ideal. Overlapping jurisdictions in pluralist systems can create debilitating confusion, even more so when the relationship between the legal orders is not clear, as is the situation in Lao PDR:

“The average villager is subject to the hegemonic forces that are outside his or her control, and poverty, class, social and family obligations and [customary law authorities] conspire with the modern legal system to leave them disempowered. While this is most clearly seen in the case of domestic violence victims, it also extends to many other areas, where sometimes the 'com-

mon ground' reached through the everyday politics of mutual recognition is only reached through sacrificing the interests of those who are most vulnerable.”

Such a lack of consistency and certainty can also undermine community confidence in all justice systems: informal, semi-formal, and formal.⁴⁸

Moreover, by failing to engage customary law systems in a more formalised relationship, the state misses out an opportunity to strengthen overall capacity to meet community demands for justice by tapping into the capacity, legitimacy, and authority of customary systems. This can also contribute to broader processes of nation-building. Excluding customary law authorities from national development processes undermines the sustainability and stability of such development and jeopardises the well-being and rights of predominantly customary law-governed communities.

An unregulated justice interface also is to the detriment of customary law authorities, who miss out on having state imprimatur providing them with clear jurisdiction and authority to act, as well as the possibility of state back-up in areas such as the enforcement of remedies. Thus, the price of not achieving a more formalised relationship built on mutual respect and recognition is significant, both to the state and customary justice system actors. However, the highest price is paid by the grassroots population, who bare the brunt of conflicting messages regarding dispute resolution fora and inconsistent or uncertain results, which can

⁴⁸ Cummins Deborah, *Local Governance in Timor-Leste: The Politics of Mutual Recognition*, PhD dissertation, University of New South Wales, 2010, p. 150.

negatively affect their lives in so many other aspects.

At the same time, customary law systems, already weakened by competing market and government paradigms, are struggling to keep up with increased demands for the recognition of women's rights; including for equality. One risk is that, in the face of losing exclusive control over land, dispute resolution, and other high-profile matters, customary law systems may attempt to 'compensate' by exerting tighter control over symbols and transmitters of culture: often perceived to be the behaviour, dress, and roles of women. According to this view, from their relative position of weakness, individual women involved in customary law proceedings are powerless to resist and likely to see no improvement in, or even a further erosion of, their status and power.

Furthermore, it is argued, 'outside' - or external - influences that challenge or disrupt local meanings of gender can function as a double-edged sword for advancing women's rights and opportunities. New meanings of gender - influenced by national or international sources - can fuel women's demands for a more equal division of labour, greater valuation of their labour, and increased fluidity in previously fixed gender roles. Alternatively, economic forces and 'development' can, if gender issues are not properly taken into account, further marginalise women by excluding them from new opportunities or structures; while, simultane-

ously, undermining their traditional sources of cultural power. For example, if only males have access to consumer goods, markets, and class-associated symbols, power relations between the sexes will become more polarised. Women will slip even further behind because they are denied the opportunities to acquire the language and symbols of industrialised modernity.⁴⁹

The other view is that customary systems will respond to demands for improved rights protection for women because, if they do not respond and simply try to fob off female demands for justice, they will contribute to the acceleration of their own decline by becoming increasingly peripheral to addressing core community concerns. Attempting to achieve greater equilibrium or social and economic justice between men and women by defending women's dignity and security, as well as lessening their workloads by supporting the relaxation of gender roles, offers the best chance for communities to be stable, resilient, and adaptive in the face of new challenges. Forward-thinking customary law systems - or, rather, customary system authorities - could plant themselves at centre stage with this as a survival strategy.

That said, the Survey did not detect any major shifts, adaptations or concessions on the part of customary law systems to bring themselves more into line with changing gender norms, or reducing inequality faced by women, in society.

⁴⁹ Klein-Huhtesing, Otome. 1995. *Gender at the margins of Southeast Asia. In 'Male' and 'Female' in Developing Southeast Asia*, ed. Wazir Jahan Karim. Oxford: Berg.

2. Shortcomings & Opportunities for Reform

Customary law systems are generally ill-equipped to deal with disputes concerning ‘outsiders’; a limitation of increasing import as communities face critical challenges to their basic survival, such as loss of control of land and resources as ‘modernisation’ and ‘development’ advance upon them. Customary law systems also provide an inadequate platform for handling community demands for justice vis-à-vis their governments, such as the ability to challenge government decisions that adversely impact upon communities, enforce state entitlements, or address abuses of human rights or power; including corruption. Issues of transnational crime, such as human or drug-trafficking, or the deleterious activities of large corporations also go well beyond the capacities of customary law systems.

Thus, customary law systems can never be a substitute for robust, independent, and accessible state justice in the age of globalisation. Nonetheless, they can play a vital complementary role. The social reality of high levels of customary law usage, as well as the overall benefits to communities where state ‘Rule of Law’ is weak, necessitate much greater engagement with, and investment in, customary law systems. More specifically, much greater attention should be paid to how customary law systems might reform to address their own shortcomings, as well as to enabling the conditions necessary for such reform to take place.

