



# Review of Statutory and Customary Law in the Xe Champhone Ramsar Site, Lao PDR

## Implications for a rights-based approach to conservation

Patricia Moore, Minavanh Pholsena, Ketsana Phommachanh and Raphaël Glémet



INTERNATIONAL UNION FOR CONSERVATION OF NATURE



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## Foreword

IUCN's research into rights-based approaches (RBAs) to reduce poverty and benefit conservation has been focused on the development of tools to better inform conservation strategies. The purpose is for conservation organizations to be able to formulate strategies based on human rights principles that also contribute to the achievement of the Millennium Development Goals, particularly MDG 1 to eradicate extreme poverty; MDG 3 to promote gender equality and empower women; and MDG 7 to ensure environmental sustainability.

Rights-based approaches can be seen as the integration of rights considerations within any policy, programme or initiative and can serve to work towards ensuring that the protection of rights and biodiversity conservation become and remain mutually reinforcing.

After developing a step-wise approach for implementing RBAs to conservation, the IUCN Environmental Law Centre in collaboration with the IUCN Lao PDR Office, the IUCN Regional Office for Latin America, and the IUCN Regional Office for Mesoamerica initiated the project "*Applying Rights-based Approaches to Conservation – From Theory to Reality*", in order to apply different steps of the step-wise approach in practice at the national as well as international levels. Testing the efficiency of the step-wise approach and gaining further RBA experience from work on the ground was necessary, since a major challenge for all actors is to understand how to put the concept of RBAs to conservation into practice. The overall goal of this project was to ensure that RBAs to conservation are implemented and related information is disseminated in order to secure the rights of vulnerable communities, improve their livelihoods and promote conservation of biodiversity and ecosystem services.

In order to gain further experience on RBAs to conservation, the Lao component of the project focused on the implementation of step 1 of the step-wise approach – undertaking a situation analysis – in the Xe Champhone Ramsar Site in Lao PDR. It examined the under-researched issue of customary law governing natural resources, including its relationship with statutory law. For this, the team undertook a desk study on laws governing natural resource use in Lao PDR as well as comprehensive field work with communities in and adjacent to Xe Champhone Ramsar Site to collect information on customary rights and to ensure the communities' participation and involvement in the different outputs from the project. This publication summarizes and analyses the findings of the field work. It also provides recommendations on how to incorporate customary law governing natural resources into the governance of Ramsar sites in the country. On the basis of the recommendations and at the request of the government, the project drafted two decrees – one national-level decree on management of Ramsar sites in Lao PDR generally, and one for the management of Xe Champhone Ramsar Site. This work complements Lao government research and opens the door for similar research in other parts of the country.

The publication also provides interesting experiences for the universal implementation of human rights in conservation planning and practice which are disseminated through interactive tools, such as the IUCN RBA to conservation Internet portal ([www.rights-based-approach.org](http://www.rights-based-approach.org)). In particular, the lessons learnt will inform the process of further developing and operationalizing IUCN's Policy on Human Rights and Conservation for Sustainable Development, which shall be implemented within all policies, programs and activities of the Union. This IUCN Policy was adopted through Resolution WCC-2012-RES-099 at the 2012 IUCN World Conservation Congress in Jeju, Korea. It provides another successful outcome that was promoted through the RBA project.

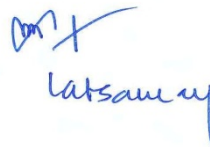
Many individuals have contributed to helping this publication see the light of day by generously sharing their ideas and experience on the concept of a rights-based approach as well as its meaning in the specific country context of Lao PDR. In particular, the inputs of Raphaël Glémet (project manager at IUCN Lao PDR), Patricia Moore (international legal expert and lead author), Mr Ketsana Phommachanh (national legal expert), Mme Minavanh Pholsena (socio-economic expert), and Thomas Greiber (project manager at the IUCN Environmental Law Centre) were a vital contribution to the planning and completion of the research and analysis and drafting of decree undertaken. The IUCN Country Office for Lao PDR and the IUCN Environmental Law Centre wish to thank all these individuals for their interest in and active support of this project.

We gratefully acknowledge the financial contributions to this IUCN project and the production of this publication provided by the German Federal Ministry for Economic Cooperation and Development (Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung) and by the Ministry of Foreign Affairs of Finland.

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Mr Phetsamone, Head of Houamuang Village

Mr Bounleuth Sengsouvankham, Head of Kengkok-Dong Village

Mr Bang One Inthasane, Head of Dondeng Village

Mr Deth Phetsalath, Head of Taleo Village

Mr Ea Panmany, Head of Nakathang Village

Mr Thongla Xayavong, Head of Dongmuang Village

Mr Lay, Head of Xe Village

Mr Xayphosi Phetsinola, Head of Xakhun-Nua Village

Mr Phouvi, Head of Dongtabeng Village

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Special thanks are also extended to all of the people of the villages surveyed, for their interest in the study and their wholehearted cooperation and participation in the surveys, workshops and group discussions.

Finally, we are very grateful to the German Federal Ministry for Economic Cooperation and Development (BMZ) for its long-standing support of the IUCN and the provision of financial support for the development of this report as part of the project *Applying Rights-based Approaches to Conservation – From Theory to Reality*.

## Acronyms and shortened names

BMZ	German Federal Ministry for Economic Cooperation and Development
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
IUCN	International Union for Conservation of Nature
Lao PDR	Lao People's Democratic Republic
MoJ	Ministry of Justice
MoNRE	Ministry of Natural Resources and Environment
MoU	Memorandum/Memoranda of Understanding
NA	National Assembly
NTFP	Non-timber forest products
NW	North-West
PM	Prime Minister
Ramsar	Ramsar Convention on Wetlands of International Importance
UNDP	United Nations Development Programme
WCS	Wildlife Conservation Society

## Approximate equivalent currency values

<u>Lao Kip (LAK)</u>	<u>US Dollar (USD)</u>
100,000	13.00
200,000	25.00
300,000	38.00
500,000	63.00
1,000,000	125.00
1,500,000	188.00
2,000,000	250.00
3,000,000	375.00
5,000,000	625.00
10,000,000	1,255.00
30,000,000	3,760.00

# 1. INTRODUCTION

This report analyses the inter-relationships of international obligations and statutory and customary laws and their implications for managing wetlands and Ramsar sites in the Lao People's Democratic Republic's (Lao PDR) in general and in particular the Xe Champhone Ramsar site.

The National Environmental Management Strategy of Lao PDR, effective up to 2020, emphasizes the importance of environmental protection. One feature of the strategy is the participation of Lao PDR in multi-lateral environmental agreements. The government's policy is also to promote certain aspects of the development of national ethnic groups' customs and culture. That policy is expressed in the Constitution of Lao PDR and implemented in statutory law. These two aspects of government policy intersect in the Xe Champhone Ramsar site.

In 2010, Lao PDR acceded to the Ramsar Convention on Wetlands of International Importance (Ramsar) and designated two Ramsar sites: Xe Champhone and Beung Kiat Ngong. The Xe Champhone wetlands are located in two districts of Savannakhet Province: Champhone and Xonbuly. In 2011, the government established a National Committee for Wetland Management of the Ramsar Convention in Lao PDR and the Governor of Savannakhet Province set up a secretariat and operational unit at the provincial level to manage the Xe Champhone Ramsar site.<sup>1</sup>

According to the Ministry of Environment and Natural Resources (MoNRE), the main portion of the wetlands is about three kilometres south of Kengkok-Dong village in Champhone district, between Road No. 9 and Road No. 11. The southern end of the site is adjacent to Xonbuly District. The official map of the Xe Champhone Ramsar site, which is attached as Appendix 1, indicates two core areas within the site.

The Lao People's Democratic Republic was proclaimed in 1975. For the first four decades of the state's existence, the country's ethnic populations were classified into three nationalities and 68 ethnic groups. In 2008, the National Assembly adopted a renaming and reclassification, based on language, into 49 ethnic groups.<sup>2</sup> Many of the people of these ethnic groups live in and near wetlands and use wetland resources according to their traditional rules and practices.

A large percentage of the population still lives in rural or remote areas, and people continue to socialize within their own ethnic groups and cultures; some do not read the Lao language. Therefore, many Lao PDR citizens are unaware of the country's statutory laws and do not have access to them. Customary rules and practices, which have been evolving as the country develops and its policies evolve, have a much greater influence on their day-to-day life.

To further strengthen the rule of law and promote the integration of customary law into the formal legal framework, in 2010 the Ministry of Justice (MoJ) conducted a survey of customary law in the country.<sup>3</sup> The survey committee included representatives of the 49 ethnic groups and government agencies at the central and local levels, Lao PDR experts on national ethnic groups, a national legal consultant, representatives from multiple organizations<sup>4</sup>, and an international anthropologist.

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<sup>1</sup> Decree No. 50/PM, dated 21 February 2011, on the establishment of the National Committee for Wetland Management of the Ramsar Convention in Lao PDR; and the Decision of the Provincial Committee for Wetland Management of the Ramsar Convention on the appointment of the provincial secretariat and implementation working team for the management of Xe Champhone wetland, Champhone District, Savannakhet Province, No. 1022/G.SVK, dated 02 August 2011, on the appointment of the secretariat and operational unit at provincial level to manage the wetland Ramsar site at Xe Champhone, Xe Champhone District.

<sup>2</sup> Government of Lao PDR. (2008). Resolution No. 213/NA of the National Assembly on the Adoption of the 49 Ethnic Groups Classified in 4 Language Groups of the Lao PDR, dated 24 November 2008.

<sup>3</sup> UNDP/ MoJ. (2011). *Customary Law Project*, report. The survey was the first activity under the Legal Sector Master Plan Toward the Year 2020, which was formally adopted by the government on 11 September 2009 by Decree No. 265/PM.

<sup>4</sup> Organizations represented on the survey committee: Law Research Institute; Law Department; Law Dissemination Department of the Ministry of Justice; Lao Front for National Construction; Institute for Socio-science; National Assembly; Lao Women Union; Ministry of Foreign Affairs; Office of Supreme People's Prosecutor; People's Supreme Court; Vientiane Law School; Lao National Committee Advance for Women; Ministry of Information and Culture; Lao Bar Association.

## 1.1 Ministry of Justice Customary Law Project

The Customary Law Project carried out in 2010 by the MoJ, with support from the United Nations Development Programme (UNDP), was a ground-breaking initiative.

The objective of the project was to:

- support the development of a strategy for linking customary law systems with the state legal framework;
- foster understanding and encourage harmonization between norms, practices, and standards of the formal and informal systems, as needed; and
- improve access to justice, legal awareness, and legal empowerment at all levels.<sup>5</sup>

The project undertook studies of customary law for each of the 49 ethnic groups in the country. Individual reports for each ethnic group are available in the Lao language on the MoJ Legal Sector Master Plan Support Programme website: <http://www.laos-lsmp.org>.

The summary report of the project, published in English in 2011, is based on five of those 49 studies. One of the five ethnic groups covered in the summary report is the Makong, which is represented in Taleo and Nanokkhan villages in the Xe Champhone area.

The MoJ/UNDP project survey covered five broad areas: cultural concepts, including religious practices, conceptions of rights, and leadership and decision-making structures; conceptual aspects and scope of customary laws; procedural aspects of customary law; interactions between customary law and the formal justice system; and changes in customary laws reported by the ethnic groups. It concluded by identifying options for further research leading to possible recognition of customary law in the statutory law system in Lao PDR.

The substantive content of customary law of the Customary Law Project covered:

- **family law**, including family obligations and rights, issues related to children, marriage, homosexuality, and inheritance patterns;
- **civil law**, including land ownership and access, social or community obligations and rights, contracts, and inheritance; and
- **criminal law**, including offenses against individuals, assets and reputations.<sup>6</sup>

While some of the information on land ownership and access from the MoJ/UNDP Customary Law Project is relevant for this analysis, it did not study customary law governing natural resources. Therefore, the information gathered and analysed by the current project on customary law governing natural resources constitutes a significant complement to the MoJ/UNDP study and to understanding customary law in Lao PDR.

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<sup>5</sup> Ministry of Justice/United Nations Development Project (MoJ/UNDP). (2011). *Customary Law Project*, Summary section, under the heading 'Customary Law Project' (no page numbering in the Summary section).

<sup>6</sup> MoJ/UNDP. (2011). *Customary Law Project*, report. pp. 11-12.



## 1.2 This Project

In 2011—with funding from the German Federal Ministry for Economic Cooperation and Development (BMZ) through the IUCN Environmental Law Centre—the IUCN Lao PDR Country Office, in cooperation with MoNRE, initiated a project to study the customary law governing natural resources in the communities in and around the Xe Champhone Ramsar site and assist with the development of regulations for the Ramsar site, integrating local customary law to the extent possible.

The current project will complement the MoJ customary law survey and report and apply the results to the specific case of the Xe Champhone Ramsar site. Using a rights-based approach, this project will analyse customary law governing natural resources—which was not surveyed in the MoJ study—in and around Xe Champhone and support the integration of peoples' long-standing customary laws with statutory laws. The goal is to ensure the protection and sustainable use of natural resources in the Xe Champhone Ramsar site with regulations that are appropriate locally and in the national context of Lao PDR.

Xe Champhone is the habitat of one of the few surviving wild populations of the Siamese crocodile (*Crocodylus siamensis*), a species which is protected under international and national law. The Xe Champhone Ramsar site is protected under the Ramsar Convention on wetlands; endangered species and specific aspects of the site are governed by other international agreements (see section 3.2) and by national sectoral law. Within the Xe Champhone Ramsar site, specific areas are under customary law protection and designated conservation areas in individual villages are protected under statutory village regulations.

According to the project survey, more than 20,000 people live in the area of the Xe Champhone Ramsar site, which falls under the administration of two districts. There are 40 villages and each village is comprised of up to four different ethnic groups. The project survey targeted 11 of those villages, with each of the four ethnic groups represented in one or more villages. Natural resources from the Xe Champhone Ramsar site are often the most important parts of these peoples' livelihoods, in some cases generating income from commercial uses.



Group discussion in Taleo village

## **2. CUSTOMARY LAWS GOVERNING NATURAL RESOURCES IN THE XE CHAMPHONE WETLANDS<sup>7</sup>**

There are 12 villages located entirely inside the Xe Champhone Ramsar site and at least four other villages that are known to have territory, but not houses, inside the Ramsar site. Until village boundaries are officially demarcated, it will not be possible to know how many other villages may also have territory located inside the Xe Champhone Ramsar site. No houses are located within the two designated core areas inside the Ramsar site but Tansoum village, and probably other villages as well, has land inside the largest core area of the Ramsar site.

This project surveyed customary law in six villages inside the Ramsar site, in four villages on and near the Champhone River, and in one village, Nanokkhian, that is approximately 15 km from the river and whose population is 100% Makong. Nanokkhian was included in the survey because the Makong ethnic group makes up only 10% of the population of Taleo village and the Makong group is not otherwise represented in the other villages surveyed.

For additional information on the socio-economic conditions in the villages surveyed and on their perceptions of customary and statutory law, see Appendix 2.

Approximately 86% of respondents in the villages surveyed reported that they follow customary law. All respondents in six out of 11 villages surveyed report following customary law rather than statutory law; respondents in five villages acknowledge statutory law, but not to the degree they follow customary law. See Table 1.

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<sup>7</sup> This section is adapted from section 4 in Appendix 2.

**Table 1 Adherence to customary and statutory law**

Village	Location in relation to the Xe Champhone Ramsar site	Ethnic group/s	Customary law (per cent)	Statutory law (per cent)
Tansoum	inside closest village to the larger of the two core areas	Tai Kadai (Lao Lum)	100	0
Houamuang	inside	Lao Lum	data not available	data not available
Kengkok-Dong	inside	Tai Kadai (Lao Lum)	83	17
Dondeng	inside	Phou Tai/ Tai Kadai	71	29
Taleo	inside closest village to the smaller of the two core areas	Phou Tai 90, Lao Lum/ Makong 10	100	0
Nakathang	inside	Katang	100	0
Dongmuang	on Champhone River	Tai Kadai (Lao Lum)	75	25
Xe	on Champhone River	Tai Kadai (Lao Lum)	100	0
Xakhun-Nua	near Champhone River	Tai Kadai (Lao Lum)	53	47
Dongtabeng	near Champhone River	Katang	100	0
Nanokkhian	15 km NW	Makong	100	0
<b>Total</b>			<b>86</b>	<b>14</b>

According to the MoJ/UNDP study, not all ethnic groups living in and around the Ramsar site have the same customary law. However, customary law practices followed in all the villages surveyed for this project are very similar, even though only two of the villages are inhabited by more than one ethnic group.

Customary law of natural resources in the villages surveyed governs human use of both ecosystems and species. It recognizes designated areas where specified activities are permitted, restricted to some degree, or prohibited altogether. It protects particular species and, in many cases, allows hunting of small animals such as rodents and lizards but not of other species. Villagers use stories to illustrate and elaborate on customary laws to make their purpose clear and easy to understand.

The project survey identified different kinds of customary protection and a range of largely self-enforced penalties under customary laws. The activities prohibited or restricted under customary law in the surveyed villages are:

- hunting;
- fishing;
- cutting trees;
- collecting non-timber forest products (NTFP);
- taking water;
- using a boat; and
- grazing.

The survey identified 24 customary protected areas in and around the Xe Champhone Ramsar site. See Table 2. These areas can be classified as:

- spiritually protected areas that sustain religious or cultural beliefs and needs; and
- non-spiritual communal protected areas established through ancestral and more recent community practices to sustain access to livelihood resources and ensure wildlife protection.

**Table 2 Sites Protected under Customary Law in 10 Villages in and around the Xe Champhone Ramsar site (on 11 surveyed<sup>8</sup>)**

<b>Inside Xe Champhone Ramsar Site</b>	
<p><b>Kengkok-Dong</b></p> <ol style="list-style-type: none"> <li>1. sacred lake/Nong Pou Ta</li> <li>2. Nong Mea Hang/Divorced Woman's Lake</li> <li>3. sacred forest/Dong Mahesak</li> <li>4. cemetery</li> </ol>	<p><b>Taleo</b></p> <ol style="list-style-type: none"> <li>1. temple forest</li> <li>2. sacred lake Suea Khok and Suea Khok Forest</li> <li>3. sacred Pa Forest/Dong Mahesak</li> <li>4. cemetery</li> </ol>
<p><b>Dondeng</b></p> <ol style="list-style-type: none"> <li>1. Turtle Lake/Nong Tao/Nong Pa Fa</li> <li>2. cemetery</li> <li>3. sacred forest/Dong Mahesak Don Haw</li> </ol>	<p><b>Nakathang</b></p> <ol style="list-style-type: none"> <li>1. sacred forest/Dong Mahesak Don Haw (inside village)</li> <li>2. cemetery</li> <li>3. sacred forest/Dong Mahesak (outside of village, in rice paddies)</li> <li>4. lake /Nong Fang Dang</li> </ol>
<p><b>Houamuang</b></p> <p>sacred forest/Dong Mahesak</p>	
<b>Along the Champhone River</b>	
<p><b>Xakhun-Nua</b></p> <p>cemetery</p>	<p><b>Dongmuang</b></p> <p>sacred Monkey Forest/Dong Ling (shared with Xakhun-Nua)</p>
<p><b>Xe</b></p> <ol style="list-style-type: none"> <li>1. sacred forest /Dong Mahesak Don Haw with connecting lake /Nong Xiengkhet</li> <li>2. sacred forest/Dong Kout Nyang</li> </ol>	<p><b>Dongtabeng</b></p> <ol style="list-style-type: none"> <li>1. lake/Nong Thagnoung Noy</li> <li>2. laad stream</li> <li>3. sacred forest/Dong Mahesak Don Haw</li> </ol>
<p><b>Nanokkhian</b></p> <p>sacred forest/Mahesak Don Haw and Kout Xeng</p>	

<sup>8</sup> Tansoum does not have any customary protected areas.