Regarding this critical point on reform options, it is neither possible nor desirable to impose engineered solutions upon communities that seek to retain the (perceived) positive aspects

of customary law systems, while phasing or filtering out defects. ‘Top-down’ state-based efforts to regulate customary law within a constitutional framework have often proven ineffective and even, at times, counterproductive in achieving a sustainable blend of justice sources within a unified legal framework.

Attempts to codify or professionalise customary law systems have more often produced the worst, and not the best, of both worlds. Efforts to create new hybrid local justice institutions that draw upon a mix of state and customary authority, or seek to make customary decision-makers more representative, have often faltered on one of two grounds: either, they have failed to take sufficient account of entrenched power interests in rural communities, resulting in the failure of modern ‘layering’ - for example, introducing a quota of women decision-makers but underestimating the support they require - upon customary institutions. Or some models have failed because state authority has dominated, eroding the customary law base, causing the hybrid body to fail to achieve legitimacy, authority or trust within the community.

Justice sector reform in many developing and post-conflict countries is a rapidly expanding area and much international assistance has been expended upon efforts to strengthen state justice systems. However, there is growing recognition that a two-track approach that also recognises the critical role that non-state justice systems often play, can offer significant advantages. Clarification and appropriate recognition of the often hazy interface between state and non-state systems can greatly contribute to the development of a national legal system that is more accessible, coherent,

and relevant to the population's justice needs; while still striving to meet national and international standards. It can also contribute to strengthening overall governance and nation-building.

Understanding complex, highly-localised cultural configurations is fundamental to this challenge, given the great importance and centrality of customary systems to the lives of many Lao citizens. The failure to grapple with questions of socio-cultural norm creation and to address the relationship between laws and norms is regarded a key cause of failure in Rule-of-Law programming efforts. "Rule-of-Law promotion efforts have been disappointing in large part because they don't take enough account of norms and culture."⁵⁰ How to 'take account' of norms and culture, while ensuring that minimal common standards are met, is a critical challenge involving the balancing of both complementary and competing interests.

A more productive, but longer-term, and transformative approach may be for states and their international partners to engage constructively with, and empower, communities to themselves drive the evolution of their customary systems in ways that will promote greater convergence with human rights standards and national laws. This will, at the same time, ensure that the pace and mode of change is such that customary systems retain their authority and legitimacy. A growing number of academics and development practitioners argue that a long-term commitment to achieving transformative reform of customary law systems, com-

bined with carefully constructed legal frameworks within which both state and customary systems can function, provides the best strategy for achieving sustainable, relevant, accessible, yet accountable, quality justice to diverse communities living within a single state.⁵¹

3. Community Perspectives

3.1 Jurisdictional Demarcation & Integration into National Law

Informants of the CLP Survey were generally supportive of the view that customary law should be legally recognised and that formalised links between the customary and state justice systems would be beneficial. From their perspective, each legal system, formal and informal, should continue to operate separately and according to their own procedural and substantive rules, but with clear jurisdictional boundaries and linkages.

A similar view was expressed by other informants, who stressed that the relationship between the two legal systems must be based upon the principle of mutual respect. Once clear lines are drawn between the jurisdictions of each, then each process should respect the other's decisions. For example, when the head of the ethnic group or the Saengxao renders a judgment, the State justice system should honour it. Cases should not be sent for reconsideration under national law, especially in civil matters. Conversely, when a case is decided by the court, customary authorities should recognise the judgement and not impose additional

⁵⁰ Quoted in Perry (2006).

⁵¹ Perry, 2009:2.

penalties for the same offence under customary law.

Makong informants from Keovilay Village explained that there was already a clear de facto demarcation between the use of customary and national law. In ‘criminal’ cases, people already turn to the national criminal law, while, in civil cases, people still prefer to resolve them using customary law, which means that customary law authority continues to be very relevant to their communities. Formalising the divide between criminal cases to be referred to the state justice system, and civil cases that can be dealt with at a community level, would enhance certainty and improve the coherence of the justice framework.

Lu-Mien informants proposed that ‘serious cases’ be referred to the state justice system on the basis that the procedures of the State are more consistent and appropriately detailed for governing decision-making on serious cases. Conversely, customary mechanisms should be utilised for solving cases occurring at the local level so as to build the strength of traditional knowledge, encourage the protection and valuing of ethnic groups’ traditional laws, create stronger local ownership over dispute resolution, and lead to more sustainable resolutions that enhance community harmony.

Some informants stated that greater integration of the content of customary laws would enhance the relevance and quality of justice available, meaning that key aspects of customary laws should inform the content of national laws. In terms of specific customary norms and

practices, informants suggested that local practices that allocate a larger share of inheritance and assets to the child - or children - who care for aging parents should be acknowledged and permitted to take effect without government or court interference. They also urged that the concept of community land be recognised in law and that ancestral and community land should not be allocated as concessions without appropriate compensation or restitution.