## 2.1 Spiritually Protected Areas

The majority of the customary law protected areas in the villages surveyed are spiritually protected areas. Religious beliefs have created customary laws that work directly and indirectly in favour of natural resource conservation in the villages surveyed in and around the Xe Champhone Ramsar site.



Spirit house next to a sacred tree in Xe Champhone wetland

Villagers conscientiously guard sacred forests, sacred ponds and cemeteries in many surveyed villages as places of prayer and homes to spirits or *nagas* (sacred serpents). It is believed that water and forest spirits will punish those who encroach on protected lands, hunt forbidden animals, or live an immoral life. Many of these protected lakes and ponds and forests in the wetlands have become breeding places for aquatic and terrestrial animals. Some examples are *dong mahesak* (sacred forests) in Dongmuang and Kengkok-Dong villages, sacred lakes in Kengkok-Dong and Dondeng villages and cemeteries in some of the surveyed villages.

## 2.2 Sacred Forests and Lakes

All of the villages surveyed, except for Tansoum and Xakhun-Nua, have a sacred forest. Tansoum shares a sacred forest with another village that was not one of the villages surveyed. Five of the villages—Taleo, Kengkok-Dong, Xe, Dondeng, and Dongtabeng—have sacred lakes.

These forests and lakes are believed to be the sacred places of guardian spirits that protect all community members. As such they are to be respected and left untouched. Sacred forests are usually located near a pond, at the source of a stream, or on the bank of a large river; sometimes the pond or stream is also under customary protection.



Nong Pa Fa

*Turtle Lake/Nong Tao/Nong Pa Fa in Dondeng village is protected because turtles have lived in it since before the village was established. The villagers believe that the spirits protect the turtles, and that they are inside of the turtles, symbolizing that the turtles are the children of the spirits.*

*White turtles that were seen in the lake 20–30 years ago were believed to be the most sacred, but they have not been seen in recent years. Provincial authorities at the border caught merchants travelling through the area who were carrying twelve turtles; these turtles were later released in the lake and can still be seen.*

*Individual villagers are not allowed to fish or use boats in Turtle Lake, but fishing is sometimes allowed for communal use. Villagers may not hunt in the forest surrounding the lake either, but may collect NTFP from the 10 m perimeter of the lake if they have asked permission of the spirits.*

*However, children are allowed to play and swim in the lake and people are allowed to touch the turtles. If these laws are broken, the punishments will be spiritual as there are no established village punishments.*

*Turtle Lake has become a tourist attraction in the province and a new source of income for the village. For 2000 kip, people may cross a bridge built in 2010, which leads to a little temple at the middle of the lake. For another small fee, children playing in the area will sing a traditional song and the turtles will come up to the surface of the water, waiting to be fed snacks sold at the entrance. Although this is a source of income for the village, villagers are worried about the exploitation of the turtles for tourism and by people coming from bordering countries.*

The sacred forest in Nanokkhian includes Xeng Pond/Kout Xeng and both are under customary protection; in Kengkok-Dong the sacred forest is adjacent to Sacred Lake/Nong Pou Ta, which is under customary protection; and in Dondeng the sacred forest is located near Nong Tao/Nong Pa Fa, the famous Turtle Lake of Champhone District, which is under customary law protection. Nakathang village has two sacred forests: one near the centre of the village and one in the middle of rice paddies outside the village centre. Some activities that are prohibited in the forest inside the village are permitted in the one outside.



Sacred monkey in Dong Ling

*The Monkey Forest/Dong Ling in Dongmuang village is a sacred forest of approximately 11 hectares. Monkeys were living in the forest before the village was established and now there are over 1,000 monkeys divided into five different troops. Other animals found in the forest include lizards, turtles and snakes.*

*The villagers believe that there are spirits living in the forest and that the monkeys are sacred. Due to this, the villagers are not allowed to hunt the monkeys, nor harm them in any way even if the monkeys steal or cause other disturbances, nor even touch them.*

*The villagers do not even dare to speak negatively, even if honestly, about the monkeys, especially if they are in close proximity to them.*

*Although hunting and cutting trees are not allowed, villagers may collect dead wood with permission from the spirits and collect NTFP without asking permission.*

*The Monkey Forest has become a major tourist attraction in Champhone District. The growth of tourism has led to increasing income for the villagers, as they sell bananas to feed the monkeys and have a restaurant and homestay for the tourists.*

Hunting is forbidden in sacred forests in the villages surveyed because the villagers believe that animals protect the guardian spirits. Examples include the monkeys in the Monkey Forest/Dong Ling in Dongmuang village and the turtles in the sacred lake/Nong Pou Ta of Kengkok-Dong village and Turtle Lake/Nong Tao/Nong Pa Fa of Dondeng village. A table providing the breakdown of animals found in the sacred forests of each village is in Appendix 2, section 4.2.2, Table 13.

Cutting trees is prohibited in all sacred forests. In Xe village villagers may be allowed to cut a tree for rare communal purposes and collecting dead wood is allowed in both Xe and Nanokkhian. Collecting NTFP is prohibited in the sacred forests in Taleo, Xe, Nakathang (inside the village), and Dongtabeng villages, but is permitted in the sacred forests in Kengkok-Dong, Nanokkhian, Xe, and Nakathang

(outside the village). Grazing animals is prohibited in the sacred forests in Taleo and Nakathang (inside the village) and permitted in Kengkok-Dong, Xe and Dondeng villages.

Fishing is completely prohibited in lakes under customary protection in two villages – the sacred lake in Taleo village and Nong Mea Hang in Kengkok-Dong village. Four other villages – Nanokkhan, Dondeng, Nakathang, and Dongtabeng – allow communal fishing in lakes under customary protection, but do not permit individual fishing. Taking water and using a boat are prohibited in the sacred lakes in Taleo and Dondeng villages, but are permitted in the other sacred lakes.

*Xe village has two sacred forests, both of which are associated with a lake. The village has conserved Sacred Forest Don Haw and connecting Lake/Nong Xiengkhet for generations. In 2006, this customary law protected area was officially recognized by the district. The lake is partly private; the part that the village protects is approximately 4.5 hectares and the sacred forest is only 0.5 hectares. The entire area is believed to be home to spirits and villagers make annual offerings to them.*

*No hunting is allowed in the forest, except for catching insects. Fishing in the lake is allowed for big communal events, but requires permission from the village authority.*

*Villagers may not cut down trees except for rare communal reasons; prior permission from both the spirits and the village authority is necessary. Collecting dead wood in the sacred forest requires permission from the spirits, but collecting NTFP does not.*

*During a storm, one big tree fell and destroyed transmission wires that brought electricity to the village. The villagers asked the spirits for permission and then cut down other large trees that threatened the transmission wires. Xe village imposes statutory-type fines for violations of these rules, and spiritual punishment is always possible.*

*The second sacred forest in Xe village has also been protected for many generations, and though it is sacred, it is less so than the Don Haw sacred forest and offerings are not made in it. This sacred forest covers approximately 10 hectares. Lake/Nong Kuot Nyang is inside sacred forest Dong Kuot Nyang. More turtles live in this lake than live in Lake Xiengkhet.*

*Fishing and hunting are not permitted in the lake and the forest. Cutting trees is not allowed except for rare occasions, such as communal purposes like restoring the temple/wat, and requires permission from the spirits. Collecting dead wood for communal use is also permitted and requires permission. Villagers are allowed to collect NTFP freely.*

*Anyone who violates these laws will be punished by the spirits and will also be fined by the village authority.*



## 2.3 Cemeteries

Five villages surveyed recognize cemeteries as customary protected areas: Taleo, Kengkok-Dong, Xakhun-Nua, Dondeng, and Nakathang.

Customary laws governing hunting in cemeteries vary from village to village. Hunting is generally permitted in the cemeteries in Taleo and Xakhun-Nua villages; in Kengkok-Dong small animals such as rodents and lizards may be hunted, but not other species; in Dondeng, any hunting requires prior permission from the spirits; and in Nakathang, hunters generally avoid the cemetery out of fear and respect.

Similarly, customary laws regulating trees, NTFP and grazing in cemeteries differ according to the village. In Taleo, cutting trees is permitted; in Kengkok-Dong it is prohibited and in Dondeng it is prohibited except for funeral purposes; in Xakhun-Nua there are no trees in the cemetery, but small bushes can be taken; and in Nakathang, cutting big trees in the cemetery is prohibited and small ones can only be cut for community use.

Collecting NTFP is permitted in the cemeteries in Taleo, Kengkok-Dong and Dondeng villages. Villagers in Houamuang village are allowed to cut bamboo and collect bamboo shoots for household use in the cemetery, with prior permission from the village authorities; outsiders are not allowed to cut bamboo or collect bamboo shoots. Grazing animals is permitted in those three villages and in Xakhun-Nua as well. In Nakathang, the villagers avoid collecting NTFP and grazing animals in the cemetery out of fear and respect.

## 2.4 Non-Spiritual Communal Protected Areas

Four surveyed villages maintain non-spiritual communal protected areas. For generations, Kengkok-Dong village has forbidden fishing and hunting crocodiles in Nong Mea Hang/Divorced Woman's Lake; the village authorities are responsible for the enforcement of this customary law.



Nong Mea Hang

The Pa Song Pa Dang Forest in Taleo is protected because of its underground spring that provides the main source of water for the community during the dry season. In this forest, cutting big trees is prohibited. Small trees can be cut, but only for individual use; cutting any tree for commercial purposes is not allowed. Hunting in this forest is also regulated: hunting large animals is prohibited, but hunting small animals is permitted.

Village authorities in Nanokkhian have conserved Phaek Lake for many years in order to sustain villagers' livelihoods. No individual fishing is allowed, but the village organizes a communal fishing day once a year. Nakathang village protects Lake Fang Dang to conserve the fish. Only communal fishing is allowed and any income from selling fish goes to the village budget.

Village forest Pa Song Pa Dang in Taleo village is approximately 13 hectares of secondary forest. This is not a sacred forest but the village protects it because it grows above an aquifer that is the main source of water for the village, even during the dry season. The villagers have prohibited cutting large trees in this forest because they know from past experience that the quality of the water decreases if the forest is reduced or degraded.

Cutting big trees is not allowed and villagers are only allowed to cut small trees for individual use. Hunting small animals such as rodents and lizards is allowed, but hunting larger animals is not.

Anyone who violates these rules must pay a cash fine and one bottle of alcohol and the fine increases for repeat violators. Sacred Lake Suea Khok, which is close by, is believed to be linked with the aquifer; fishing in the lake is not permitted.

The Taleo villagers have observed how human action affects these two water sources and seem to be well aware that wetlands provide ecosystem services, particularly filtration and purification.

## 2.5 Spiritual Advisers and Rituals

Villages with a sacred forest or sacred lake have a Kuan Cham Ban, who communicates with the spirits of the sacred site and organizes ritual ceremonies. Fortune tellers, who are independent and not associated with particular sacred sites, advise villagers about the source of misfortunes they are suffering and what they need to do in order to overcome the consequences of having offended the spirits.



Kuan Cham Ban group discussion

Every year villages that have a sacred forest or lake organize a ritual ceremony led by the Kuan Cham Ban to pay respect to the guardian spirits in the sacred site. Animals such as chickens or pigs are slaughtered during the ceremony. The wealthier villages will slaughter a buffalo every three years for the spirits in the sacred site.



Spirit house with 3 levels (for the spirit, the soldier and the wife)

Dongmuang and Xakhun-Nua villages share the same sacred forest and have two Kuan Cham Bans. Only the one who lives in Xakhun-Nua can organize the master annual ritual ceremony; the one in Dongmuang can only organize small ritual ceremonies for those who have been disturbed by the spirits.

When spirits are offended, they can cause misfortune for anyone. The person who suffers misfortune may or may not be the person who offended the spirits. When a villager suffers misfortune—bad luck or illness—the first person consulted is a fortune teller. The fortune teller identifies the source of the misfortune and the potential ultimate severity of the penalty and advises villagers on the offerings that must be made to propitiate the spirits.

After consultation with a fortune teller, the villager will ask the Kuan Cham Ban what offerings must be made to appease the offended spirits. The fortune teller who is consulted first does not necessarily have to be from the same village as the Kuan Cham Ban of the sacred site where spirits have been offended. A Kuan Cham Ban may sometimes serve as fortune teller as well. A fortune teller can give advice on offerings, but the Kuan Cham Ban, as representative of the spirits, makes the final decision and organizes the ritual ceremonies to appease the spirits. Neither the fortune tellers nor the Kuan Cham Ban get involved in natural resource management.

## 2.6 Permission and Enforcement

Mechanisms for management of natural resources and enforcement of customary law are quite similar for both spiritual and non-spiritual customary protected areas, in all the villages surveyed, regardless of the ethnic composition of the villages. Village authorities, security guards and voluntary village police guard the non-spiritual areas and enforce the rules that apply to them while the spirits guard spiritual areas.

Fines for violating customary prohibitions and restrictions in most cases involve slaughtering animals as offerings for the spirits. The value of the punishment is very much dependent on the seriousness of the crime, and may range from a chicken, to a pig, cow or buffalo. After the ceremony, the Kuan Cham Ban shares the meat with members of the community.

Punishment for violations in sacred forests and lakes is done primarily by self-policing grounded in the fear of the consequences of angering the spirits. The villages surveyed reported no fines or spiritual penalties for violating prohibitions in cemeteries.

Spiritual punishments for violating prohibitions or restrictions related to sacred forests and lakes in a village consist primarily of sickness, bad luck or, in very serious cases, death. The misfortune can fall on anyone, whether that particular person or family has breached the rules or not. When a family experiences sickness, they will consult the fortune tellers to get advice and then they will seek

assistance from the Kuan Cham Ban. Villagers follow the advice of the fortune tellers and the Kuan Cham Ban; to disregard their advice is to risk one's life.

Outsiders are also subject to spiritual punishments. Villagers tell one story about a punishment that involved two Vietnamese soldiers who took monkeys from the Monkey Forest in Dongmuang village. On the way to their camp the soldiers shot themselves. A more recent story involved a construction worker at the new temple in Dongmuang village who beat a monkey that had stolen his food. That night he became very sick and bled, and finally died in the provincial hospital. The villagers say that if these people had followed the advice of the fortune tellers, and given an apology to the spirits in the sacred forest, they would not have died.

### **3. CONSTITUTION AND STATUTORY LAW**

An analysis of the current legal framework governing the Xe Champhone Ramsar site must consider both general laws and those that specifically apply to the site.

The laws that generally apply to the Xe Champhone Ramsar site include, but are not limited to: the Constitution; the Land Law; the Law on Aquatic Animals and Wildlife; the Water and Water Resources Law; the Forestry Law; the Fisheries Law; the Environmental Protection Law; the Penal Law; and their implementing decrees. The implementing decrees for most of these laws establish detailed rules that apply to specific uses of natural resources. There is no specific law enacted by the National Assembly to regulate the Xe Champhone Ramsar site.

However, there are executive decrees delegating oversight authority and the power to issue further regulations governing the site. These include the Prime Minister's Decree (PM Decree) on the establishment and activities of the National Committee for Wetland Management of the Ramsar Convention in Lao PDR and the Decision issued by the Governor of Savannakhet Province appointing the provincial secretariat responsible for the management of Xe Champhone Ramsar site. There are also regulations adopted by local government authorities that apply in individual villages located in and around the Xe Champhone Ramsar site.

In addition to the general laws and decrees, any relevant ministry may also issue additional regulations as delegated by the PM Decrees. In the absence of a specific National Assembly law or PM Decree targeting any site, the relevant Ministries may issue regulations for specific areas, including Xe Champhone wetland.

In the absence of laws or decrees that specifically govern the site, general laws apply. The governing bodies at both central and local levels are responsible for supervising the development of detailed rules that must be consistent with generally applicable laws, international commitments and the specific features of the community and its customary laws. The governing bodies that administer these general laws must have an understanding of the implications of the inter-relationships among the laws for their implementation. This requires in-depth knowledge of the demographics of the area to be regulated in order to effectively integrate customary practices with the relevant provisions in applicable statutory laws.

Since natural resources underpin national economic development and poverty reduction prospects, the government is acutely aware of the importance of conserving environmental resources and ensuring the environmental and social sustainability of all development activities. Laws, decrees and regulations attempt to ensure the conservation of natural resources. However, their implementation is not effective due to weaknesses in the monitoring system, and lack of appropriate compliance and enforcement measures, among other challenges.

This analysis will identify the hierarchy of norms in Lao PDR, including: constitutional provisions; international agreements; laws passed by the National Assembly; executive decrees and regulations governing the rights; obligations and prohibitions related to wetland resources; and the status of customary law with respect to the Xe Champhone Ramsar site.



### **3.1 Constitution of Lao PDR (2003)**

The Constitution, as the supreme law of the country, guarantees respect for and the promotion of ethnic groups and their cultures, including their freedom of belief. Article 8 establishes the State policy of unity and equality among all ethnic groups and prohibits discrimination, while Article 43 guarantees the freedom of belief. Article 19 stipulates that all citizens have the obligation to protect the environment and natural resources.

These articles of the Constitution are the fundamental legal foundation for the analysis in this section, which focuses on the constitutional and statutory basis for conserving natural resources, protecting the environment, and promoting the culture and customary practices and laws of ethnic groups in Lao PDR.

### **3.2 International Treaties**

Under the Lao PDR legal framework, the second tier in the hierarchy of law is international treaties or conventions.<sup>9</sup> Ramsar and other related conventions to which Lao PDR is a Party govern Ramsar sites in the country. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) establishes categories of species according to the degree to which they are endangered. International treaties are directly effective in Lao PDR. In the national legal hierarchy, they are subordinate to the Constitution and superior to national and sub-national laws and regulations.

#### **3.2.1 Ramsar Convention on Wetlands of International Importance (Ramsar)**

Lao PDR's obligations as a Party to Ramsar include:

- formulating and implementing planning to promote the conservation of its Ramsar sites and the wise use of wetlands in the country (Article 3.1);
- promoting the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are designated as Ramsar sites or not, and provide adequately for their protection (Article 4.1);
- encouraging research and the exchange of data and publications (Article 4.3);
- endeavoring through management to increase waterfowl populations on appropriate wetlands (Article 4.4);
- promoting the training of personnel competent in the fields of wetland research, management and wardening (Article 4.5);
- consulting with other Parties to Ramsar about implementing obligations arising from the Convention especially in the case of transboundary wetland or where a water system is shared by Contracting Parties (Article 5); and
- ensuring that its representatives who attend the Ramsar Conferences of the Parties include persons who are experts on wetlands or waterfowl (Article 7).