Hmong informants suggested that customary authorities - elders, community leaders, Saengxao or representatives of each Saengxao in that village - should also sit on VMU panels. By changing the composition of VMU panels to include customary authorities, local decision-making would be invested with more respect and authority in the community. With input from customary leaders, VMUs could more effectively investigate and decide cases in ways considered fair or otherwise reflective of the values of the community.

3.2 Legal Education

Linked to this idea of mutual respect between legal systems is the critical issue of legal education, so that communities can use and ‘own’ both systems. Makong informants stressed that much greater effort should be invested in legal education and legal literacy to enhance knowledge and use, especially of the state courts. Greater assistance should be available to those who wish to use the courts; particularly, for women, the poor, and those who do not speak Lao Loum, the language of the courts. Com-

munity education is also needed on customary laws, as well as how customary and state laws can - and should - interact. Awareness of both national and customary laws is necessary, as is legal empowerment, so that people not only know of their options, but feel sufficiently confident and resourced to exercise them.

3.3 Recognition of Ritual & Practice

One suggestion by informants was that the fundamental role of community rituals be preserved and validated. Rituals - such as the annual rite to honour the spirit of the land, conducted in a holy area preserved by the whole community, or the spirit of the forest, to guarantee health and peace - are critical to communities, ensuring that community peace, harmony, and well-being will be preserved and validated. Communities should be guaranteed the right to manage their traditional sacred place, including the sacred forest, so that these critical ritual events can continue to be observed.

Outsiders working in local communities should show greater sensitivity to the impact of their presence upon - in terms of the need for and actual conduct of - ritual ceremonies and help to meet the costs involved. Where communities host foreign workers involved in commercial resource extraction - e.g., timber or mines - and where such activities are carried out - often against community wishes - in or on a customary sacred forest or ground, companies should meet the costs associated with neces-

sary ritual compensation, usually taking the form of a buffalo sacrifice. When the death of outsiders occur inside village boundaries, again, companies or foreign workers should contribute to providing a buffalo sacrifice to the spirit of the land. Currently, in most cases involving outsiders, ritual compensation, perceived as fundamental to maintain harmony and community well-being, is never taken into consideration.

Another suggestion to enhance community harmony and respect for customary laws is that customary practices be documented and disseminated to those working in ethnic communities to ensure that ignorance of local practice does not cause insult or upset within those communities. Those working in ethnic areas should be made aware of local customs so that they can behave properly from the moment of their arrival.

A further suggestion is that the government should not interfere with the customary practices used for determining the orientation and lay-out of villages by, for example, compelling villagers to live in a linear fashion along a road. The first function of customary law is the physical establishment of a community. Fundamental principles guide the selection of a site in order to preserve good health, avoid malevolent spirits, epidemics, and other misfortune. Representatives of the state often require the re-organisation of the village, usually in line along the road. There is no scientific or developmental reason for such requirements. Communities should, therefore, be free to use customary principles for arranging village space.

4. Reconciliation with National & International Law

A key challenge for Lao PDR in considering greater recognition of customary law is how to achieve the best possible balance between regulating, monitoring, and, where necessary, intervening in the operation of customary law systems to achieve greater consistency with national and international standards, without sacrificing important benefits, such as, informality, flexibility, and the delivery of more culturally-resonate outcomes - or intruding upon concepts and processes that give customary law its meaning, authority, and effectiveness.

A number of assumptions inform any attempt to find a *modus operandi* between customary and state systems and laws. One is that communities - especially rural, poor or otherwise disadvantaged segments - face major barriers in accessing state justice. The second is that the courts are overburdened and have limited capacity and resources to handle all the local disputes that may arise. Third, many - especially ethnic and rural communities - regularly turn to customary systems because they are popular and perceived as effective. Thus, unsurprisingly, a large proportion of the community demand for justice is already being met by customary systems. Finally, as disputes resolved customarily are usually settled more amicably, without resort to a 'winner takes all' approach, there is a greater chance of achieving reconciliation and broader community harmony.

4.1 Balance of Decision-Making Authority

Recognition of customary law systems is not a panacea for achieving access to justice for poor and disadvantaged groups, although it may be an important element. This is because, although customary law systems are ideal for resolving many kinds of local disputes, there are some categories of local disputes that hinge upon basic human rights. These include conflicts associated with gender violence, children's rights, divorce, and cases concerning serious crimes. At present, customary authorities commonly decide such cases, but without authority to do so. Processes of mediation in customary law systems are dependent upon the parties being more or less equal in power and able to negotiate fair outcomes with each other. However, where rights are at stake, weaker parties may be forced to trade-off their (inalienable) rights to achieve a resolution, resulting in an unfair outcome, while not addressing the social issue that gave rise to the dispute. Mediation mechanisms do not have the capacity to recognise and enforce rights.

A body with the capacity of adjudication - namely, a local competent legal authority with jurisdictional powers - is much better-suited to this purpose, as it can rule on and enforce rights. Contrary to the trend in Lao PDR, where state jurisdictional authority has become somewhat more remote through the amalgamation of local courts, there is a strong case for extending jurisdictional reach to more loca-

⁵² See Yrigoyen Fajardo, R, Rady, K, Sin, P *Pathways to Justice: Access to Justice with a focus on the Poor, Women and Indigenous People*, UNDP Cambodia, 2005

lised levels, so as to meet these aspects of the community demand for justice, while remaining sensitive to local customs.

In addition, customary law mechanisms are insufficient for cases involving major land disputes, which often entail poor people pitted against powerful external parties, such as the Government, politically connected or rich individuals or powerful corporations. Again, recognition of customary law systems will not contribute much to access to justice in such cases. Similarly, cases concerning the abuse of power or human rights cannot be met through customary law systems; nor can cases concerning transnational crime, such as drug or human trafficking or organised crime.

In summary, the dispute resolution mechanism has to be appropriate to the level at which the problem occurs in order for it to be effective. Hence, although customary law systems play an important role in meeting local community demands for justice, they cannot cover the whole gamut of conflicts or disputes that the poor frequently have concerning their relationships with governments, corporations or other outsiders. Part of achieving greater capacity of local dispute resolution, therefore, necessarily involves some local authorities being endowed with jurisdictional powers to resolve some local conflicts - such as, local-level criminality, local abuse of power cases, and cases necessitating determination of rights - but in ways sensitive to local conditions.

4.2 Options

Thus, one possible option for greater recognition of customary law systems in Lao PDR, which both recognises customary law systems' strengths and limitations, is that: customary law mechanisms could be authorised to mediate many community disputes; a local justice mechanism endowed with jurisdictional competence could deal with local cases requiring adjudication, determination, and enforcement of rights; and the national courts could be freed up to handle and prioritise cases that can only be resolved at that level, such as human rights abuses, efforts to curb abuses of power or other cases requiring judicial determination.⁵³

There are, of course, many other alternatives that have been tried and tested, often with disappointing results. Some customary law systems are recognised by the state through a range of mechanisms; such as, partial or full incorporation of customary law, exclusion, general codification, adjustment and accommodation or through functional recognition. Perhaps the most spectacular failures have occurred where attempts have been made to codify customary laws and have professional judges apply these codes in their judgements. Even if these written versions of customary laws could capture the full range of variables and discretion that are factored into the individual consideration of a case at a given mo-

⁵³ See Yrigoyen Fajardo, R, Rady, K, Sin, P *Pathways to Justice: Access to Justice with a focus on the Poor, Women and Indigeneous People, UNDP Cambodia, 2005* for further discussion of this as a potential strategy.

ment, they may be unable to respond to the constant evolution and change that occurs within customary law processes. Thus, they risk becoming rigid, quickly outdated, and possibly even more disadvantageous to vulnerable community members when applied than the original version.

A typical means by which states have sought to formalise roles and regulate customary law systems is to constrain their recognised operation to the lower tiers of the state justice system, limit their jurisdiction - especially in relation to criminal law matters - subordinate their decisions to constitutional standards, and subject their decisions to the scrutiny of appeal in regular higher courts. Such a model, which has its virtues, has, in practice, tended to distort, trample, and cause dysfunction to customary law systems, while still not effectively protecting rights.

Constitutional protections, such as those in place in Lao PDR - like the prohibition upon gender discrimination - are necessary, but insufficient to ensure that customary law systems do not discriminate against women. Individual case decisions at this level are not likely to achieve change in the way customary law authorities tackle the issue of gender discrimination in their everyday operations. Constitutional appeals can also undermine the effectiveness of customary mechanisms by re-opening cases that are already considered closed, which may be considered offensive in some customary law systems.

The difficulty of restricting customary law mechanisms' jurisdiction to 'minor' cases has already been examined. There are also major risks that customary law systems will exceed

their jurisdiction, sometimes at the behest of victims, when they do not match with local perceptions of the appropriate forum for bringing a dispute of that sort. For example, women may urge customary authorities to decide cases of rape, or particularly serious cases of domestic violence, even if they do not have jurisdiction, because using state courts may have deleterious social or economic consequences for the women. Denying access to socially-accepted customary mechanisms creates a risk that even more women will remain silent when they are the victims of such crimes.

Mechanisms for monitoring and, where necessary, intervening in customary law processes to prevent rights abuses would offer more consistent quality control over customary law systems, but also raise major challenges; especially in relation to developing practical and cost efficient modalities for doing so.

Allowing parties' choice of forum can act as another means of protecting rights, by requiring the consent of parties to using customary law systems and providing both with 'opt out' rights, permitting them to re-commence their proceeding in state courts at any time. While this, again, is another necessary protection, it too is inadequate in itself, as opting 'in' to state courts may not be a very accessible or attractive option; especially, to women, the poor, and other disadvantaged groups. In sum, legal mechanisms alone are an insufficient means for ensuring robust oversight of customary law mechanisms and underline the importance of deploying non-legal remedies also, in order to achieve change in some aspects of community norms; thereby, addressing the problem at its source and stemming the tide of disputes in some areas.