Ramsar recognizes three levels of the status of wetlands in a country: designated as a Ramsar site of international importance; designated as a national protected area according to national categories; and unprotected. On becoming a Party to Ramsar, a country must designate at least one national wetland as a Ramsar site (Article 2.1). Parties to Ramsar also have an obligation to establish nature reserves, or other types of protected areas, on wetlands, whether or not those protected areas are designated as Ramsar sites (Article 4.1). In every country there will be wetlands that are not subject to protection; Ramsar obliges the countries that are parties to the treaty to promote the conservation and wise use of unprotected wetlands (Article 3.1).

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<sup>9</sup> Government of Lao PDR. (2009). Presidential Ordinance No. 01, dated 7 October 2009 on ratifying and acceding to international treaties.

'Wise use' of wetlands (Article 3.1), is the fundamental principle of the Ramsar Convention. It is defined as:

... the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development.<sup>10</sup>

Therefore, Ramsar does not require strict or absolute protection of Ramsar sites. Rather it requires conserving wetlands through active and effective planning and management to maintain wetland ecosystems and the services provided by them, in whatever ways are most appropriate for each particular site.

Over the years, Ramsar has developed and explained the concept of wise use and the Conference of the Parties has adopted guidelines for implementing it.<sup>11</sup>

### **3.2.2 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

CITES governs international trade in endangered species of fauna and flora and categorizes animal and plant species according to the degree to which they are endangered or protected. The lists of these categories are in appendices to the Convention.

Appendix I includes all species threatened with extinction that are, or may be, affected by international trade. Appendix II includes species that are not currently threatened with extinction but which must be managed in order for them to avoid the threat of extinction. Appendix III lists species that individual countries regulate within their own jurisdictions and for which they need the support of other countries to control trade in them.

The Siamese crocodile, which lives in the Xe Champhone wetlands and which is categorized in the IUCN Red List of Threatened Species as 'critically endangered', is listed in CITES Appendix I. As a Party to CITES, Lao PDR is obligated to penalize unauthorized possession of a Siamese crocodile as well as to prohibit its unauthorized trade. CITES does not explicitly require Parties to protect Appendix I species in the wild, but the obligation to penalize unauthorized possession creates a need for domestic legislation that requires permission for possession and penalizes possession without a permit.

### **3.2.3 Convention on Biological Diversity (CBD)**

Lao PDR is also a Party to the CBD. While Ramsar applies specifically to wetlands and CITES to species, the CBD obligations apply to all types of ecosystems, including wetlands, and to all species.

The CBD is sometimes referred to as an 'umbrella' for the other international agreements that regulate ecosystems and species and its obligations are consistent with those under Ramsar and CITES. Under the CBD, *in-situ* conservation, or conserving ecosystems and species where they naturally occur, is the priority. Among the multiple provisions of the CBD that apply to Xe Champhone, the following are particularly important:

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<sup>10</sup> The Ramsar Convention on Wetlands, 'The Wise Use Concept'. [http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0). Accessed 30 September 2012.

<sup>11</sup> The Ramsar Convention on Wetlands. (1) (2006). A Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character (Resolution IX.1 A). Available on-line: [http://www.ramsar.org/cda/en/ramsar-documents-guidelines-a-conceptual-framework/main/ramsar/1-31-105%5E20842\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-documents-guidelines-a-conceptual-framework/main/ramsar/1-31-105%5E20842_4000_0). (2). (1993). 'Additional Guidance for the Implementation of the Wise Use Concept'. First adopted as Resolution 5.6 of the 5th Meeting of the Conference of the Contracting Parties, Kushiro, Japan. Available on-line: [http://www.ramsar.org/cda/en/ramsar-documents-guidelines-additional-guidance-for/main/ramsar/1-31-105%5E20915\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-documents-guidelines-additional-guidance-for/main/ramsar/1-31-105%5E20915_4000_0). (3) (1990). Guidelines for the Implementation of the Wise Use Concept. First adopted as Recommendation 4.10 of the 4th Meeting of the Conference of the Contracting Parties (Montreux, Switzerland). Available on-line: [http://www.ramsar.org/cda/en/ramsar-documents-guidelines-for-the-20909/main/ramsar/1-31-105%5E20909\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-documents-guidelines-for-the-20909/main/ramsar/1-31-105%5E20909_4000_0). All accessed 30 September 2012.

- regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use (Article 8c);
- promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings (Article 8d);
- subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices (Article 8j); and
- protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation and sustainable use requirements (Article 10c).

### **3.3 Statutory Law**

Most laws passed by the National Assembly are supplemented by implementing PM Decrees, except for the Law on Aquatic Animals and Wildlife and the Penal Law. Decrees provide more detailed rules and are the legal instruments the government uses as the basis for its administrative decisions to consistently implement the law. Existing implemented decrees provide a general regulatory framework, but do not specifically target Xe Champhone as a Ramsar site.

#### **3.3.1 Land Law (2003)**

In Lao PDR, land is owned by the national community and the State grants rights to develop it. It is only under the Land Law that individuals can obtain title to land, whether it is wetland, forest land, farm land, or land used for any other purpose.

Chapter IV of the Land Law specifically governs wetlands and provides the statutory definition of wetlands in Lao PDR:

Water area land [wetland] is land which is submerged or which surrounds bodies of water such as submerged land, land at river sources, river banks, islands, newly-formed land, land formed when water recedes, or land formed by a change or diversion of waterways. (Article 23)

The law designates the Ministry of Agriculture and Forestry as the authority responsible for administering wetlands. (Article 24)

The use of wetlands must comply with the following conditions:

1. Not cause erosion;
2. Not cause obstruction to waterways;
3. Not cause water levels to recede or to flood;
4. Not pollute or poison bodies of water;
5. Not cut trees or destroy the forest in water catchment areas;
6. Not dig or take away soil from swamps and wetlands, except in the case of necessity with prior authorization from the concerned organization. [sic] (Article 25)

The Land Law gives village administrations where wetlands are located the responsibility of ‘...studying and making proposals to the district or municipal administration concerning the allocation of such land to individuals or organizations for appropriate protection and use.’ (Article 26). District or municipal administrations, in coordination with village administrations, are responsible for allocating forest land use rights (Article 22). Land titles give people the right to develop their land and land title can be transferred.

The law defines general penalties in Articles 83-84, in addition to the loss of the right to use land (Article 6).

### **3.3.1.1 Decree on the Implementation of the Land Law, No. 88/PM, 03 June 2008**

This PM Decree defines 'submerged land' to include aquatic animals and plants (see section 2.3.2, below):

'Submerged land' refers to all land parcels located under the water in a wetland, which consist of aquatic animals, aquatic plants, minerals and others. (Article 2)

The PM Decree also defines customary use of land and specifies how it is to be recognized under the Land Law:

Customary land utilization rights is the protection and utilization of land through the clearance and development or through the state land allocation plan of the concerned land parcel in a regular, continued and long-term manner until the present time without any documents certifying the land use rights for individual, organization or village communal use.

The state recognizes the customary land use rights of individual, organization, or village community by issuing the Land Survey Certificate or Land Title or Land Certificate on a case-by-case basis, as specified in the land law, through the application for land registration submitted to the Land Management Authority ... (Article 26)

### **3.3.2 Law on Aquatic Animals and Wildlife (2007)**

This is the statutory law that most directly governs wildlife in the Xe Champhone Ramsar site. The law obliges people to protect wildlife and aquatic animals, even if they are found outside of a protected area. In the Xe Champhone Ramsar site, wildlife and aquatic species are in an internationally-recognized protected area, and therefore require additional governmental oversight.

The law defines aquatic animals as any species that lives in the water all or most of the time and relies on aquatic ecosystems for regeneration or can be taken from nature for breeding (Article 2). The law defines customary use of aquatic animals and wildlife as use consistent with beliefs that have been traditionally practiced for a long time (Article 3.30).

Conservation of its Ramsar sites is Lao PDR's first obligation under the Ramsar Convention. Under the law, 'conservation means to preserve and utilize wildlife and aquatic [animals] in accordance with any regulations and to maintain it for sustainable use,' (Article 3.14)

General principles on protection, development and use of wildlife and aquatic animals, set out in Article 6, include protection, sustainable use and regeneration of species, and maintenance of habitats and ecosystems, particularly in accordance with international conventions to which Lao PDR is a Party.

Articles 11, 12 and 13 of the law establish three categories of wildlife and aquatic animals, which are consistent with the categories created under CITES. Hunting of species listed in Category I is totally prohibited. The Siamese crocodile which lives in the Xe Champhone wetlands is listed in Category I.



Young Siamese crocodiles in Tansoum village

Article 17 provides for identifying habitats, conservation zones, and feeding zones for wildlife and aquatic animals with the participation of local people, in order to develop regulations and guidelines.

The law includes a specific provision on customary use of wildlife and aquatic animals:

The customary use of aquatic and wildlife animals for the necessities in term of culture or belief, such as: release of birds, turtles, fish and others. The customary uses of wildlife and aquatic are authorized in villages in accordance with the rules and regulations. (Article 32)

Article 24 allows hunting wildlife or catching aquatic animals for customary use, but only those listed in Category 2, and with restrictions on the tools that may be used.

Specific provisions on household use, set out in Article 31, allow use of wildlife and aquatic animals in categories II and III ‘... in particular seasons or in permitted areas, using tools and equipment which do not compromise species populations or adversely impact natural habitats.’

Article 52 establishes the following general prohibitions applicable to individuals, local organizations and international organizations in Lao PDR: taking aquatic animals and wildlife listed in Category III; tormenting aquatic animals and wildlife; taking, possessing and trading aquatic animals and wildlife without the required permits; catching aquatic animals and wildlife in conservation areas, during breeding season, and when they have young; producing, importing, selling and using equipment and weapons that can be used to deplete aquatic animals and wildlife; damaging conservation areas in any way, including damaging boundary markers; and generating pollution by raising aquatic animals and wildlife in communities and urban areas.

Permission for any use of wildlife in:

- Category I must be obtained from the Government;
- Category II may be given by the Ministry of Forestry and Agriculture;
- Category III may be given by the provinces as specified in regulations.<sup>12</sup> Lists of Category I and II species are approved by the Government based on the proposal of the Ministry of Agriculture and Forestry.

Penalties for violations of the law are set out in Articles 67-72. Penalties range from education measures, to fines and criminal sanctions. Under Article 70, violators who cause more than 200,000 kip in damage are fined double the value of the damage caused. Second or habitual violations are fined at triple the value of damage caused to wildlife in Category I, double the value of damage caused to wildlife in Category II, and the value of the damage to wildlife in Category III. Apparently, there is no fine for a first offense if the value of the damage caused is less than 200,000 kip. Criminal

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<sup>12</sup> In Category III, only seasonal use is allowed or, otherwise, with permission of the Provincial Division of Forestry and Agriculture.

sanctions for specified offenses are stipulated in Article 71 and may include imprisonment for three months to five years in addition to a fine and payment of compensation. Additional penalties include suspension or revocation of permission to use wildlife and aquatic animals (Article 72).

The Law on Aquatic Animals and Wildlife does not have an implementing decree.

### **3.3.3 Fisheries Law (2009)**

This law governs activities related to fisheries, fish breeding, and conservation in natural water resources. The law defines 'aquatic fauna' as being fauna whose young are born and grow in water (Article 3.1). The law further defines protected, controlled and common aquatic fauna in terms of the three-category classification system established in the law on Aquatic Animals and Wildlife: protected aquatic fauna are classified as Category I; controlled aquatic fauna as Category II; and common aquatic fauna as Category III (Articles 3.9, 3.19, 3.11 and 9).

The law divides fisheries into two types: family and commercial fisheries (Article 13). Family fisheries are defined as subsistence aquaculture and fishing carried in one specific body of water to provide basic food for the daily life of a family (Article 14) and 'family exploitation' is similarly defined in Article 26. The law also allows capturing and releasing fish and other aquatic fauna for traditional and religious events (Article 28).

The Fisheries Law generally prohibits the following activities: using poison, explosives, weapons, electrical devices, bright lights, and other devices to fish; using any fishing gear which unduly obstructs the passage of aquatic fauna; producing, importing or selling any kind of prohibited fishing gear; disposing of waste or discharging waste water or chemicals into water bodies; trapping fish by blocking a stream, marsh, or channel or by digging a pond or draining a permanent natural pond; fishing in the spawning season; catching the immature offspring of fish or other aquatic fauna that are protected or controlled; damaging fish conservation zones and fishing in breeding areas and natural spawning grounds; and accepting, trading, owning or transporting protected or controlled aquatic fauna (Article 38).

Violations of the law that incur damages valued at less than 200,000 kip, regardless of the category of the aquatic fauna involved, are sanctioned with re-education and an official warning; there is no fine (Article 64). Where damages are greater than 200,000 kip, again regardless of the category of the aquatic fauna involved, the offender is fined double the amount of the loss.

As with the Law on Aquatic Animals and Wildlife, for subsequent offenses, fines are triple the value of the loss of protected aquatic fauna, double the value of the loss of controlled aquatic fauna, and equal to the value of the loss of common aquatic fauna, which means that the fines for subsequent violations involving controlled aquatic fauna are the same as for a first offense where damages are greater than 200,000 kip. For subsequent violations involving common aquatic fauna, the fine is less than for a first violation where damages are greater than 200,000 kip. Also for subsequent violations, the State seizes any illegal assets (Article 66). In addition to fines, the law requires payment of full compensation for any damage caused (Article 67).

In addition to the offenses specified in the Penal Law (see Section 3.3.8), the Fisheries Law stipulates that the following are criminal offenses: destruction of habitats, spawning areas and food sources of fish and other aquatic fauna; illegal fishing, capture or taking possession of protected fish and other aquatic fauna, whether alive or dead, their skeletons or other parts thereof; and import, export, transit and removal of protected fish and other aquatic fauna. Criminal penalties are imprisonment of three months to one year, in addition to the fines specified in Article 66 of the law (Article 68).

The Fisheries Law does not have an implementing decree.

### **3.3.4 Forestry Law (2007)**

The Forestry Law is closely linked to the Law on Aquatic Animals and Wildlife. The same inspection authority administers both laws. The law establishes different levels of protection depending on the type of forest. In case of Xe Champhone, forest and wetlands and aquatic animals and wildlife are subject to special protection under both laws.

Customary use is one of four categories of forest uses established in Article 39, but the law defines customary use in terms of statutory law only:

Customary utilization of forests is the use of forest and forest products that has been practiced for a long time in accordance with laws and regulations. The State allows the use of timber and harvest of forest products in non-prohibited forests for household utilization without adverse impact on forest resources, and the environment as well as reflecting the rights and interest of individuals or organizations. [The content of the second sentence is also provided in Article 40.]

Customary utilization of forest and forest products shall be practiced in accordance with a designed plan and with village regulations and laws and regulations on forests. (Article 42)

The Forestry Law establishes three categories of forests (Article 9): protection forests; conservation forests; and production forests. Each type of forest is subject to a different type of management. People are allowed to use wood and forest products, according to a management plan, in the controlled use zones of protection and conservation forests (Articles 23 and 24). Production forests are those where logging and harvesting of non-timber forest products are allowed, according to management plans, for the purposes of socio-economic development and poverty eradication among ethnic groups (Article 25).

Article 82 specifies that forests that are allocated for village administration have three classifications, but only names two of those categories: protection forest and conservation forest. Protection forest includes water resources and riverside forests and conservation forests include sacred forests, cemetery forests, and village use forests. According to Article 82, there are also supposed to be unclassified land areas to be used for production. The difference between production forests (Article 25), 'village use forests' as conservation forests (Article 82), and the unclassified land to be used for production is not clear.

Article 102 stipulates prohibitions, including: destroying forests by encroachment, clearing, cutting, burning, and using chemicals to kill trees; setting up settlements in forests without permission; cutting protected trees; occupying trees, forests, NTFP and forestland; and moving, changing or destroying signs or stakes marking the boundaries of Protection Forest, Conservation Forest and Production Forest areas. Violations may result in loss of forest rights (Article 98).

Under Article 125, violators who cause more than 1,000,000 kip in damage are fined the equivalent of the value of the damaged timber, NTFP, and forest resources, based on the actual market price. Second or habitual violations are fined at double the value. In addition, violators must pay compensation equal to the damage caused (Article 126). Criminal sanctions are as specified in the Penal Law (Article 127). Additional penalties include confiscation of assets, vehicles and equipment related to the offense, suspension or revocation of permits, or revocation of forest rights (Article 128).

#### **3.3.4.1 Decrees Implementing the Forestry Law**

There are multiple decrees implementing the Forestry Law. The decrees that govern protection and production forests are described below.

##### **3.3.4.1.1 Decree on the Protection Forest, No. 333/PM, 19 July 2010**

The principles stipulated in this PM Decree include ensuring that forest protection must take people's participation into account (Article 5.3). Protection forests are divided into four levels (national, provincial/city, district/municipality, and village) —and two zones (absolutely prohibited zone and utilization zone under management) (Article 6). Protection forests under the administration of a village are classified into three types: stream source forests, river bank forests, and road-side

forests. Village conservation forests consist of sacred forests, cemeteries, and production forests. Empty lands may be allocated as production areas (Article 16).

### **3.3.4.1.2 Decree on Sustainable Management of Production Forest Areas, No. 59/PM 22 May 2002**

The objectives of this PM Decree include the participation of villagers in forest management planning, management and receipt of revenues (Article 2.3). Production forest areas are to be established with the participation of villagers (Article 5.1). Forest management areas are to be delineated inside production forest areas and villagers are to participate in production forest management to generate revenue for themselves (Article 6). Harvesting of timber and NTFP is allowed only in demarcated management areas of production forests (Article 9). Conflicts are to be resolved by administrative authorities in the jurisdiction; conflicts that cannot be resolved administratively are to be submitted to the courts (Article 15).

### **3.3.5 Water and Water Resources Law (1996)**

The Water and Water Resources Law defines water resources to include plants and animals:

... Water resources are natural resources which are comprised of things inhabiting water or water resources which do or not have life e.g., plants, aquatic animals, rocks, minerals, sand, mud, stones, etc. (Article 2)

The law also defines 'aboveground water sources' as places where there is a body of water which occurs in long connecting flows and in spots, including rivers, small waterways tributaries, ponds, canals, swamps, bogs, and springs (Article 3).

'Reserved water sources' are defined as those which are 'allocated for the care of animals, vegetation, and living and non-living things, ... including the natural environment ...'(Article 9).

Neither the law nor its implementing PM Decree define customary use of water, but small scale use of water, as defined in the law, is most closely related to customary use:

Small scale use is the use of water and water resources which is not of a business nature for the following purposes:

1. Family [residential] use for the benefit of the general household or for cultural and athletic use;
2. Fishing and raising fish or other marine animals;
3. Collecting dirt, rocks, gravel, sand, mud, and other vegetation in or around a water source;
4. Use in agro-forestry production and for livestock for basic family use. (Article 15)

Small scale use does not require approval (Article 18) and "... may be undertaken provided that there is no prohibition from a relevant ministry or a local administrative authority." (Article 15)

The law does not stipulate fines and provides only that violators will be punished on a case-by-case basis according to the laws and regulations of the country (Article 47).