4.3 Hybrid Mechanisms

The creation of new local institutions that attempt to bring a blend of ‘old’ and ‘new’ authority, by including customary law leaders in their composition, alongside representatives from other sectors of society, as well as incorporating some features of customary systems, is another option for expanding recognition of customary law and local justice. This concept is not dissimilar to what already exists in Lao PDR in the form of Village Mediation Units; although, in some other models, customary authorities are included, and customary procedures are followed.

A challenge is to get the balance right and ensure that customary authorities have sufficient power and influence to guarantee that the new institution is considered authoritative; while not muting or undermining the participation of other representatives. Key to achieving this balance is bringing to the process awareness of how deep-rooted and extensive customary authority can be in local communities and considering ways of bolstering the relative power and contributions that the non-customary authority representatives can make. A danger is that, if such bodies stray too far from community norms by trying to blend national laws into decision-making, community members may simply vote with their feet and continue to use unregulated customary law systems: as already is the situation in some villages with under-functioning VMU’s.

Another strategy some states have used for curbing customary practices considered harmful is to pass laws eliminating or modify particular practices. When such laws are passed prior

to achieving greater alignment of social norms with prohibitions, they often do not succeed or may even prove counterproductive. The timing of introducing a law, so that it is introduced only after a ‘tipping point’ of public support for the ban has been achieved, has proved a more successful approach.

In short, there are a wide range of possible approaches and strategies for consideration of how customary law in Laos could be further recognised, yet rights would be protected. They all have their strengths and weaknesses and there is no “one size fits all” approach that can be recommended. A model that merits further investigation is for state authority to be extended to customary law mechanisms to decide most local disputes. Customary law would be supplemented by the establishment of a local authority vested with competent jurisdiction for deciding the categories of cases in which customary law systems are less effective. Such a model offers wide scope for the operation of customary law, while safeguarded by an alternative and, critically, local and accessible body empowered to adjudicate the remaining cases in accordance with state law. Reform of formal justice processes to provide poor and disadvantaged community members access to procedures for challenging higher level issues involving outsiders is also a critical element of achieving greater access to justice for smaller communities and the poor, marginalised or vulnerable.

5. ‘Change through Culture’

Given the inherent difficulties and often limited success of ‘top-down’ efforts to align or guide the evolution of customary law systems

towards national or international human rights standards, consideration should also be given to exploring, as an alternative or complementary approach, tackling human rights violations in customary law systems ‘head-on at their source and working to shift the underlying normative values within the customary law systems responsible for generating violations. Given the entrenchment of gender inequality and suppression of children’s rights, for example, profound processes of intra-cultural contest are needed that will gradually substitute norms that create or sustain human rights violations with ones that will not.

The effort to challenge some customary norms must be driven internally by the disadvantaged segments of the communities themselves, if their exclusion from decision-making is not to be perpetuated. In the case of women or children, empowerment may first be necessary in order that they can play such a role. At the same time, it is necessary to recognise the acute difficulty for marginalised and less powerful community members to mount and sustain challenges to ‘mainstream’ community views or the customary leadership.

Thus, disadvantaged community segments, such as women, need to find friends amongst the culturally privileged groups and tactically engage with them in strategic alliances, so that they can ‘front’ orthodox forces and try to persuade and cajole customary law leaders from an internal vantage point. Such culturally privileged supporters may include empathetic customary, spiritual or religious law leaders, as well as other supporters of high social standing, including ‘ordinary’ men. The involvement of these groups would enhance the cultural leverage of the change movement and, thereby,

the chances of it succeeding in altering norms that tolerate human rights abuses. Women or other disadvantaged segments of society should continue to direct processes of cultural struggle, but with the support and backing of powerful allies. While the State, international, national, and local NGOs, in addition to other institutions - such as media and educational bodies - also have important roles to play in such processes, they need to be primarily supportive, not directive, in nature to avoid jeopardizing internal ownership and legitimisation of change processes within community law systems.

A second prong to such a strategy would be to develop culturally resonant messages or entry-points for shifting or challenging norms that support human rights violations. For example, while presenting domestic violence as a human rights violation and against state law may have little impact in influencing community norms, a campaign approach that empirically demonstrated the harmful impact of domestic violence upon children and women, and how development and other benefits are stunted when women experience violence - or how domestic violence is, contrary to some accounts, against local customs or traditions - or whatever ‘message’ is empirically shown to be the most resonant, is more likely to achieve anchorage and change.

Given that those arguments perceived to emanate from indigenous cultural sources are likely to prove the most compelling and persuasive to customary law leaders and communities generally, looking deeply into the history, ritual beliefs, and myths of ethnic communities may provide rich resources for re-casting concepts hitherto perceived as being ‘foreign’, as be-

ing locally-owned. A further basis for reform efforts could be generated by undertaking empirical research to dislodge ideological descriptions of customary law and open up the field to make visible areas of contest, such as the unmet demand for justice by women and children, and documenting ‘best practice’ in customary law decision-making on relevant human rights issues.

These are all ideas for achieving shifts in norms in customary law systems and communities, so that human rights violations are less likely to arise in the first place. It involves long-term transformative change, driven by members of the community in question. While such processes will be challenging and difficult, they may still offer the best medium to long-term option for preventing and sustainably addressing the bulk of human rights’ violations occurring against vulnerable groups under customary law systems.

6. Further Actions

In light of the above, and given the original objective of the Customary Law Project, the main follow-up must be the development of a Customary Law Strategy. Key elements of it should be proposals for:

- 1) The clarification of the relationship between, and respective jurisdictions of, the customary and formal (state) legal systems - and, to a lesser degree, semi-formal mechanisms;
- 2) A system by which customary law and practice considerations are routinely and regularly taken into account in gov-

ernment law and policy-making and planning; and

- 3) Methods by which to encourage internal community change where customary norms or practices are in conflict with international - especially, human rights - obligations or state laws promoting and protecting rights, access to justice, or legal empowerment.

The obvious next step will be to implement the Strategy.

In the interim, it should be noted that not all of the data gathered in the Customary Law Survey has been input into the database yet and only a fraction of it has been analysed. (This Report is based on five - albeit intensive ones - of forty-nine reports.) As such, there is considerable scope for further research and analysis. Issues to be examined in-depth might include:

- The possible clash between customary laws and practises and national laws.
- Possible clashes between customary practices and international standards, including human rights abuses.
- The extent to which customary practices that involve human rights abuses, currently receive community support, including the gauging of levels of support amongst the groups most affected.
- The extent and nature of unmet community demands - including, specially, those of women and children - for justice, which customary mechanisms are ineffective in addressing. Such demands might include: corruption, maladministration or human

rights abuses, land disputes involving outside parties or commercial interests or transnational crime.

- The research might also explore what kind of mechanism(s) might best address such unmet demands for justice, including the means to ensure that the mechanism(s) is/are accessible to vulnerable community members.

Toward this end, all the data from the Survey should be made readily accessible to researchers and practitioners.

More concretely, the findings - and outputs - of

the Customary Law Project should be linked with those of the Access to Justice Survey to develop initiatives, possibly through implementation of the LSMP, which will improve justice delivery for ethnic groups, particularly those in remote or marginal areas, or vulnerable members thereof. Such initiatives might include development of: Regulatory Impact Assessment (RIA) tools to screen draft legislation for its possible (undue) impact on customary norms or practices; more culturally sensitive and effective means of disseminating legal information or implementing other programmes, based upon customary methods and concepts; cultural sensitive/awareness training for formal legal system officials; or, indeed, the aforementioned Customary Law Strategy itself.

This Report does not purport to take on and resolve the many issues associated with efforts to reconcile Lao PDR's state and customary legal systems, although it does highlight areas where this process may face particular challenges. Its particular contribution is to provide the first serious effort to document empirically the content of some of the customary laws practiced in the country. Expanding this body of knowledge is an essential first step on the longer road toward developing a model of legal pluralism to meet the demands and challenges for accessible and quality justice systems in Lao PDR.