### **3.3.5.1 Decree Implementing the Water and Water Resources Law, No. 204/PM, 9 October 2001**

This PM Decree provides that the line ministries responsible for administering water resources are authorized to define the conditions of small scale use and are required to do that in coordination with the water resources management committee and local authorities (Article 11). Medium- and large-scale water use must be approved by the Government (Article 12).

The Ministry of Agriculture and Forestry is responsible for encouraging local people to establish natural water reservoirs (Article 17). Where it is possible that water resource development projects will impact the environment and local people, the ministries and related local authorities must notify the people who will be affected and seek their feedback (Article 19).

The Ministry of Agriculture and Forestry is responsible for cooperating with government authorities at all levels to define water resource protection and conservation areas and develop the regulations and implementation plan for such areas (Article 21).



Several ministries are responsible for defining quality standards for water for different uses (Article 23) and for preventing erosion that affects water quality (Article 27).

### **3.3.6 Law on Agriculture (1998)**

The Law on Agriculture defines agriculture to include animal husbandry and fishery:

Agriculture [refers to] cultivation, animal husbandry and fishery for consumption and [for producing] food for the public, raw materials to supply industrial processing factories, and commodities for domestic consumption and export. (Article 2)

The law requires anyone who undertakes any agricultural activity to protect the social and natural environment (Article 65) and to minimize any adverse impact on people and the environment (Article 66).

Article 67 provides that animals are not to be penned near public artesian wells, or near streams, ponds, canals, or marshes. Destructive fishing practices, including poison and explosives, are prohibited and the use of enclosed fence traps, barrier nets, [and] bag nets in streams to collect small fry [or] large fish is forbidden primarily during the breeding season (Article 68). The provisions of Article 68 are consistent with the Fisheries Law.

Specified violations are subject to a fine equal to double the value of the actual damage arising from them (Article 81). The law stipulates that criminal offenses are to be sanctioned in accordance with the Penal Law (Article 82) and provides for additional measures including suspension of agricultural activities (Article 83).

The Law on Agriculture was being reviewed in 2012 with a view to amending it in the near future.

#### **3.3.6.1 Decree Implementing the Law on Agriculture, No. 83/PM, 9 May 2001**

When the Law on Agriculture is amended, the current implementing PM Decree will be either amended or repealed.

### **3.3.7 Environmental Protection Law (1999)**

The Environmental Protection Law provides general rules on environmental protection in Lao PDR and creates general obligations for individuals and organizations with respect to nature conservation and environmental protection. Under this law:

- environmental protection consists of all activities that do not cause damage to the environment and do not cause adverse impact to the health of humans and ecosystems and their components (Article 3);
- everyone in Lao PDR, citizens and non-citizens alike, has the obligation to protect the environment and cultural, historical and natural heritage sites and to comply with regulations (Articles 4 and 16);
- government authorities must designate protected areas and protected species (Article 15).

Under Lao PDR law, the term 'natural heritage site' is not limited to sites designated under the World Heritage Convention; a Ramsar site is considered a natural heritage site.

The law does not contain a specific provision on customary law, but does define village-level administration of environmental management, which includes planning and monitoring the implementation of plans, and educating and mobilizing villagers to participate in activities related to protection, mitigation and restoration of the village environment (Article 40).

The Environmental Protection Law generally describes penalties to include re-education, fines, civil liability or criminal punishment (Article 44).

### **3.3.7.1 Decree Implementing the Environmental Protection Law, No. 102/PM, 4 June 2001**

Article 3 of this PM Decree, referring to Article 4 of the law, further specifies the obligation to protect the environment with particular emphasis on impacts on the environment that are caused by human activities.

Article 10 specifies that local authorities have particular responsibility for administering the provisions of the law that govern the conservation and sustainable use of biological resources.

### **3.3.8 Penal Law (2005)**

The Penal Law provides penalties for violations that are relevant for this analysis, including:

For destruction of forests:

Any person engaging in tree-cutting or forest-slashing inconsistently with forestry regulations or who starts a forest fire or destroys any forest through any other means shall be punished by three months to one year of imprisonment and shall be fined as provided by forestry regulations. Where such an offense causes substantial damage, the offender shall be punished by one to five years of imprisonment and shall be fined as provided by the forestry regulations. (Article 139)

For illegal hunting:

Any person engaging in hunting that is inconsistent with hunting regulations, such as hunting of protected species, hunting during a restricted season or in restricted places, hunting with prohibited tools and others shall be punished by three months to two years of imprisonment and shall be fined as provided by hunting regulations. (Article 141)

For illegal fishing:

Any person engaging in fishing (or catching any other aquatic animals) inconsistently with fishing regulations, such as with the use of explosives, poisons, chemicals or other prohibited tools shall be punished by three months to one year of imprisonment and shall be fined as provided by fishing regulations. (Article 142)

For unlawful exploitation of natural resources:

Any person exploiting natural resources, such as metals, minerals, precious stones and “non-timber forestry products” inconsistently with the laws shall be fined from 100,000 kip to 1,000,000 kip. Where such an offense causes substantial damage, the offender shall be punished by two to five years of imprisonment and shall be fined from 500,000 kip to 5,000,000 kip. (Article 143)

These are general, but strictly applicable, provisions that apply directly to Xe Champhone Ramsar site. The Penal Law normally makes no exception for violations falling under these provisions, but Articles 139, 141, and 142 refer to specific regulations for determination of wrongful conduct. Article 143, which applies to use of non-timber forest products, simply refers to ‘the laws’. However, it must be observed that the Penal Law does not allow lesser penalties under specific regulations.

## **3.4 Prime Minister’s Decrees and Decisions**

In addition to the general laws and decrees discussed above, any relevant ministry may also issue additional regulations as delegated by the PM Decrees. In the absence of a specific National Assembly law or PM Decree targeting any site, the relevant Ministries may issue regulations for specific areas, including Xe Champhone wetland. In 2011, the government issued PM Decree No. 50/PM on the appointment and responsibilities of the National Committee for Wetland Management of the Ramsar Convention in Lao PDR. According to the PM Decree, the committee’s responsibilities are primarily supervisory and advisory. Following government practice, the committee may instruct provinces on implementing the management of Ramsar sites, including by reiterating provisions of existing decrees and ministerial regulations or even by incorporating customary laws in its specific governing rules for administering Ramsar sites.

### **3.5 Specific statutory regulations that apply to the Xe Champhone area**

This sub-section examines the legal instruments at the provincial and local levels that specifically govern Xe Champhone Ramsar site. The MoJ/UNDP customary law project report indicates that there are many examples in practice where cooperation has developed between the customary and statutory systems, on the issues examined by that study.<sup>13</sup> This study found similar examples of co-existence of customary law and statutory regulations governing natural resources.

#### **3.5.1 At Provincial Level**

The Governor of Savannakhet issued a Decision on the management of the Xe Champhone Ramsar site, appointing a provincial secretariat and an implementation working team. The secretariat created by this decision is headed by the Deputy Chief of the Provincial Office of Natural and Water Resources and has full authority to control operations at Xe Champhone Ramsar site, under the supervision of the National Committee.

#### **3.5.2 At District Level**

The Provincial Governor's Decision appointing the implementation working team for Xe Champhone designates the Deputy Chief of the District Cabinet Office as the head of that team.

Standard practice gives the head of a district the power to closely oversee the territory within the district and supervise the villages and any operations located within it, including reviewing proposals from the villages for creation of any protected areas and their governing rules in each village.

However, in the case of the Xe Champhone Ramsar site, the Ramsar implementation working team, rather than the District Head, would review proposals for any rules for the Xe Champhone Ramsar site.

#### **3.5.3 At Village Level**

For the specific purpose of analysing statutory and customary laws on natural resource management, the village level of the legal hierarchy requires the most attention. Both customary and statutory laws operate at the village level in the Xe Champhone area and affect the day-to-day life of people living there.

In addition to customary laws governing natural resources, the project survey found statutory regulations in six villages. All of these regulations were adopted within a one-year period, 2011-2012, after Lao PDR acceded to the Ramsar Convention. Four of these villages are inside the Xe Champhone Ramsar site; the houses of one of these villages are located outside the boundary of the Ramsar site, but fields and paddies belonging to the village are inside the site. Of the villages with regulations, only one—village cluster Dongneng/Xakhun-Tai/Phonthong—is outside the Ramsar site.

Four villages with statutory regulations were among the 11 villages surveyed for the customary law study: Taleo/Natai; Tansoum; Houamuang; and Kengkok-Dong. One village and one village cluster that have statutory regulations were not among the villages surveyed for the customary law study: Kadan and Dongneng/Xakhun-Tai/Phonthong.

In four villages, all of which are inside the Ramsar site (Tansoum, Kadan, Kengkok-Dong, and Taleo), the regulations are based in part on a series of Memoranda of Understanding (MoU), the first of which was signed in 2010, between the Government and the Wildlife Conservation Society (WCS). These MoU focus on conservation of the endangered Siamese crocodile.<sup>14</sup> In Houamuang, and in the

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<sup>13</sup> MoJ/UNDP Customary Law Project report, Summary section, under the heading "Relationship with National and International Law" (no page numbering in the Summary section).

<sup>14</sup> The MoU in effect for 2012-2013 was signed by the Champhone District Agriculture and Forestry Office and WCS, for the period 19 April 2012-18 April 2013. It is supported financially by Lanxang Mineral Ltd., Sepon Gold Mining Project, and WCS. The MoU covers ten villages in four districts, including Xe Champhone; in Xe Champhone district it covers Phone Kor village, in addition to the four villages that were surveyed for this study. Any amendment to the MoU requires the written approval of the Ministry of Foreign Affairs. There are no penalties for not complying with the terms

Dongneng/Xakhun-Tai/Phonthong village cluster outside the Ramsar site, the regulations are not focused on crocodile conservation but govern hunting, fishing, and maintenance of canals and river channels during fish breeding season.

There are no official maps of village boundaries. The boundaries of all conservation areas created by the village regulations are defined by landmarks.

### **3.5.3.1 Taleo and Natai**

*Regulations on the management of natural reservoir conservation areas for Siamese crocodile conservation (09.03.2012)*

The conservation area created by these regulations is 77 m wide, 1 km long and, in the dry season, 3 m deep. The regulations specify the boundaries and prohibit six kinds of human activity in the conservation area:

1. fishing with common fishing equipment;
2. fishing with explosives, poison, electric shocks and other illegal methods;
3. capturing or killing crocodiles;
4. hunting with any kind of gun or any other weapon;
5. damaging the environment around the conservation area by burning the forest or engaging in slash and burn cultivation; and
6. pumping excessive amounts of water from the marsh.

Village security staff are responsible for guarding the conservation area and have the power to seize any hunting or fishing equipment used to commit any violation. The village community head is responsible for investigating violations and prosecuting offenders.

Fines for first, second and third offenses vary depending on which prohibition is violated, and range from 200,000 kip for a first offense of damaging the environment to 30,000,000 kip for a third offense of capturing or killing a crocodile. For first and second offenses, a formal warning is issued. For third offenses, the violator is detained and the violation is reported to district authorities for further action.

The regulations specify that they are made with the consent and agreement of all authorities and villagers in all villages in the Champhone district.

### **3.5.3.2 Tansoum**

*Regulations on the management of natural reservoir conservation areas for Siamese crocodile (10.03.2012)*

These regulations create two conservation areas:

- Mark Pheo marsh, 100 m wide, 1.2 km long and, in the dry season, 3 m deep;
- Phinoy marsh, 50 m wide, 700 m long and, in the dry season, 3 m deep.

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of the MoU; any disputes among the parties are to be resolved by consultation or in accordance with governing Lao PDR law. Any illegal act involving the Siamese crocodile would be penalized under national law.



Mark Pheo Marsh in Tansoum village

The regulations specify the boundaries and prohibit ten kinds of human activity in the conservation areas:

- expanding agricultural activities;
- granting land concessions for any purpose;
- using any chemical substances;
- logging, burning or otherwise destroying forests;
- fishing and hunting;
- using any type of hunting and fishing equipment;
- taking water for any production purpose;
- trading in crocodiles and damaging crocodile habitat in any way;
- taking any action that blocks pathways used by crocodiles; and
- damaging information signs.

For first and second violations of these prohibitions, offenders are fined 500,000 kip and 1,000,000 kip, respectively, and given an official warning. If there is a third offense, the offender is detained and the violation is reported to district authorities for further action.

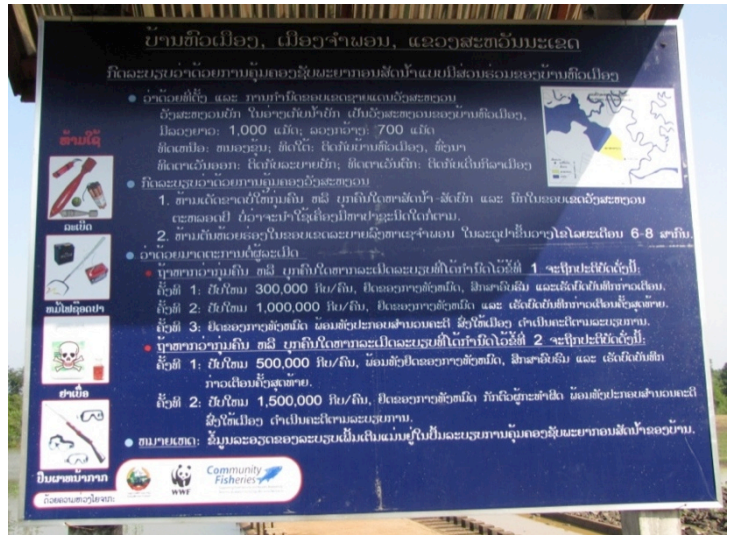
Injuring, capturing or killing a crocodile is prohibited both within and outside of the conservation areas. Fines for violations of this prohibition are 5,000,000 kip for a first offense, 10,000,000 kip for a second offense, and 30,000,000 kip for a third offense. Official warnings are issued for first and second offenses. For a third offense, the offender is detained and the violation is reported to district authorities for further action.

Village security staff are responsible for guarding the conservation area and have the power to seize any hunting or fishing equipment used to commit any violation. The village community head is responsible for investigating violations and prosecuting offenders.

The regulations specify that they are made with the consent and agreement of all authorities and villagers in all villages in the Champhone district.



Crocodile conservation in Tansoum village



Fish conservation zone in Houamuang village

### 3.5.3.3 Houamuang

*Regulations on the management and wise use of aquatic animal resources (04.05.2011)*

These regulations create a conservation area 700 m wide, 1 km long and, in the dry season, 3 m deep. The regulations specify the boundaries and prohibit two kinds of human activity in the conservation area:

1. catching aquatic animals and hunting any animals or birds for any purpose, regardless of the type of fishing or hunting equipment used, throughout the year; and
2. blocking the flow of water in channels or rivers which are linked to Xe Champhone during the breeding season from June to August.

The fines for violations of the prohibition on fishing and hunting are 300,000 kip for the first offense and 1,000,000 for a second offense. For a third offense, there is no fine; the offender is detained and the violation is reported to district authorities for further action.

The fines for violating the prohibition on blocking water flow during breeding season are 500,000 kip for the first offense and 1,500,000 kip for the second offense. On the second offense, the offender is detained and the violation is reported to district authorities for further action.

Village security staff are responsible for guarding the conservation area and have the power to seize any hunting or fishing equipment used to commit any violation. The village community head is responsible for investigating violations and prosecuting offenders.

The regulations specify that they are made with the consent and agreement of all authorities and villagers in all villages in the Champhone district.



### 3.5.3.4 Kengkok-Dong

*Regulations on the management of natural reservoir conservation areas for Siamese crocodiles (10.03.2012)*

These regulations create two conservation areas:

- Mae Hang marsh, 80 m wide, 750 m long and, in the dry season, 3 m deep; and
- Nong Kan, 23 m wide, 350 m long and, in the dry season, 3 m deep.



Mae Hang Marsh in Kengkok-Dong village

*Kengkok-Dong village protects three ponds, and their surrounding areas, for different reasons.*

*Catching turtles in Pou Ta Lake/Nong Pou Ta and cutting trees in the area around the pond are not permitted, but the villagers are allowed to fish. The area surrounding the village spirit house and the village administration building is also protected; no one is allowed to cut trees there.*

*Fishing is not permitted in Divorced Woman's Lake/Nong Mea Hang and hunting is not allowed in the area around it. Villagers may use water from the lake for irrigation and may also use boats on the lake. Note that there is a stream coming out of the lake where people have put up fishing nets. Boys hunting by the bank using slingshots were also observed. Furthermore, the forest to one side of the lake is privately owned.*

*Since the end of 2008, the villagers have cooperated with WCS to protect Kan Lake/Nong Kan. The lake is habitat for crocodiles that have moved from Divorced*

*Woman's Lake via a connecting stream. There are fewer crocodiles in Kan Lake than in Divorced Woman's Lake and they are generally only seen during the rainy season. Neither the lake nor the crocodiles are considered sacred.*

*Under an agreement, WCS gives the village an annual budget to protect Kan Lake. Villagers are not allowed to fish in the lake except for rare occasions for communal use. Instead, fish are released once a year to maintain a stable population in the lake and thus a stable food source for the crocodiles.*

*Approximately 10 years ago, 'bad grass' invaded the lake, probably from Divorced Woman's Lake and Xe Champhone, and has been growing rapidly. Under the agreement with WCS, villagers are not allowed to burn or remove the "'bad grass' because it is favored by the crocodiles. However, villagers' cows and buffalos are allowed to graze around the lake and eat the 'bad grass'.*



Nong Kan in Kengkok-Dong village

The regulations specify the boundaries and prohibit six kinds of human activity within the conservation areas:

- using any chemical substances;
- using any weapon to shoot animals;
- trading crocodiles or damaging their habitats;
- fishing and hunting for any animals;
- fishing with common fishing equipment and with poisons and other illegal methods; and
- damaging information signs.

Penalties for violations of these prohibitions vary depending on whether they are committed at Mae Hang or at Nong Kan:

- For a violation at Mae Hang, the fines are 500,000 kip for a first offense and 1,000,000 kip for a second offense. For a third offense at Mae Hang, the fine is one buffalo, the offender is detained and the violation is reported to district authorities for further action; and
- For a violation at Nong Kan, the fines are 300,000 for a first offense and 500,000 for a second offense. For a third offense, there is no fine; the offender is detained and the violation is reported to district authorities for further action.

Injuring, capturing or killing crocodiles are prohibited within and outside of both conservation areas. Fines for violations of this prohibition are 5,000,000 kip for a first offense, 10,000,000 kip for a second offense, and 30,000,000 kip for a third offense. Official warnings are issued for first and second offenses. For a third offense, the offender is detained and the violation is reported to district authorities for further action.

Village security staff are responsible for guarding the conservation area and have the power to seize any hunting or fishing equipment used to commit any violation. The village community head is responsible for investigating violations and prosecuting offenders. The regulations specify that they are made with the consent and agreement of all authorities and villagers in all villages in the Champhone district.

### **3.5.3.5 Kadan**

*Regulations on the management of the natural reservoir conservation area for Siamese crocodile conservation (13.03.2012)*

Kadan village is located inside the Xe Champhone Ramsar site, but was not included in the customary law survey for this project.