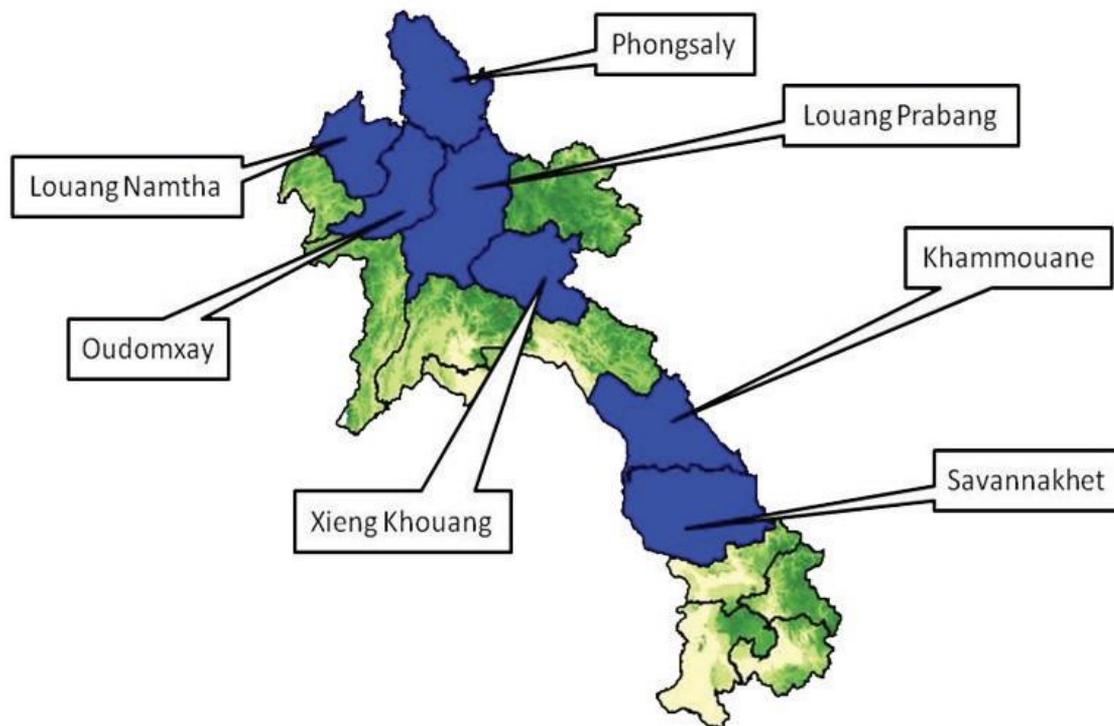
References

APPENDIX I: Survey Methodology

Prior to undertaking field research, a desk study was conducted canvassing existing literature on customary laws and practices in Laos and neighbouring countries. Most of the ethnic groups in Laos also live in the surrounding countries. Thus, relevant transnational research was also considered in the desk study, such as that undertaken by the Tribal Research Institute (TRI) in Northern Thailand, the Vietnamese Institute of Folklore and Vietnamese Academy of Social Sciences (VASS), and The Chinese Academy of Social Sciences (CASS). As most of the ethnic groups concerned have not documented in writing their customary laws, heavy reliance was placed upon such external sources. The draft desk study was then presented to the UNDP Lao PDR, as well as the UNDP Regional Centre in Bangkok, and was also subject to peer review for comment. All comments were taken into consideration and used to strengthen the initial methodology.

The Customary Law Project ultimately relied on two key survey methodologies: Participatory Action Research (PAR) and Ethnic Specialist Research. For the PAR, forty-nine teams of two ethnic representatives - one senior and one youth - for a total ninety-eight people, were selected by committees at the district level. Four workshops were organised at the national level, during each of which training was provided for one week. The teams were then given four to six weeks to conduct field research, using an interview guideline and finally, led by district justice staff, to write up their reports. The data was compiled and validated during six workshops conducted at the national level. This methodology permitted coverage of all forty-nine ethnic groups, located in thirty-four districts in all of the sixteen provinces.

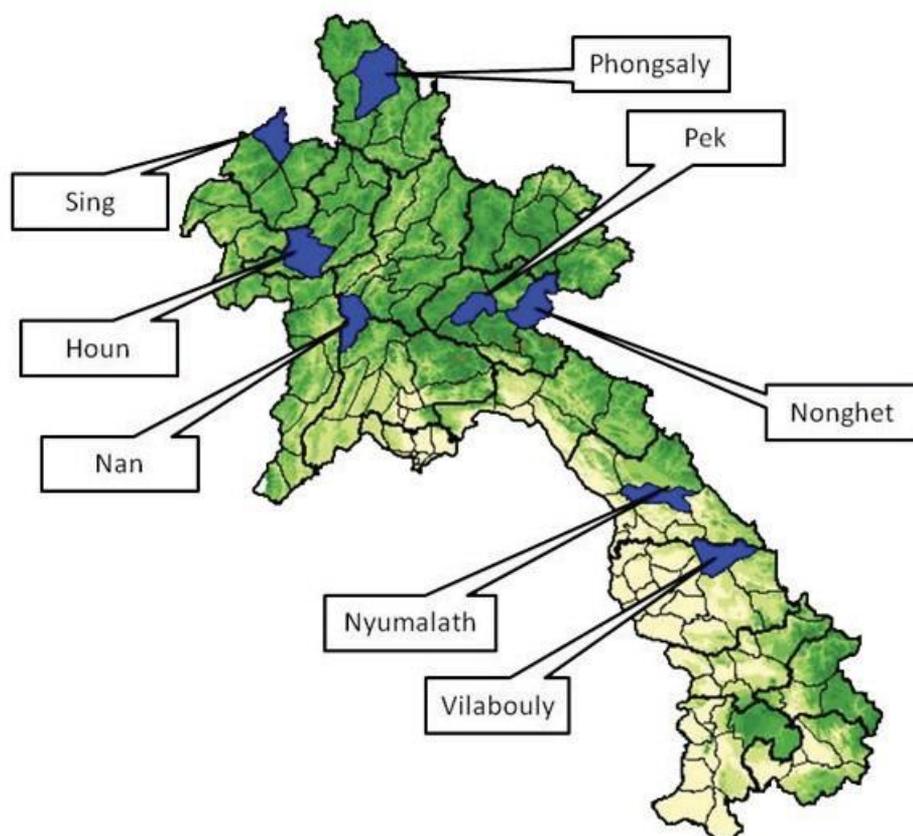
Ethnic Specialist Research Areas



The second methodology was based on the work of five experienced ethnic researchers - one female and four male - who each conducted their studies in two communities, one stable and one resettled/consolidated, of their own ethnic group. Their reports were then translated into English. This report provides the findings from the five main reports and

also draws upon some, although not all - due to translation limitations - of the data from the forty-nine ethnic group reports. All of the reports have been compiled into the accessible database on customary law practices in Lao PDR.