These regulations create two conservation areas:

- Lat Kadan marsh, 50 m wide, 1 km long and, in the dry season, 3 m deep; and
- Phinoy marsh, 50 m wide, 700 m long and, in the dry season, 3 m deep.

The regulations specify the boundaries and prohibit three kinds of human activity within the conservation area:

- using common fishing equipment;
- using illegal fishing equipment; and
- taking water in excess of the amount permitted for agricultural use.

The fines are different for violations of each of these prohibitions:

- For using common fishing equipment, the fine for a first offense is 500,000 kip and for a second offense is 1,000,000 kip. Official warnings are issued for first and second offenses. On the third offense, there is no fine; the offender is detained and the violation is reported to district authorities for further action;
- For using illegal fishing equipment, the fine for a first offense is 5,000,000 kip and for a second offense is 10,000,000 kip. On the second offense, the offender is detained and the violation is reported to district authorities for further action; and
- For taking water in excess of the amount permitted, the first for a first offense is 1,000,000 kip and for a second offense is 2,000,000 kip. Official warnings are issued for first and second offenses and on the second offense the violation is reported to district authorities for further action.

Doing anything that affects a crocodile is prohibited within and outside of the conservation areas. Fines for violations of this prohibition are 5,000,000 kip for a first offense, 10,000,000 kip for a second offense, and 30,000,000 kip for a third offense. Official warnings are issued for first and second offenses. For a third offense, the offender is detained and the violation is reported to district authorities for further action.

Village security staff are responsible for guarding the conservation area and have the power to seize any hunting or fishing equipment used to commit any violation. The village community head is responsible for investigating violations and prosecuting offenders.

The regulations specify that they are made with the consent and agreement of all authorities and villagers in all villages in the Champhone district.

### **3.5.3.6 Dongneng/Xakhun-Tai/Phonthong**

*Regulations on the management and wise use of aquatic animal resources (04.05.2011)*

The conservation area created by these regulations is 1 km wide, 1 km long and, in the dry season, 4 m deep.

The regulations specify the boundaries and prohibit three kinds of human activity within the conservation area:

- fishing and hunting for land animals, aquatic animals and birds, regardless of the type of equipment used, throughout the year;
- using any type of illegal equipment or method that would endanger aquatic animals; and
- blocking the channels or rivers which are linked to Xe Champhone during the breeding season June to August.

Fines for violating the prohibitions on fishing and hunting and blocking water flow are 500,000 kip for the first offense, 2,000,000 kip for the second offense, and 5,000,000 kip for the third offense. Official warnings are issued for first and second offenses. On the third offense, the offender is detained and the violation is reported to district authorities for further action.

Fines for violating the prohibition on using illegal equipment and methods are 200,000 kip for the first offense and 10,000,000 kip for the second offense. On the second offense, the offender is detained and the violation is reported to district authorities for further action.

Village security staff are responsible for guarding the conservation area and have the power to seize any hunting or fishing equipment used to commit any violation. The village community head is responsible for investigating violations and prosecuting offenders.

The regulations specify that they are made with the consent and agreement of all authorities and villagers in all villages in the Champhone district.

These regulations also provide that, beginning three years after establishing the conservation area, the villages will annually discuss whether to propose to the district administration that they be permitted to jointly catch fish.

These villages were not included in the customary law survey for this project.

### **3.5.3.7 Nanokkhian**

Nanokkhian does not have its own statutory regulations, but it is the only one of the 11 villages surveyed that is adjacent to a forest that is protected by the district government. In 2006, the district government allocated to a sugar company a 40-year concession of 300 ha. The villagers protested on the basis that the village was using part of the concession area for livelihood support. The district government then reduced the concession area to 200 ha, allocating 100 ha to Nanokkhian village as a district protected forest that the villagers refer to as their village forest.

Nanokkhian village is located downstream of the sugar cane plantation and the sugar factory that processes the sugar cane, and has been affected by the chemicals used in both since they were established in 2006.

## **3.5.4 Summary of village regulations**

Five of the villages which have adopted village regulations are inside the Xe Champhone Ramsar site: Tansoum, Kengkok-Dong, Taleo, Houamuang, and Kadan.

Village regulations create two conservation areas in three villages: Tansoum, Kadan, and Kengkok-Dong, all of which are inside the Ramsar site. The regulations in the other three villages create one conservation area.

Crocodiles and their habitats are not regulated in Houamuang village, which is inside the Ramsar site, and in the village cluster Dongneng/Xakhun-Tai/Phonthong, which is outside.

The scope of village regulations varies considerably:

- Tansoum – 11 prohibitions and corresponding penalties;
- Kadan – 5 prohibitions and corresponding penalties; and
- Taleo/Natai, Kengkok-Dong, and Houamuang villages and Dongneng/Xakhun-Tai/Phonthong village cluster – 4 prohibitions and corresponding penalties.

## 4. COMPARING CUSTOMARY AND STATUTORY LAW

Statutory laws are relatively recent creations, compared with customary laws which have existed for a long time. Customary law, practiced for generations, provides incentives for people to participate in protecting the environment and in so doing help to promote ethnic culture for their future generations. Rituals that are conducted in a sacred area preserved by the whole community, such as annual rites to honor the spirits of the water or of the forest, reinforce community commitment to ensuring that community peace, harmony, and well-being will be preserved and validated.

In Xe Champhone many acts prohibited under customary law such as hunting, fishing and logging in certain places, are also prohibited under statutory law. Ethnic people with strong spiritual beliefs will not commit acts harmful to sacred places or animals; statutory laws and the Penal Law are consistent with their beliefs. At the village level, the community is key to the administration of statutory as well as customary law, since representatives of ethnic groups are often both customary law authorities and statutory authorities. Most villages already have their own internal dispute resolution mechanisms that accommodate the multi-ethnic character of each village.

The MoJ/UNDP Customary Law Project found that many original customary practices have been changed through government policy, statutory laws and national socio-economic development in general. Findings for the Makong ethnic group in the area surveyed for the MoJ project indicate that for the issues that were the focus of the MoJ/UNDP study, many Makong turn to statutory law in criminal cases, while they continue choose to resolve civil cases using customary law.<sup>15</sup> In the case of the law governing natural resources, the villages where people of the Makong ethnic group live that were surveyed for this project report that 100% of the population adheres to customary law (see Table 2).

The Xe Champhone Ramsar site itself is protected under statutory law as are the conservation areas created by the village regulations described in sub-sections 3.5.3.1–3.5.3.7 above. Four of the conservation areas created under village regulations—two in Tansoum village and two in Kengkok-Dong village—are inside the Xe Champhone Ramsar site.

In the villages surveyed for this project, 16 areas inside the Ramsar site and seven areas along the Champhone River are under customary protection. One additional area under customary protection is in Nanokkhan village, 15 km from the Xe Champhone Ramsar site.

There is only one case in which a customary protected area is also designated as a conservation area under village regulations: Nong Mea Hang in Kengkok-Dong village.

The basis for regulation differs among national statutory law, customary law and village regulations. National statutory law, overall, has the broadest basis for regulation, encompassing species, place, method, purpose of use and consequences of use. Customary law, with its focus on sacred sites, regulates primarily on the basis of place and, in some cases, on the basis of species. Village regulations also regulate primarily on the basis of place; the Siamese crocodile is the only species regulated, and several villages regulate fishing methods. See Table 3.

Even the village regulations that are broadest in scope (see sub-section 3.5.4) do not regulate all of the aspects of natural resource use that are regulated by customary law in the same villages. Grazing and collecting NTFP, in particular, are ignored by all the village regulations, even though livestock account for the largest percentage of annual household income in the villages surveyed and almost 100% of the people in the villages surveyed rely on NTFP (see Appendix 2, section 3.7.4, Tables 8 and 9).

Forest areas and individual trees are the single most important natural resource governed by customary law—in nine of 11 villages surveyed—but their conservation is included in the regulations for only two villages. This disparity is likely due to the wildlife focus of the international organizations that promoted the development of the village regulations.

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<sup>15</sup> MoJ/UNDP. (2011). *Customary Law Project* report, page 101.

Each village regulation governs one or more aspects of natural resource use that are not governed by customary law: expanding agriculture, granting land concessions, blocking crocodile pathways and fish channels, using chemicals, using electricity, poison, explosives and other fishing methods that are illegal under statutory law, and damaging signs.

No village regulation completely reflects the customary law governing natural resources in that village.

**Table 3 Basis for regulation**

Activity	Basis for Regulation		
	National statutory law	Customary law	Village regulations
<b>Hunting</b>	1. species 2. place  3. method	1. place 2. species	1. place 2. species (Siamese crocodile only) 3. method (Taleo, Kengkok-Dong only)
<b>Fishing</b>	1. species 2. place 3. method	place	1. place 2. method
<b>Trees/forest areas/NTFP</b>	1. place  2. species	1. place  2. species	place
<b>Taking water</b>	1. purpose of use 2. consequence of use 3. place	place	1. place 2. purpose of use
<b>Using boat</b>	no regulation	place	no regulation
<b>Grazing</b>	no regulation	place	no regulation

#### 4.1 Prohibitions and Restrictions

In the villages surveyed, customary law is more nuanced than statutory law. Within the relatively limited area under the jurisdiction of a village, there may be as many as five areas recognized under customary law, with different regimes of permission and protection for each. In areas protected under customary law in a village, for example, one type of activity may be completely prohibited in one or more of the customary protected areas, restricted in others, and permitted in others.

Customary law in the villages in and around the Xe Champhone Ramsar site regulates six activities: hunting, fishing, cutting trees, collecting NTFP, taking water, using a boat, and grazing animals. Only three of those activities—hunting, fishing and taking water—are also governed by the recently-adopted village regulations.

Seven different activities that are regulated under some village regulations are not governed by customary law: damaging crocodile habitat; blocking crocodile pathways; expanding agriculture; using chemical substances; blocking water channels during breeding season; granting land concessions; and damaging signs.

The tables in the following sub-sections provide a summary comparison of provisions in national statutory law, customary law and village regulations. Table 11 provides a summary comparison of customary law and village regulations in the villages surveyed that are inside the Xe Champhone Ramsar site. More detailed information is provided in Appendices 3 and 4.

### 4.1.1 Hunting

National statutory law—the Law on Aquatic Animals and Wildlife—governs hunting on the basis of species and place: hunting is prohibited or restricted according to the category and conservation status of individual species; and hunting is generally forbidden in designated conservation zones, each of which must have its own specific regulation. It is not clear whether a Ramsar site would be considered a “conservation zone/prohibited area” under the law. The law recognizes customary and household use and allows it under specified conditions, according to the species involved. The law prohibits hunting during breeding season or when female animals have young, but does not regulate hunting on the basis of the size of the animal.

The Siamese crocodile, which lives in the Xe Champhone wetlands, is listed in CITES Appendix I as a species threatened with extinction and is included in Category I under the Law on Aquatic Animals and Wildlife. Therefore it is protected anywhere it is found, whether inside a conservation area or outside of one.

Customary law governs hunting primarily on the basis of place, with prohibitions and restrictions in accordance with the status of the place. For example, Hunting is completely prohibited in all sacred forests in all the villages surveyed. But in some village forests and cemeteries, hunting is selectively prohibited on the basis of size: large animals may not be hunted, only small animals such as rodents and lizards may be hunted.

In some cases customary law also regulates hunting on the basis of species. For example, catching turtles is prohibited in Tansoum village; in Sacred Lake/Nong Pou Ta in Kengkok-Dong village; and in Turtle Lake/Nong Tao/Nong Pa Fa in Dondeng. These villages are located within the Ramsar site.

Village regulations prohibit hunting of any species in the conservation areas created by the regulations, while also prohibiting capturing, injuring or killing one particular species—the Siamese crocodile—anywhere.

National statutory law regulates hunting and fishing primarily on the basis of species, while customary law and village regulations regulate primarily on the basis of place. Customary law also regulates hunting in some places on the basis of the size of the animal, which national statutory law and village regulations do not. But ‘small animals’ under the customary law of the villages surveyed is actually species-specific, referring to rodents and lizards. As there has not yet been an inventory of species found in the Xe Champhone wetlands, it is not yet possible to say whether any of the small-size species that can be hunted are protected under either national law or CITES.

**Table 4 Hunting: permissions, prohibitions and restrictions**

<b>Hunting</b>		
<b>National Statutory Law<sup>16</sup></b> (general)	<b>Customary Law</b> (specific sites)	<b>Village Regulations</b> (specified conservation areas)
Customary use allowed, with some restrictions related to particular species.		
Household use allowed, in specified seasons and areas and with certain types of equipment.		
Hunting of Category I/ endangered species prohibited.	All hunting in sacred forests and in some village forests prohibited, regardless of species. Some villages prohibit hunting of particular species.	Capturing/injuring/killing crocodiles prohibited inside or outside of specified conservation areas.
Hunting of Categories II & III species restricted.	Hunting in cemeteries and some village forests restricted to small animals.	
		All hunting in specified conservation areas prohibited, regardless of species.

#### **4.1.2 Fishing**

Under the Law on Aquatic Animals and Wildlife, fishing, like hunting, is governed on the basis of species and place. The Fisheries Law governs fishing on the basis of place as well and also prohibits the use of specific fishing gear and fishing methods. As with terrestrial species, there has not yet been an inventory of fish and other aquatic species found in the Xe Champhone wetlands, and it is therefore not yet possible to say whether any of the fish species that live in the wetlands are protected under either the Fisheries Law or CITES.

The villages surveyed for this project did not report any customary law governing fishing by species, only by place. Under customary law, all fishing is prohibited in the sacred lake in Taleo village and in Nong Mea Hang in Kengkok-Dong village. Customary law permits only communal fishing in protected lakes in Dondeng, Nanokkhan, Nakathang, and Dongtabeng villages.

All of the village regulations prohibit all fishing in the conservation areas created by the regulations. In addition to the blanket prohibition on fishing in the designated conservation areas, five of the village regulations—in Tansoum, Kengkok-Dong, Taleo, and Kadan villages inside the Xe Champhone Ramsar site and in the Dongneng/Xakhun-Tai/Phonthong village cluster outside—expand on the prohibition by specifying different penalties for fishing with common equipment and for fishing with destructive methods including poison, electric shock, and explosives. Houamuang village regulations simply stipulate that fishing is prohibited regardless of the equipment used.

See sub-section 4.1.1 for the analysis of the relationships among national statutory law, customary law and village regulations.

<sup>16</sup> Three laws, by definition, appear to govern aquatic plants and animals – the Land Law, the Water and Water Resources Law and the Aquatic Animals and Wildlife Law. Article 2 of the Water and Water Resources Law says that water resources are comprised of things inhabiting water or water resources which do or do not have life, including plants and aquatic animals. The last phrase of the definition of “submerged land” in the Decree implementing the Land Law says that submerged land consists of aquatic animals, aquatic plants, minerals and other things.

In spite of the definitions, the purpose of the Aquatic Animals and Wildlife Law is to govern plants and animals, while the purposes of the other two laws are to govern land and water, respectively.

As with hunting, national statutory law, customary law and the village regulations are basically consistent with each other and with international obligations with respect to fishing.



Local fish from the wetlands

**Table 5 Fishing: permissions, prohibitions and restrictions**

<b>Fishing</b>		
<b>National Statutory Law (general)</b>	<b>Customary Law (specific sites)</b>	<b>Village Regulations (specified conservation areas)</b>
Customary use allowed, with some restrictions related to particular species.	Fishing in protected lakes in some villages restricted to communal fishing on specified days.	
Household use allowed, in specified seasons and areas and with certain types of equipment.		
Fishing of Category I/ endangered species prohibited.	All fishing in sacred lakes in some villages prohibited, regardless of species.	All fishing in specified conservation areas prohibited.
Fishing of Categories II & III species restricted.		

### 4.1.3 Cutting trees/damaging forests

Three national laws govern the use of forestland and trees: one generally and two specifically in wetlands. The Forestry Law is the general governing law; it defines 'forestlands' to be any plot the Government may designate as 'forest', whether there is any forest cover or not. The Land Law governs forests and trees in wetlands, and the Water and Water Resources Law absolutely prohibits cutting trees around 'water sources', which are defined to include wetlands. As with hunting and fishing, use of forest species is regulated on the basis of place (both the Forestry Law and the Land Law) and species (the Forestry Law).

The Forestry Law recognizes customary use of forests and forest products and allows it in forests that are not designated as protection, conservation or production forests, in accordance with a plan and with village regulations, which must be consistent with the Forestry Law and its regulations. Cutting trees or otherwise destroying forests in wetlands catchment areas is prohibited, and cutting endangered and other protected tree species is not allowed without express permission.

Article 82 of the Forestry Law and Article 16 of the PM Decree on the Protection Forest (2010) appear to indicate that sacred forests and cemeteries are automatically recognized under statutory law as village conservation forests, which are one of two categories of protection forests allocated for village administration under the Forestry Law and one of four levels of protection forests under village administration designated by the PM Decree. However, it is not clear how this automatic statutory protection functions in practice.

Customary law in the villages surveyed governs trees primarily on the basis of place, rather than species; only Houamuang village reported that its sacred forest protects a particular sacred tree.<sup>17</sup> Cutting trees is prohibited in all sacred forests in all villages. Kengkok-Dong village also prohibits cutting trees in the cemetery while Taleo village allows cutting trees in the cemetery. Nanokkhian village permits collection of dead wood in the sacred forest. In the village forest in Taleo village and in village forests and cemeteries in Nanokkhian, Xakhun-Nua, Dondeng, and Nakathang villages, cutting trees is selectively prohibited on the basis of size: large trees may not be cut, only small trees and bushes may.



Sacred forest in Kengkok-Dong village

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<sup>17</sup> Approximately 20 years ago, Houamuang village reduced the size of its sacred forest because villagers felt the area was too large. The villagers agreed on the change and held a ceremony asking the spirits for permission. The area previously protected is now used for cultivation.



Regulations in Taleo and Tansom villages prohibit damaging or destroying forests in any way in the designated conservation areas. As with customary law, village regulations establish prohibitions only on the basis of place, not species.

In all villages there is potential conflict between the Forestry Law and customary law, depending on the status of trees and forested areas in sacred forests and cemeteries. In Taleo village there is potential conflict between customary law—which allows cutting small trees in the Suea Khok forest around the sacred lake—and the Water and Water Resources Law, which absolutely prohibits cutting trees around water sources, which are defined to include wetlands.

**Table 6 Cutting trees: permissions, prohibitions and restrictions**

<b>Cutting trees</b>		
<b>National Statutory Law</b> (general)	<b>Customary Law</b> (specific sites)	<b>Village Regulations</b> (specified conservation areas)
Customary use of forests allowed in unrestricted forests, and in restricted forests according to a plan.	Collecting dead wood for personal and/or community allowed in some sacred forests and village forests.	
Cutting trees in water catchment areas prohibited.	Cutting trees in sacred forests prohibited.	Damaging forests in specified conservation areas prohibited in two villages.
Cutting trees around water sources prohibited.		
Cutting protected/restricted species prohibited.	Cutting large trees in some village forests prohibited; cutting small trees allowed.	

#### 4.1.4 Collecting NTFP

Collecting NTFP and wetlands products is a relatively small percentage of household income in the villages surveyed, but 97% of the households surveyed rely on them for subsistence consumption (see Appendix 2, section 3.7.4).



Fish and NTFP from the Ramsar site at the local market

Two national laws govern the use of NTFP. The Forestry Law is the general governing law and the Water and Water Resources Law governs vegetation in and around water sources. See sub-section 4.1.3 for the description of statutory regulation of NTFP under the Forestry Law. The Water and Water Resources Law recognizes small scale use and stipulates that it does not require approval as long as it is not prohibited by another ministry or a local administrative authority. Small scale use as defined in the law includes collecting vegetation in or around a water source.

Customary law governing NTFP varies from village to village. Collecting NTFP is prohibited in sacred forests in Taleo, Dondeng, Nakathang (the sacred forest inside the village) and Dongtabeng villages. It is permitted in the sacred forests in Kengkok-Dong, Nakathang (the sacred forest outside the village), Nanokkhian, Dondeng, and Xe villages; in the temple forest in Taleo village; and in the cemeteries in Taleo, Kengkok-Dong, and Xe villages.

In all villages there is potential conflict between the Forestry Law and customary law with respect to collecting NTFP, depending on the status of sacred forests and cemeteries.

Village regulations do not address NTFP, even though it is a significant issue for household subsistence.

**Table 7 Collecting NTFP: permissions, prohibitions and restrictions**

<b>Collecting NTFP</b>		
<b>National Statutory Law</b> (general)	<b>Customary Law</b> (specific sites)	<b>Village Regulations</b> (specified conservation areas)
Customary use of forest products allowed in unrestricted forests, and in restricted forests according to a plan	Collecting NTFP prohibited in some sacred forests and village forests, and allowed in others	No provisions related to NTFP.
Small scale collection of vegetation in and around water sources does not require approval	Collecting NTFP allowed in cemeteries	

#### 4.1.5 Taking water

Two national laws govern the use of water. The Water and Water Resources Law is the general governing law and the Land Law specifically governs the use of water in wetlands. Both laws regulate on the basis of the purpose of use, the consequence of use, and place. Both laws apply to all uses of water in wetlands whether or not the wetlands are a conservation area.

The Water and Water Resources Law recognizes small scale use of water and stipulates that it does not require approval as long as it is not prohibited by another ministry or a local administrative authority. Small scale use as defined in the law includes household use of water, fishing and raising fish, collecting vegetation in or around a water source and use for household agroforestry and livestock. The Water and Water Resources Law has an absolute prohibition on any action that would cause a water source to become shallow or dry up; the Land Law has a similar provision stipulating that use of water in wetlands must not cause water levels to recede or to flood.

Customary law governing the use of water is based on place, rather than type or consequence of use. Taking water for any purpose from the sacred lake in Taleo village and from Turtle Lake in Dondeng village is prohibited. Otherwise, taking water is permitted under the customary law in all other villages. The villages surveyed that permit taking water did not report any restrictions on doing so.

Regulations in two villages—Taleo and Kadan—restrict the amount of water that can be taken. Tansoum village regulations strictly prohibit taking water for any purpose. Because all three villages are inside the Xe Champhone Ramsar site, their regulations are consistent with national statutory law which governs the use of water in wetlands.

Assuming that water use permitted under customary law is small scale use as defined by the Water and Water Resources Law, customary law in the villages surveyed—both inside the Ramsar site and outside of it—is consistent with national statutory law.

**Table 8 Taking water: permissions, prohibitions and restrictions**

<b>Taking water</b>		
<b>National Statutory Law</b> (general)	<b>Customary Law</b> (specific sites)	<b>Village Regulations</b> (specified conservation areas)
Small scale use of water does not require prior approval.	Taking water from lakes and streams under customary protection allowed in most villages.	
Taking water must not cause water levels to recede.		Pumping excessive amounts of water or taking water for agriculture from specified conservation areas prohibited in some villages.
Any action that would cause a water source to become shallow or dry up prohibited.	Taking water from a sacred lake in one village and from a protected lake in another village prohibited.	
Any action that would modify or impede water flow requires a permit.		During fish breeding season June-August, blocking channels and rivers which are linked to the Champhone River prohibited in two villages.

#### 4.1.6 Using a boat

There is no national statutory law that expressly governs the use of boats, but use of boats may be controlled in areas that have site-specific regulations.

Customary law governing the use of boats is based on place and is the same as the customary law governing the use of water (see sub-section 4.1.5).

Village regulations do not address the use of boats.

**Table 9 Using boats: permissions, prohibitions and restrictions**

<b>Using boats</b>		
<b>National Statutory Law</b> (general)	<b>Customary Law</b> (specific sites)	<b>Village Regulations</b> (specified conservation areas)
No provisions on using boats.	Using a boat on lakes and streams under customary protection allowed in most villages.	No provisions on using boats.
	Using a boat on a sacred lake in one village and on a protected lake in another village prohibited.	

### 4.1.7 Grazing

There is no national statutory law that expressly governs grazing, but grazing may be controlled in areas that have site-specific regulations. The Law on Agriculture prohibits penning animals near streams, ponds, canals or marshes, but has no provisions on grazing. The Land Law prohibits any activity in a wetland that causes erosion, which may or may not be a result of grazing.



Buffalos in the Xe Champhone Ramsar site

Livestock contribute almost 30% of the income of households in the villages surveyed (see Appendix 2, section 3.7.4) and customary law regulates the activity in all but two villages: Nanokkhan and Dongtabeng. Grazing is prohibited in the sacred forests in Taleo and Nakathang (the sacred forest inside the village) and in the temple forest in Taleo village. It is permitted in the sacred forests of all other villages surveyed, and in the village forests and cemeteries of all villages that regulate grazing.

Village regulations do not address grazing.

**Table 10 Grazing: permissions, prohibitions and restrictions**

<b>Grazing</b>		
<b>National Statutory Law</b> (general)	<b>Customary Law</b> (specific sites)	<b>Village Regulations</b> (specified conservation areas)
Animals must not be penned near streams, canals, ponds or marshes.	Grazing in sacred forests prohibited in two villages. Grazing allowed in sacred forests, village forests and cemeteries in all other villages.	No provisions on grazing.
Activities in wetlands must not cause erosion.		

**Table 11 Comparison of customary law and village regulations for villages surveyed inside the Xe Champhone Ramsar site**

Prohibition	Taleo and Natai		Tansoum		Houamuang		Kengkok-Dong		Dondeng		Nakathang		Kadan	
	Customary law	Village regulations <sup>18</sup>	Customary law	Village regulations	Customary law	Village regulations	Customary law	Village regulations	Customary Law	Village Regulations <sup>19</sup>	Customary Law	Village Regulations <sup>20</sup>	Customary Law <sup>21</sup>	Village Regulations
Hunting	22								23		24			
Fishing, using common or illegal equipment							25		26		27			
Cutting trees, damaging, destroying forests	28								29		30			
Collecting NTFP	31					32			33		34			
Taking water									35		36			

<sup>18</sup> In all village regulations prohibitions apply only to the conservation area specified in the regulation.

<sup>19</sup> Dondeng Village does not have a village regulation.

<sup>20</sup> Nakathang does not have a village regulation.

<sup>21</sup> Kadan was not surveyed for this project.

<sup>22</sup> In Taleo and Natai villages hunting is completely prohibited under customary law in the Temple Forest and the Spirit Forest. In Suea Khok Forest and in the Pa Song Pa Dang Village Forest hunting large animals is prohibited, but hunting small animals such as rodents and lizards is allowed. Hunting is allowed in the cemetery.

<sup>23</sup> In Dondeng hunting is prohibited in the sacred forest, catching turtles is prohibited in the sacred Turtle Lake, and hunting in the cemetery requires the permission of the spirits.

<sup>24</sup> In Nakathang hunting is prohibited in the sacred forest inside the village. Hunting large animals is prohibited in the sacred forest outside the village and hunting small animals is permitted. Hunting is avoided in the cemetery out of fear and respect.

<sup>25</sup> In Kengkok-Dong fishing is prohibited in Nong Mea Hang, but is permitted in Nong Kan.

<sup>26</sup> In Dondeng communal fishing in Turtle Lake is allowed only with permission of the spirits.

<sup>27</sup> In Nakathang only communal fishing is permitted in Lake Fang Dang.

<sup>28</sup> In Taleo and Natai villages cutting trees is completely prohibited under customary law in the Temple Forest and the Spirit Forest. In Suea Khok Forest and in Pa Song Pa Dang Village Forest cutting large trees is prohibited, but cutting small trees and taking dead wood is allowed. Cutting trees is allowed in the cemetery.

<sup>29</sup> In Dondeng cutting trees is prohibited in the sacred forest and cutting large trees in the cemetery is allowed only for funeral purposes.

<sup>30</sup> In Nakathang cutting trees is prohibited in both sacred forests. In the cemetery cutting large trees is prohibited; cutting other trees may only be permitted for communal use,

<sup>31</sup> In Taleo and Natai villages collecting NTFP is prohibited under customary law in Suea Khok Forest, Pa Spirit Forest, and Pa Song Pa Dang Village Forest.

<sup>32</sup> In Houamuang village cemetery the Head of the village reports that villagers are permitted to cut bamboo and collect bamboo shoots for household use after getting permission from the village authorities, although this is not provided in the village regulation. Outsiders are not allowed to cut or collect in the cemetery.

<sup>33</sup> In Dondeng collecting NTFP is prohibited in the sacred forest, but permitted in the cemetery.

<sup>34</sup> In Nakathang collecting NTFP is prohibited in the sacred forest inside the village, but permitted in the sacred forest outside the village. Collecting NTFP in the cemetery is avoided out of fear and respect.

<sup>35</sup> In Dondeng taking water from Turtle Lake is prohibited.

<sup>36</sup> In Nakathang taking water from Lake Fang Dang is permitted.

Prohibition	Taleo and Natai		Tansoum		Houamuang		Kengkok-Dong		Dondeng		Nakathang		Kadan	
	Customary law	Village regulations <sup>18</sup>	Customary law	Village regulations	Customary law	Village regulations	Customary law	Village regulations	Customary Law	Village Regulations <sup>19</sup>	Customary Law	Village Regulations <sup>20</sup>	Customary Law <sup>21</sup>	Village Regulations
Using a boat									37					
Grazing	38					39			40		41			
Injuring/capturing/killing a crocodile														
Damaging crocodile habitat														
Blocking crocodile pathways														
Expanding agriculture														
Using chemical substances														
Blocking water channels during breeding season														
Granting land concessions														
Damaging signs														

<sup>37</sup> In Dondeng using a boat in Turtle Lake is prohibited.

<sup>38</sup> In Taleo and Natai villages grazing is prohibited in the Temple Forest and Pa Spirit Forest.

<sup>39</sup> The Head of Houamuang village reported that the village allows grazing in the cemetery, although this is not provided in the village regulations.

<sup>40</sup> In Dondeng grazing is permitted in the sacred forest and the cemetery.

<sup>41</sup> In Nakathang grazing is prohibited in the sacred forest inside the village, but permitted in the sacred forest outside the village. Grazing in the cemetery is avoided out of fear and respect.

## 4.2 Penalties

Customary law and statutory law both have ‘administrative sanctions’, or fines. Under customary law in the villages surveyed, fines are usually paid by offering animals whose meat is then distributed by the Kuan Cham Ban. Taleo village imposes customary fines for hunting in the Pa Sacred Forest, but uses a hybrid customary/statutory fine for hunting large animals in Suea Khok Forest around the sacred lake, where fines for violations are money as well as one bottle of alcohol. Nanokkhian village imposes the customary fine for hunting in the sacred forest, but imposes a monetary fine for hunting in the village forest that was allocated by the district government.

National statutory law and village regulations create mechanisms that enable village administrative bodies to monitor compliance and enforce the law, and rely on the courts to resolve disputes. In the case of statutory law state authorities state both levy fines and determine criminal penalties. Under customary law the community levies fines, but it is the spirits that mete out more severe penalties. This is the case as well for the only site under customary protection that is also a designated conservation area under village regulations – Nong Mea Hang in Kengkok-Dong village.

Statutory law provides for imprisonment as a penalty for criminal violations. Under customary law in the villages surveyed it is the spirits—rather than the state or the community—that impose the most severe penalties, ranging from bad luck to sickness to death. The spirits are therefore the judges under customary law; the Kuan Cham Ban acts on behalf of the spirit judges. An offender is not locked away, but suffers the punishment of the spirits within the community where all can witness it. Villagers’ belief in the power of the spirits to cause bad luck or some other misfortune or death means that customary ‘criminal’ law is primarily self-policing and self-enforcing.

If someone who violates customary law is not caught in the act, it is possible that no one, other than the offender himself or herself, would be aware of the offense until some kind of misfortune strikes. At that point, the person suffering the misfortune would follow the instructions of the fortune teller and the Kuan Cham Ban, who would explain what offerings have to be made to placate the spirits and avoid any further penalty. Therefore, customary ‘criminal’ law does not require rules of evidence. The fact that misfortune occurs is the evidence of a violation. Customary law also provides for ‘criminal procedure’. The Kuan Cham Ban mediates with the spirits to understand what must be done to atone for the offense and carries out the ritual required.

As with statutory law, the severity of customary fines and spiritual penalties depends on the gravity of the offense. Fines and spiritual penalties under customary law vary from village to village. Customary fines and spiritual penalties are similar in all villages surveyed, and do not appear to be related to one specific ethnic group. Nakathang and Dongtabeng villages, whose population is 100% Katang, and Nanokkhian village, whose population is 100% Makong, report the same fines and spiritual penalties as villages whose populations are 100% Tai Kadai and villages whose populations include two or more ethnic groups.

Customary law in the villages surveyed in most cases applies equally to villagers and outsiders. Exceptions are Dondeng and Dongtabeng villages. In Dondeng village, the customary spiritual penalty is more severe for a villager than for outsiders. If a villager catches a turtle, takes water, fishes or uses a boat in Turtle Lake/Nong Tao/Nong Pa Fa the spiritual penalty is sickness or death. If an outsider commits the same violations, the spiritual penalty is sickness or misfortune. On the other hand, in Dongtabeng village spiritual penalties are more severe for outsiders than for villagers. In Dongtabeng, if a villager cuts a tree or collects NTFP in the Don Haw Sacred Forest the spiritual penalty is bad luck or sickness; if an outsider commits the same violation the spiritual penalty could be death.

Customary law allows offenders to mitigate their punishment by asking the fortune teller what must be done to placate the spirits and asking the Kuan Cham Ban to communicate with the spirits and organize appropriate rituals.

Sub-sections 4.2.1-4.2.6 provide a comparison of penalties under customary law; national statutory law; and village regulations. Seven of the 13 villages for which this project gathered and analysed information on customary law, village regulations, or both are located inside the Xe Champhone



Ramsar site. Three of those villages, which were included in the customary law survey for this project—Tansoum, Houamuang, and Xakhun-Nua—did not report any customary fines or penalties. Xakhun-Nua shares its sacred forest with Dongmuang and follows the customary law of Dongmuang. The sacred forest in Houamuang is very small, with only one large tree, so there has not been a need for customary law governing hunting or cutting trees. Tansoum village does not have its own sacred forest but shares the sacred forest of another village and follows the rules of that village. Kadan village was not included in the customary law survey.

Appendix 5 provides an overview of all national and village-level statutory penalties and all customary penalties.

#### **4.2.1 Hunting**

Administrative fines and criminal penalties under the Law on Aquatic Animals and Wildlife and the Penal Law apply everywhere in the country. There are no administrative sanctions if the value of the damage is less than 200,000 kip. Once that threshold is exceeded, fines are specific to the value of the damage and to the category of wildlife involved. If the value of the damage is greater than 200,000 kip, for a first offense the fine is double the value of the damage, regardless of the category of the wildlife involved.

It is only with repeated violations that fines are pegged to the category of the wildlife affected: triple the value of the damage for Category I wildlife; double the value of the damage for Category II wildlife (which is the same as the fine for a first offense); and simply the value of the damage for Category III wildlife, which means that the fine for repeated offenses involving Category III wildlife is less than the fine for a first offense. Administrative sanctions include seizure of assets. The criminal penalty for any hunting that is inconsistent with regulations is imprisonment for a period of three months to two years. The criminal penalty is not linked to administrative fines and could be imposed for a first offense.

Fines for hunting in violation of customary law are specific to the violation and in some cases specific to the place where the violation was committed. Customary law governs hunting generally, and taking crocodiles in particular, in nine villages. Two of those villages—Kengkok-Dong and Dondeng—are inside Xe Champhone Ramsar site. Customary fines vary from village to village and in some villages depend on the status of individual protected areas within the village.

Unlike national statutory law, which does not link administrative fines and criminal penalties, most villages impose the customary fine of slaughtering an animal while the spirits may impose a spiritual penalty that ranges from bad luck to death.

Exceptions are found in Kengkok-Dong and Taleo villages. In Kengkok-Dong, there is no fine for catching turtles in Sacred Lake/Nong Pou Ta or for hunting large animals in the cemetery: only spiritual penalties ranging from bad luck, to sickness, to death for a violation in Nong Pou Ta, and sickness or bad luck for a violation in the cemetery. Taleo village has a customary fine and penalty for hunting in Pa Sacred Forest; no fine or penalty for hunting large animals in Pa Song Pa Dang village forest, although such hunting is prohibited; and the hybrid customary/statutory penalty described above for hunting large animals in Suea Khok Forest around the sacred lake.

Fines established by village regulations are specific to the violation and are not related to the value of the damage, as are the fines established by the Law on Aquatic Animals and Wildlife. Fines under village regulations are pegged to the category of the wildlife involved only for violations involving the Siamese crocodile in Tansoum, Kengkok-Dong, and Taleo villages. The fines in all of those villages are 5,000,000 kip for a first offense, 10,000,000 kip for a second offense, and 30,000,000 kip for a third offense. The other village regulations that govern hunting simply prohibit all hunting in the conservation areas designated by the regulations.

Fines under village regulations vary widely by village. A first-time offender in Houamuang village is fined 300,000 kip, while the fine for a first offense in Tansoum village is 500,000 kip and in Taleo village is 1,500,000 kip. Regulations in the three villages create two conservations areas in each

village. Only in Kengkok-Dong village do the regulations establish different fines for each conservation area in the village, with higher fines for violations in Nong Mea Hang than in Nong Kan.

Kengkok-Dong is also the only village whose regulations impose a customary fine: the fine for a third offense is one buffalo, rather than a monetary fine. In Tansoum and Houamuang villages and for violations in Nong Kan in Kengkok-Dong village, there are no fines for a third hunting offense: the offender is detained and the case referred to district authorities. Taleo village is the only one whose regulations impose a fine for a third violation of the general hunting ban.

Under all village regulations evidence is seized for all hunting offenses and official warnings are issued for first and second offenses. Education is also required for first offenders in all villages, except for violations of the general hunting ban in Taleo village, where it is not stipulated. Village regulations do not include criminal penalties and do not refer to spiritual penalties.

To summarize the correlations and discrepancies among national, customary and village fines for hunting:

- National statutory fines are based on the value of the damage and on the category of wildlife involved;
- Customary fines are specific to the violation and, in some cases, to the place where the violation was committed. As with national statutory fines, customary fines are scaled according to the gravity of the violation and, in some cases, depend on the species (but not the statutory category) of wildlife involved;
- Fines under village regulations are specific to the violation, are not related to the value of the damage and are related to the category of wildlife involved only in the case of violations involving the Siamese crocodile.