Target Districts for the Ethnic Specialist Component



The survey covered six main areas of investigation; including, cultural configurations, conceptual aspects and scope of customary laws, procedural aspects of customary laws and practices, interactions between customary law and the formal justice system, changes in customary laws, and, finally, it explored the potential options for further research on possible recognition of customary law systems in Lao PDR.

The Customary Law Project obtained data covering all the 49 officially recognised ethnic groups. It conducted ten training and monitoring workshops, at the national level, and

trained 98 lay researchers, building documentation and monitoring capacity from the grassroots to the central level and creating a benchmark, in terms of a participatory approach, for other projects in Lao PDR. Despite the increase in workload entailed by the more ambitious research plan adopted, the timeframe and budget for the project remained as initially planned. The success of the expanded project relied heavily upon the commitment, energy and initiatives of the Law Research and international Cooperation Institute, as well as the ethnic representatives commissioned to research their customary law practices.

APPENDIX II: Ethnic Group Populations in Lao PDR

		Number in Total Population			
Code	Ethnic Group	Male	Female	Total	%
<i>Tai-Kadai / Lao-Tai</i>					
1	Lao	1,528,269	1,538,736	3,067,005	54.6
2	Tai	108,257	106,997	215,254	3.8
3	Phou Thay	91,634	95,757	187,391	3.3
4	Lue	61,100	61,954	123,054	2.2
5	Nyouan	14,493	14,949	29,442	0.5
6	Nhang	3,101	3,059	6,160	0.1
7	Sek	1,799	1,934	3,733	0.1
8	Tai Neua	7,382	7,417	14,799	0.3
	Total	<u>1,816,035</u>	<u>1,830,803</u>	<u>3,646,838</u>	<u>64.9</u>
<i>Austroasiatic / Mon-Khmer</i>					
9	Khmou	306,875	307,018	613,893	10.9
10	Pray	10,843	11,079	21,922	0.4
11	Ksing Moun	4,354	4,211	8,565	0.2
12	Phong	13,171	13,143	26,314	0.5
13	Thène	248	266	514	0.0
14	Oe Dou	329	320	649	0.0
15	Bit	1,014	950	1,964	0.0
16	Lamet	9,460	10,367	19,827	0.4
17	Sam Tao	1,761	1,772	3,533	0.1
18	Katang	58,366	59,910	118,276	2.1
19	Makong	57,823	60,019	117,842	2.1
20	Tri	13,130	13,550	26,680	0.5
21	Jrou	23,009	24,166	47,175	0.8
22	Tariang	14,356	14,778	29,134	0.5
23	Ta-Oy	16,156	16,021	32,177	0.6
24	Yè	5,274	5,296	10,570	0.2
25	Brao	11,134	11,638	22,772	0.4
26	Katu	11,179	11,580	22,759	0.4
27	Harak	10,449	10,831	21,280	0.4
28	Oy	11,083	11,375	22,458	0.4
29	Ngkriang	6,375	6,504	12,879	0.2

		Number in Total Population			
Code	Ethnic Group	Male	Female	Total	%
30	Cheng	3,699	3,860	7,559	0.1
31	Sadang	467	471	938	0.0
32	Souay	20,792	22,042	42,834	0.8
33	Nha Heun	3,430	3,355	6,785	0.1
34	Lavy	608	585	1,193	0.0
35	Pacoh	8,242	8,508	16,750	0.3
36	Khmer	2,882	2,943	5,825	0.1
37	Toum	2,252	2,206	4,458	0.1
38	Ngouan	339	383	722	0.0
39	Moy	277	257	534	0.0
40	Kri	249	246	495	0.0
	Total	629,626	639,650	1,269,276	22.6
Sino-Tibetan / Tibetan-Burmese /Lolo-Burmese					
41	Akha	45,563	45,135	90,698	1.6
42	Phou Noy	18,554	18,893	37,447	0.7
43	Lahu	7,619	7,619	15,238	0.3
44	Sila	1,517	1,422	2,939	0.1
45	Hanyi	427	421	848	0.0
46	Lolo	836	855	1,691	0.0
47	Ho	5,317	5,120	10,437	0.2
	Total	79,833	79,465	159,298	2.8
Hmong-Mien					
48	Hmong	227,689	224,257	451,946	8.0
49	Iu-Mien	13,875	13,574	27,449	0.5
	Total	241,564	237,831	479,395	8.5
Other / No answer					
50	Other	6,418	6,114	12,532	0.2
51	No answer	27,075	27,568	54,643	1.0
National Total		2,800,551	2,821,431	5,621,982	100.0

(Source: The figures are taken from the 2005 Census, main report, Table 1.6, page 15.)

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