#### **4.2.2 Fishing**

The Fisheries Law, unlike the Law on Aquatic Animals and Wildlife, stipulates administrative sanctions for violations that cause damage valued at less than 200,000 kip. Once that threshold is exceeded fines are specific to the value of the damage and to the category of the aquatic fauna involved. If the value of the damage is greater than 200,000 kip, for a first offense the fine is double the value of the damage, regardless of the category of the aquatic fauna involved.

It is only with repeated violations that fines are pegged to the category of the aquatic fauna affected: triple the value of the damage for protected/Category I aquatic fauna; double the value of the damage for controlled/Category II aquatic fauna (which is the same as the fine for a first offense); and simply the value of the damage for common/Category III aquatic fauna, which means that the fine for repeated offenses involving common/Category III aquatic fauna is less than the fine for a first offense where the value of the damage caused by the first offense is greater than 200,000 kip. Administrative sanctions include seizure of assets. Under the Fisheries Law and the Penal Law the criminal penalty for illegal fishing—imprisonment of three months to one year—is less than for illegal hunting. The criminal penalty is not linked to administrative fines and could be imposed for a first offense.

Customary law governs fishing in seven villages, including Kengkok-Dong and Dondeng, which are inside the Xe Champhone Ramsar site. Customary fines for fishing violations reflect more hybridization with statutory law than do the fines for violations of customary laws governing hunting.

Purely customary fines are imposed only in Dondeng village, where the fine for individual fishing in Turtle Lake/Nong Tao/Nong Pa Fa is slaughtering an animal, ranging from a chicken, to a pig, to a buffalo, depending on the seriousness of the violation, plus the spiritual penalty of sickness or death.

Xe village imposes a hybrid fine for individual fishing in Lake/Nong Xiengkhet, which is linked to Don Haw Sacred Forest/Mahesak: for a first offense, the fine is 100,000 kip; for a second offense, 200,000 kip; and for a third offense, 300,000 kip plus slaughtering an animal, ranging from a chicken,

to a pig, to a cow, to a buffalo, depending on the seriousness of violation. Each of these fines is accompanied by the spiritual penalty of sickness or bad luck.

Other 'hybrid' fines are:

- in Kengkok-Dong village, for fishing in Nong Mea Hang, one buffalo or the cash equivalent;
- in Taleo village, for fishing in the sacred lake a fine of 100,000 kip and one bottle of alcohol for a first offense; 200,000 kip and one bottle of alcohol for a second offense; and 300,000 kip and one bottle of alcohol for a third offense.
- in Dongtabeng village, for individual fishing in Thangoung Noy Lake and Laad stream a fine of 200,000 kip, one pig, and one bottle of alcohol; and
- in Nakathang village, for individual fishing in Lake Fang Dang a fine of 1,000,000 kip.

Two villages—Taleo and Kadan—have regulations that establish different penalties for fishing with common fishing equipment and for fishing with illegal methods and equipment, such as explosives, poison, and electric shock. In Kadan and Taleo villages, the fine for a first offense of fishing with common equipment is 500,000 kip and the fine for a second offense is 1,000,000 kip. Kadan village, which is inside the Xe Champhone Ramsar site, does not fine a third offense, but detains the offender and reports the case to district authorities. Taleo village detains the offender and reports the case on a third offense, in addition to fining the offender 1,500,000 kip.

For fishing with illegal methods, there are significant differences in the fines imposed under village regulations. A first offense in Kadan village is fined 5,000,000 kip while a first offense in Taleo village is fined 1,500,000 kip. In Taleo village, the fine for a second offense is 3,000,000 kip, and for a third offense the fine is 5,000,000 kip, the offender is detained and the case is reported to district authorities. Kadan village does not provide for a third offense. On the second offense, the offender is fined 10,000,000 kip, detained, and the case reported to district authorities.

Two villages—Tansoum and Houamuang, both inside the Xe Champhone Ramsar site—have similar fines for fishing in the conservation areas created under village regulations. Fines for a first offense are 500,000 kip and 300,000 kip, respectively. Fines for a second offense are the same: 1,000,000 kip. For a third offense in both villages there is no fine, the offender is detained and the case reported to district authorities.

The regulations in Kengkok-Dong village, also inside the Xe Champhone Ramsar site, establish two conservation areas and different penalty regimes for each. For a first offense in Nong Kan, the fine is 300,000 kip, while for a first offense in Nong Mea Hang the fine is 500,000 kip. A second offense in Nong Kan is fined 500,000 kip and in Nong Mea Hang is fined 1,000,000 kip. For a third offense in Nong Kan there is no fine, the offender is detained and the case reported to district authorities. A third offense in Nong Mea Hang draws a customary fine—one buffalo—and the offender is detained and the case reported to district authorities.

As with fines for hunting in violation of village regulations, the range of fines for prohibited fishing is substantial and impossible to correlate with fines under national statutory law.

### **4.2.3 Cutting trees and damaging or destroying forests**

Administrative fines and criminal penalties under the Land Law, the Forestry Law, and the Penal Law apply everywhere in the country. Under the Forestry Law, the damage threshold is even higher than it is under the Law on Aquatic Animals. There are no administrative sanctions if the value of the damage is less than 1,000,000 kip. Once that threshold is exceeded a first offense is fined at the value of the damaged forest resources; for subsequent or habitual violations, the fine is double the value of the damaged resources. Both the Forestry Law and the Land Law require payment of compensation for damage caused. The Penal Law establishes the same punishment as for fishing offenses—three months to one year of imprisonment—and adds a more severe punishment of one to five years imprisonment for offenses that cause 'substantial damage'.

Customary law governs trees and forests in nine villages. Three of them—Tansoum, Kengkok-Dong and Dondeng—are inside the Xe Champhone Ramsar site. Customary fines, which are applied in most villages, are in most cases identical to the fines for hunting and fishing violations. Taleo village applies two ‘hybrid’ fines. For cutting trees in Suea Khok Forest around the sacred lake fines range from 100,000 kip for a first offense to 300,000 kip for a third offense and include one bottle of alcohol for each level of offense.

There are additional, unspecified spiritual penalties for villagers. The fine for cutting large trees in the Pa Song Pa Dang village forest is 100,000 kip and one bottle of alcohol, with no additional spiritual penalties. Cutting trees in the temple forest is prohibited, but no customary fines or penalties were reported. Nanokkhan village applies a fine of 100,000-200,000 kip for cutting trees in the village forest established/allocated under statutory law; there are no additional spiritual penalties.

Village regulations govern forests in only two villages—Tansoum and Taleo. In Tansoum village, the fine for a first offense of logging, burning or otherwise destroying forest is 500,000 kip, for a second offense 1,000,000 kip, and for a third offense there is no fine—the offender is detained and the case reported to district authorities. In Taleo village, the fines for first and second offenses of burning forest are lower—200,000 kip and 500,000 kip respectively. There is a fine for a third offense—1,000,000 kip—and the offender is detained and the case reported to district authorities.

Protection of trees and forests is the most important issue for customary law in the villages surveyed—governed in nine villages—yet regulations in only two villages address it. As noted in the introduction to this section, this disparity likely reflects the focus on fauna, rather than flora, of the international organizations that promoted the development and adoption of the village regulations.

#### **4.2.4 Collecting NTFP**

The same national laws that govern forests also govern NTFP. All administrative fines are the same for NTFP as they are for other forest resources. See sub-section 4.2.3 for the description and analysis of the fines and penalties imposed under those laws and their relationship with customary law and village regulations. Unauthorized collection of NTFP is the only offense involving natural resources for which the Penal Law (Article 143) specifies a fine as well as imprisonment (see Section 3.3.8).

Customary law in four villages governs NTFP; one of those villages, Dondeng, is inside the Xe Champhone Ramsar site. In three villages—Taleo, Nakathang, and Dongtabeng—traditional customary fines and spiritual penalties are imposed for violations involving NTFP. Taleo village also imposes hybrid penalties for collecting NTFP that are identical to the fines and penalties for cutting trees in Suea Khok Forest around the sacred lake and for cutting large trees in Pa Song Pa Dang village forest.

No village regulations address the issue of NTFP.

#### **4.2.5 Taking water and using a boat**

The Water and Water Resources Law and the Land Law govern the use of water. Neither law stipulates specific administrative sanctions for violations, but both laws state that penalties must correspond to the gravity of the violations. The Water and Water Resources Law provides that administrative sanctions must be determined on a case-by-case basis. The Land Law provides that offenders may be required to pay compensation and may lose land rights. The Penal Law does not have specific provisions related to violations of water law. No national law specifies penalties for the use of boats.

Two villages—Kengkok-Dong and Taleo—regulate the use of water and the use of boats in sacred lakes. Kengkok-Dong village levies the customary fine of offering an animal to the spirits for taking water from Turtle Lake/Nong Tao/Nong Pa Fa or using a boat there. The spiritual penalty is sickness or death. For taking water from the sacred lake in Taleo village or using a boat there, the fines are a hybrid—100,000-300,000 kip for first, second and third offenses plus one bottle of alcohol for each level of offense—there are no associated spiritual penalties.

Regulations in two villages—Tansoum and Kadan—govern taking water but do not address the use of boats. In Tansoum, the fines for taking water for production purposes are 500,000 kip for a first offense and 1,000,000 kip for a second. For a third offense, there is no fine; the offender is detained and the case reported to the district authorities. In Kadan, the fine for taking water for agriculture in excess of the quantity allowed is double the fine for a violation in Tansoum: 1,000,000 kip for a first offense and 2,000,000 kip for a second one. On the second offense, the case is reported to district authorities, but the offender is not detained.

Customary law in the villages surveyed is closer in spirit to national statutory law governing use of water, dealing with violations on a case-by-case basis depending on the seriousness of the offense. Village regulations do not allow for case-by-case fines and penalties.

#### **4.2.6 Grazing**

There are no statutory administrative or criminal sanctions that specifically penalize grazing that has a negative impact on the environment, nor does the Penal Law address the issue.

Customary law in two villages—Taleo and Nakathang, neither of them inside the Xe Champhone Ramsar site—governs grazing with customary fines applied in both. The spiritual penalties in both villages are sickness or bad luck, rather than sickness or death.

No village regulations deal with grazing.

## **5. IMPLICATIONS FOR GOVERNING RAMSAR SITES IN LAO PDR**

The hypothesis of this study was based on the assumption that there would be conflicts between customary law and national statutory law. The hypothesis, drafted in 2010, did not anticipate the village regulations that were adopted in 2011 and 2012. This study and analysis have identified questions of how national statutory law may be interpreted in the context of the Ramsar Convention and Decree No. 50/PM. This analysis has also identified areas of actual and potential conflict between national statutory laws, between national statutory law and the customary law that governs natural resources in the villages in and around the Xe Champhone Ramsar site, and between national statutory law and village regulations.

The findings of the study indicate that:

- customary law in the villages surveyed is followed by a much larger percentage of the population than that which follows statutory law, and therefore provides the more effective basis for wetland resource conservation and protection;
- there are few actual or potential conflicts between national statutory law and customary law; and
- there are in fact more actual and potential conflicts between statutory laws that govern aspects of Ramsar sites, and between recently-adopted village regulations and statutory and customary law.

There are several statutory laws and institutions at national and sub-national levels of government that directly and indirectly regulate and administer Ramsar sites in Lao PDR. Decree No. 50/PM provides the foundation for this project's approach to assisting central government authorities as they collaborate with provincial and village authorities to ensure the participation of local people in developing regulations for the Xe Champhone Ramsar site.

However, Decree No. 50/PM does not provide a basis for resolving potential conflicts among several national laws that may be interpreted as governing Ramsar sites. In the absence of a specific National Assembly law or PM Decree governing wetlands and Ramsar sites, any relevant ministry may issue regulations, which creates the potential for overlapping mandates and conflicting regulations.

Therefore, it is recommended that a PM Decree governing wetlands and Ramsar sites be issued to provide legal certainty for the further regulation of wetlands and Ramsar sites in Lao PDR. This PM Decree would provide the basis for regulations governing individual Ramsar sites. The proposed decree would: supplement and support Decree No. 50/PM; provide guidance for implementation of Lao PDR's obligations under Ramsar and other international treaties governing wetland ecosystems and species; resolve actual and potential conflicts among statutory laws with respect to Ramsar sites; and establish the framework for regulations governing individual Ramsar sites.

## **5.1 The Status of Ramsar Sites in the Context of National Statutory Law**

The issues of the interaction between obligations under the Ramsar Convention, provisions of national statutory law and the power to make regulations affecting Ramsar sites are the first fundamental questions that need to be addressed.

The Constitution is clear that the obligations in multilateral environmental agreements to which Lao PDR is a Party are directly effective in the country. However, the way in which individual provisions of these agreements interact with provisions of national statutory law is not so clear.

The status of Ramsar sites is determined by regulation on the basis of place. Ramsar and the CBD are the international agreements that apply and two of the national statutory laws that regulate on the basis of place are consistent with those international agreements. The first obligation of a Party to the Ramsar Convention is the conservation of its Ramsar sites and wise use of its wetlands generally. The Law on Aquatic Animals and Wildlife provides that central government authorities are supposed to collaborate with local authorities to identify 'conservation areas'. The Law on Aquatic Animals and Wildlife defines conservation in a way which complements Ramsar's definition of 'wise use' and the prohibitions in the Land Law on activities that cannot be carried out in wetlands are also consistent with Ramsar's wise use.

On the other hand, the Forestry Law—while it regulates on the basis of place—does not define 'conservation' and defines 'forestlands' to mean any plot, whether or not it has forest cover, that the Government declares to be forestland. It is also possible that certain areas protected under customary law—sacred forests and cemeteries—may be automatically classified as a sub-category of protection forests under the Forestry Law (see section 5.4, below).

To ensure that management of wetlands and of all current and future Ramsar sites in the country is consistent with Ramsar principles and guidance, it is recommended that the proposed PM Decree:

- state explicitly that wetland ecosystems in Lao PDR are to be managed according to the wise use guidelines adopted by Ramsar and that regulations specific to each Ramsar site will apply national sectoral laws on a case-by-case basis, to the extent that their provisions are consistent with wise use under Ramsar; and
- state explicitly that Xe Champhone and all current and future Ramsar sites in the country are exempt from being declared as 'forestland' for the purposes of the Forestry Law, so that they can be managed independently as wetland ecosystems under site-specific regulations to be approved by the Provincial and National Committees and avoid any conflicts with the Forestry Law.

## **5.2 Authority to Adopt Regulations that Apply to a Ramsar Site**

All six of the recently-adopted regulations for villages in and around the Xe Champhone Ramsar site were approved at the district level. It was reported that the provincial secretariat and implementation working team responsible for the management of the Xe Champhone Ramsar site were involved in the process of developing and approving the village regulations, although no one from the Provincial Committee responsible for Ramsar signed the regulations. It is not clear whether the National Committee was consulted or gave its approval. Any regulations for villages inside any Ramsar site should be approved by the National Committee. This includes existing regulations and any amendments to them, and any regulations made in the future.

- The proposed PM Decree must clarify the relationships among the National Committee, the provincial secretariat and implementation working team for the Ramsar sites and the district administration with respect to Ramsar sites. This is necessary to avoid overlapping or conflicting jurisdictions and mandates that could have a negative impact on the management of the Ramsar site. The proposed PM Decree should also stipulate that the clarifications of jurisdictional relationships must be communicated directly to all provincial, district and village authorities involved.

### **5.3 Potential Conflicts among National Statutory Law, Customary Law and Village Regulations: Prohibitions and Restrictions on Hunting and Fishing**

In the Xe Champhone Ramsar site, customary law and village regulations govern hunting and fishing primarily on the basis of place, with the exception of village regulations governing the Siamese crocodile. National statutory law governs hunting and fishing on the basis of species as well as on the basis of place. Customary law governing hunting and fishing in the villages surveyed can be considered to be consistent with the conditions for customary and household use specified in the Law on Aquatic Animals and Wildlife.

Statutory law allows customary and household use only of species in categories II and III. Only one of the villages surveyed in the Xe Champhone Ramsar site reported any customary protection of the Siamese crocodile. Given the findings of this project, there does not appear to be any basis for conflict between national statutory law, customary law and existing and future village regulations as long as hunting and fishing in Ramsar sites are regulated on the basis of species.

However, if an entire Ramsar site is regulated on the basis of place, as a ‘conservation area’ under the Law on Aquatic Animals and Wildlife, the law’s generalized prohibition on hunting and fishing in conservation areas would apply to the entire area of any village located inside the Ramsar site. This would nullify the nuanced customary recognition of different restrictions and degrees of protection accorded to different places within the villages. It would also override the site-specific prohibitions for the conservation zones established under the regulations in the villages in and around the Xe Champhone Ramsar site.

- See the first recommendation under section 5.1, above. If this is done in the proposed PM Decree, regulations for Ramsar sites can govern hunting and fishing on the basis of species. This would be entirely consistent with national law governing protected species generally. It would also be consistent with the regulations in villages in and around the Xe Champhone Ramsar site that prohibit any action that affects a Siamese crocodile whether the crocodile is inside or outside of a conservation area designated under the regulations. It would also be consistent with customary site-specific variations in prohibitions and restrictions within each village inside the Xe Champhone Ramsar site, and would allow for similar site-specific regulations in other Ramsar sites.

### **5.4 The Status of Sacred Forests and Village Cemeteries**

The Forestry Law and the Decree on the Protection Forest are not clear on this issue.

If all sacred forests and cemeteries are automatically recognized as village conservation forests, which are a sub-category of protection forests under the Forestry Law and its implementing decrees, then there are 12 forest areas with statutory protection inside the Xe Champhone Ramsar site which would be subject to statutory restrictions on the use of forests and NTFP.

While the Forestry Law recognizes customary use of forests and forest products, it allows such use only in forests that are not designated as protection, conservation or production forests. If sacred forests and cemeteries are automatically classified as a sub-category of protection forests, the penalties for violations of the Forestry Law, particularly in the case of NTFP, are substantial and would create a significant burden for the people of the Xe Champhone and other Ramsar sites who rely on subsistence use of NTFP and other wetlands products.



- See the recommendations under section 5.1, above. The proposed PM Decree should stipulate that customary protected areas, including sacred forests and cemeteries, inside Ramsar sites, are exempt from classification under the Forestry Law so that they can be managed independently under the regulations for each Ramsar site and local customary law, thus avoiding any conflicts with the Forestry Law.

## **5.5 Potential Conflicts among National Statutory Law, Customary Law and Village Regulations – Fines and Other Penalties**

Hybrid fines, particularly for fishing violations, indicate that customary law has already developed a mechanism for integrating statutory characteristics. This can be the basis for creating a structure of fines for violations in the Xe Champhone Ramsar site, and in other Ramsar sites, that would be consistent with both statutory and local customary law.

### **5.5.1 Fines**

There is an anomaly in the fine structure under the Law on Aquatic Animals and Wildlife. The fine for repeated offenses involving Category III wildlife is less than the fine for a first offense. It would be advisable for this to be revised in a future amendment to the law.

Under customary law in all of the villages surveyed in and around the Xe Champhone Ramsar site, there is no discrimination with respect to fines: they are the same for outsiders as they are for village residents. Therefore, there is no rule of law question with respect to customary fines. They are applied equally to everyone who violates the law.

Fines under recently adopted regulations in villages inside the Xe Champhone Ramsar site vary substantially from village to village. A first violation of using prohibited fishing methods in Taleo/Natai villages is triple the fine for the same offense in Tansoum. The fine for a first offense of taking water in Kadan village is double the fine for the same offense in Tansoum. Since the fines apply equally to villagers and outsiders, the fine structure creates a perverse incentive to violate the regulations in Tansoum rather than in Kadan.

Fines under village regulations are also not consistent in all cases with fines under national statutory law. Fines for hunting and fishing violations under village regulations are specific to the violation and are not related to the value of the damage, as are the fines established by the Law on Aquatic Animals and Wildlife. In addition, there may be inconsistencies in fines under the Law on Aquatic Animals and Wildlife and the fines imposed by village regulations, but that is impossible to determine precisely without knowing the value of the damage caused by each individual violation and, in the case of the fine for a third fishing offense in Nong Mea Hang in Kengkok-Dong village, the value of a buffalo.

In several villages in and around Xe Champhone Ramsar site, and in the case of fishing in most of those villages, fines for violations of customary law are a hybrid of customary and statutory fines: for example, a fine of one animal plus one bottle of alcohol. Following consultation with villagers who live in and around a Ramsar site, it would be advisable to enable structures for ‘hybrid’ fines that incorporate both customary and statutory aspects of fines and are consistent with both national statutory law and customary law.

Monetary fines should be established at a level that creates an effective deterrent. Rather than establishing fines as a fixed monetary value, which is likely to decline in real terms over time, it would be advisable to consider the possibility of expressing monetary fines in terms of the violator’s income or on the basis of market values. Doing this would contribute to ensuring that fines are proportional to the economic capacity of the violator and/or to the actual market value of the natural resource involved. The Forestry Law, which provides for determining fines on the basis of the market value of the natural resource involved, is an example of how this could be done.

Under the regulations in villages in and around Xe Champhone Ramsar site, as under customary law, fines are distributed among the villagers. Under national statutory law, fines must be sent to the

national treasury. It is not clear whether the local authorities who adopted the village regulations have the power to retain, and distribute locally, money collected as fines.

- The proposed PM Decree should enable structures for fines that are specific to each Ramsar site and that create deterrents that are specific to the economic capacity of the violator and/or to the market value of the natural resource involved in the violation.
- The proposed PM Decree should stipulate that fines under regulations for individual Ramsar sites could be higher for violations inside the core zone or zones than for violations outside the core zone(s), but that fines must be consistent for each type of zone.
- The proposed PM Decree should state explicitly that fines for violations of the regulations of Ramsar sites can be retained by the respective provincial Ramsar authorities and distributed among villagers and/or allocated to the costs of managing the respective Ramsar sites. This would require a waiver of the application of the Law on the State Budget.
- All existing village regulations must be reviewed and harmonized with the proposed PM Decree and with the regulations for the Xe Champhone Ramsar site.

### **5.5.2 Other penalties**

Only national law imposes statutory criminal penalties; village regulations cannot do that. Spiritual penalties are the customary equivalent of criminal penalties under statutory law. Spiritual penalties are the only instance under customary law in the villages surveyed in which sanctions against villagers and outsiders are different. That is the case in only two villages, and in one of those villages the spiritual penalty for villagers is more severe than the penalty for outsiders.

Since spiritual penalties are self-enforcing, depending on the belief of the offender, it is not possible to integrate them into the proposed PM Decree or eventual regulations for Ramsar sites. This means that 'double jeopardy' is possible: being 'convicted' twice for the same offense and suffering a spiritual penalty under customary law in addition to imprisonment under national statutory law. Although it is not desirable to punish an offender twice for the same offense, in the particular case of spiritual penalties it is unavoidable, since the effect of such penalties depends entirely on the belief of the offenders themselves and not on any external influence.

'Outsiders', who are often unaffected by self-enforcement mechanisms, tend to be those who violate both customary law and statutory law. They willingly infringe customary rules in order to obtain the benefit they seek, whether it is cutting trees or fishing, by paying monetary fines or offering a buffalo, pig or chicken to the spirits. Thus they technically comply with customary law, but continue to violate it because they perceive the penalties as insignificant. During the customary law survey, villagers recounted examples of outsiders suffering spiritual penalties, including death. However, it was not possible to determine whether all outsiders who violate customary law actually suffer spiritual penalties. Under statutory law, including regulations for Ramsar sites, villagers and outsiders alike must fully comply regardless of whether they respect customary law or not.

## 6. IMPLICATIONS FOR REGULATION OF THE XE CHAMPHONE RAMSAR SITE

The regulatory framework governing the Xe Champhone Ramsar site includes: the Ramsar Convention; several national laws; the national and provincial decrees that establish governing bodies; regulations in some villages in and around the Ramsar site; and, most important of all, the customary laws explained in section 5. For this framework to be more effective, the already-substantial body of statutory law needs to be supplemented by a PM Decree, and Xe Champhone and other Ramsar sites will require site-specific regulations.

When statutory law—in this case the regulations for the Xe Champhone Ramsar site—incorporates elements of customary law, people’s perceptions of both systems of laws are changed. This is positive for both legal systems. The MoJ/UNDP study has demonstrated the commitment of the government to do exactly this. This survey has demonstrated that customary law has already adopted some characteristics of statutory law, creating examples that can be used in developing the regulations.

This study has examined and analysed the components of governance: the customary and statutory laws and, to some extent, the institutions and the processes that determine how decisions are made that affect the natural resources of the Xe Champhone wetlands and the people who depend on them. The principles of governance—accountability, transparency, participation, and the rule of law—must also be taken into account in developing regulations for the Xe Champhone Ramsar site. These principles are particularly important in Xe Champhone given the relatively large population living in and around the site: more than 20,000 people in 40 villages, not including non-locals who regularly visit the area.

In general, regulations for the Xe Champhone Ramsar site must:

- be consistent with the proposed PM Decree which will incorporate international obligations in the Ramsar Convention, and the wise use guidance developed under Ramsar, CITES and the CBD;
- be consistent with national statutory law;
- balance the constitutional guarantees of unity, equality, non-discrimination and freedom of belief among all ethnic groups living in and around the Ramsar site;
- balance maintaining the dynamism of customary law while ensuring that penalties are equitable; and
- enable the authorities responsible for the Ramsar site at the provincial and district levels to coordinate with village authorities to further define village-specific regulations that may incorporate the customary law of each village.

Specifically, regulations for the Xe Champhone Ramsar site must:

- Include provisions that reflect all of the bases for regulation found in national statutory law without compromising customary law and *vice versa*. The ethnic groups living inside the Ramsar site should not be forced to abandon their customary law unless and until they choose to do so. The proposed PM Decree will establish the basis for resolving conflicts between statutory laws and for accommodating eventual conflicts between customary and statutory law in ways that ensure that the Ramsar site can be wisely used.
- Include a provision that they must be reviewed periodically with the villagers who live inside the site, in order to do two things:
  1. review and compare experience in implementing the regulations in all villages; and
  2. examine the degree to which the ecological character of the Ramsar site has changed, due to climate change, activities outside the Ramsar site, and any other factors that may have affected the wise use of the wetlands, whether positively or negatively.

- Take into account the need to mitigate the effects of activities undertaken outside the site. Although Nanokkhian village is situated outside of the Ramsar site, it is within the basin that includes the Xe Champhone wetlands. The status under national statutory law of the 100 ha district protected forest allocated to Nanokkhian village (see sub-section 3.5.3.7) should be clarified. The situation in Nanokkhian village, with the sugar plantation and factory nearby, demonstrates that effective management of the Xe Champhone Ramsar site will require a scientific basin-wide approach to preserve the wetlands and the people and endangered species that depend on them.
- Be harmonized with village regulations for the five villages inside the Xe Champhone Ramsar site.

## 7. FINAL CONSIDERATIONS

Top-down state-based efforts to regulate customary law within a constitutional framework have often proven ineffective and even counterproductive in achieving a sustainable blend of justice sources within a unified legal framework.<sup>42</sup>

The current project follows up on the MoJ/UNDP project, and is the first test of integrating customary and statutory law governing natural resource management in Lao PDR. Based on the results of this study, this project does not suggest that all customary law should be codified and it agrees with the MoJ/UNDP report in recommending that customary law should not be regulated by the state. Rather, it is hoped that the findings of this project will serve as an incentive to consolidate the regulatory regime for wetlands and Ramsar sites in Lao PDR and to expand the work begun by the MoJ/UNDP study to encompass broader and deeper further study of customary law governing natural resources.

In implementing the recommendations of this study, additional issues that will need to be taken into account include:

- **Dispute resolution** – Keeping in mind the statement from the MoJ/UNDP report quoted at the beginning of this section, creating new statutory dispute resolution mechanisms is not recommended. It will be more effective to rely on existing mechanisms at the community level, including the Village Mediation Unit and Village Administrative Authority, and provide them with training and information on wetland resource conservation.
- **Public awareness** – Not only the people living in and around Ramsar sites, but all citizens need to be aware of the value of wetlands, the services they provide, and of the status of Ramsar sites and the international obligations related to them. There will need to be ongoing initiatives to raise awareness about government policy for wise use of Ramsar sites, the national regulatory regime for all Ramsar sites and the regulations that govern individual Ramsar sites. In addition to making people aware of laws and regulations, efforts to increase people's understanding of the importance of wetlands and wetland resources should also highlight the benefits of participating in their conservation and sustainable use. Initiatives for raising awareness about wetlands conservation can be undertaken on 2 February of each year, which is designated as World Wetlands Day. They can also be carried out using national days created under statutory laws, including 1 June as National Forest Day under the Forestry Law, and 13 July as National Fish Releasing and Conservation of Aquatic Wildlife Day under the Law on Aquatic Animals and Wildlife, combined with traditional conservation periods observed under the Buddhist calendar (June to September).
- **Planning and consultation** – Comprehensive plans for the management and wise use of wetlands resources in Ramsar sites must be harmonized with specific regulations for each site. Management plans must integrate sustainable customary management practices and their development must incorporate transparent consultation with the people living in and around Xe Champhone and other Ramsar sites, in order to safeguard local livelihoods and provide additional livelihood options such as sustainable tourism.

Nature conservation and culture preservation have strong support from the Constitution, government policy and statutory law of Lao PDR. The country has begun the important process of clarifying the relationships between the customary and statutory legal frameworks. Consolidating the regulatory regime for Ramsar sites in the country and developing regulations for the Xe Champhone Ramsar site is a strategic opportunity to move that process forward.

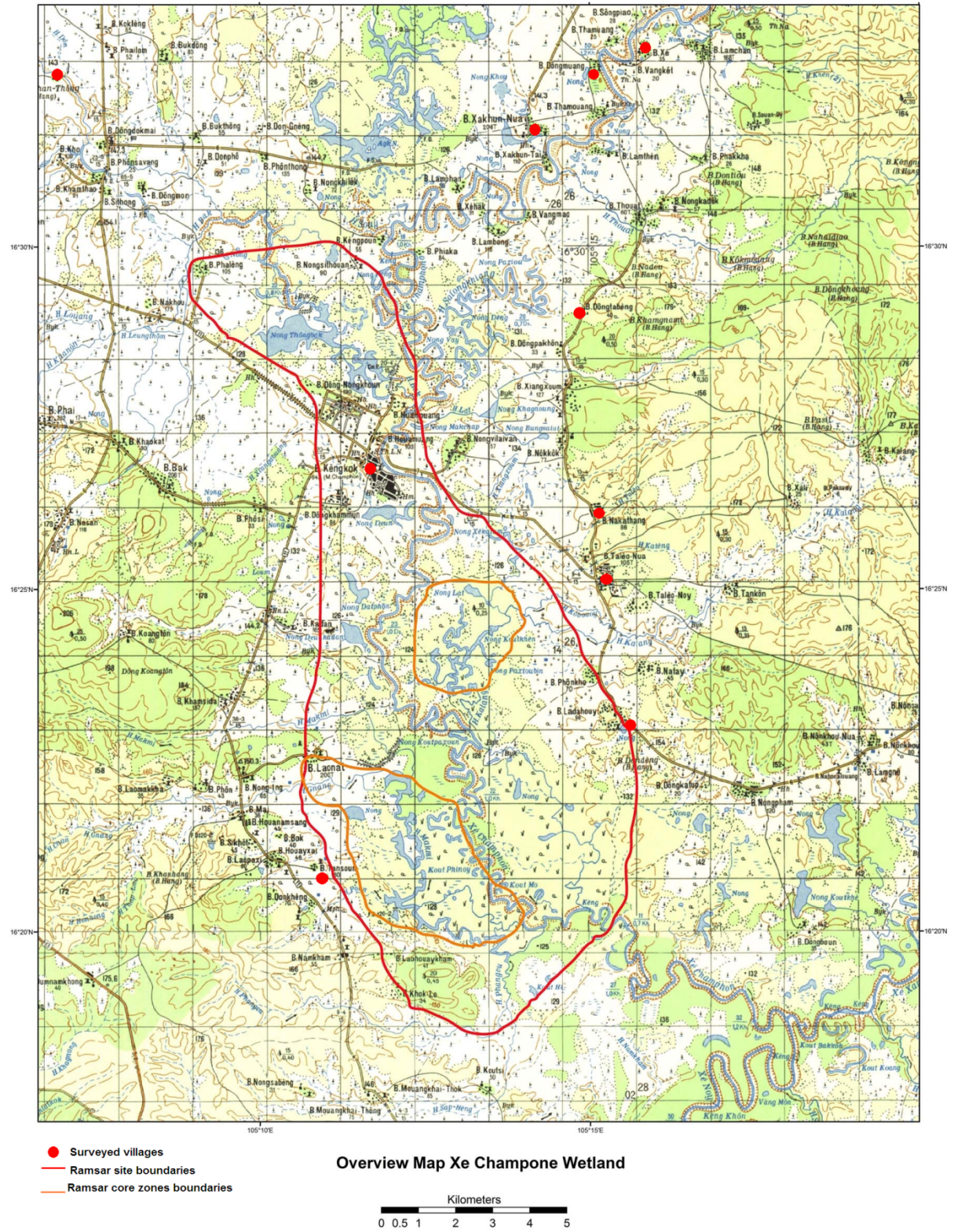
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<sup>42</sup> UNDP-MoJ report. (2011). *Customary Law Project*, p. 99.



## 8. APPENDICES

### Appendix 1: Official Map of the Xe Champhone Ramsar Site and Surveyed Villages





**Appendix 2: Socio-Economic Field Survey Report: A Rights-based Approach to Conservation in the Xe Champhone Ramsar Site, Lao PDR**

## **Socio-Economic Field Survey Report**

A Rights-based Approach to Conservation in the  
Xe Champhone Ramsar Site, Lao PDR

May 2012





## **SOCIO-ECONOMIC FIELD SURVEY REPORT**

### **A RIGHTS-BASED APPROACH TO CONSERVATION IN THE XE CHAMPHONE RAMSAR SITE, LAO PDR**

May 2012

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## Glossary

Ban	Village
Dong Mahesak	Sacred forest believed to be the place of the guardian spirits that protect all community members.
GIS mapping	Geographic information system mapping
Kout	Lake. This term used only in Xe Champhone
Kuan Cham Ban	Spirit mediators/ritual ceremony organizers
Nong	Lake
Soui	Reservoir for irrigation in Xe Champhone wetlands
Xe	River

## **1 Introduction**

This study aims to analyse the situation in the Xe Champhone wetlands of Lao PDR. It will examine the under-researched issue of customary laws governing natural resources, including their relationships with statutory law. The hypothesis to be tested is that non-recognition of customary law governing use of natural resources—and inconsistent implementation where customary law is formally recognized—has economic costs for the State in terms of loss of ecosystem services and in terms of the cost of addressing conflicts arising from non-recognition, and perpetuation of poverty among people whose daily lives are governed by customary law and are dependent on the resources and services provided by the ecosystems in which they live.

This report is the progress report on the fieldwork undertaken up until December 2011. A detailed analysis of socio-economic and customary laws will be done after completion of the field survey in all ten sample villages.

### **1.1 Purpose and Scope of the Report**

This report provides an overview of the methodology and findings from the field survey in ten sample villages within or adjacent to the Ramsar site of Xe Champhone in November and December 2011.

### **1.2 Structure of the Report**

Chapter 2 of this report provides an overview of the methodology for data collection. Chapter 3 summarizes the socio-economic profiles including demographic data, social organization and economic activities in the sample villages. Chapter 4 describes findings from focus group discussions with schoolchildren, women, elders and fishers, as well as from household interviews about customary practices for protection of natural resources around their communities.

## **2 Methodology**

The field survey was undertaken at three levels: household, village and district. Questionnaire forms and guiding questions for the household survey and focus group discussions were field-tested prior to the training of enumerators.

Prior to the field survey, four enumerators were trained in methodology for data collection. During the survey the enumerators were grouped into two teams of two members each. One team collected village and district data and carried out focus group discussions. Another group carried out household interviews and GIS mapping. Data from the household interviews were analysed with SPSS statistics software.

### **Sample size**

There are about 40 villages located in the Ramsar site with a total population of about 20,000 people. The field survey was carried out in ten villages of different ethnic groups such as Lao Lum Lao (50%) and Phouthai (21%) (Tai Kadai or Tai linguistic group), Katang (18%) and Makong (21%) (Mon-Khmer linguistic group) as summarized in Table 1.

**Table 1: Sample villages**

No.	Village	Criteria	No. of households interviewed	Participants in focus group discussions				Ethnicity
				Girls	Women	Boys	Men	
1.	Dondeng	sacred lake for turtles, tourism site	17	4	9	6	15	Phouthai (Tai linguistic group)
2.	Dongtabeng	protected lake and community forest	12	0	16	0	35	Katang (Mon-Khmer)
3.	Dongmuang	fishing control, monkey forest	12	5	12	5	20	Lao Lum Lao (Tai linguistic group)
4.	Kengkok-Dong	villagers directly use wetland for their livelihoods	30	5	5	5	9	Lao Lum Lao (Tai linguistic group)
5.	Nakathang	protected lake and community forest	17	5	17	5	22	Katang (Mon-Khmer)
6.	Nanokkhan	protected lake and community forest	17	8	12	2	18	Makong (Mon-Khmer)
7.	Xakhun-Nua	monkey forest, protected forest of the district	20	4	28	6	10	Lao Lum Lao (Lao linguistic group)
8.	Taleo	protected lakes and community forest	16	5	32	5	10	Phouthai (Tai linguistic group)
9.	Xe (formerly Xe Bang Ket)	protected lake and community forest	10	5	12	5	15	Lao Lum Lao (Tai linguistic group)
10.	Tansoum	Siamese crocodiles	8	4	8	4	11	Phouthai and Lao Lum Lao (Tai linguistic group)
<b>Total</b>			<b>159</b>	<b>45</b>	<b>151</b>	<b>43</b>	<b>165</b>	

## 2.1 Focus Group Discussions

Focus group discussions were carried out by the two members of the enumerator team with separate groups of fishers, elders, women and schoolchildren. Each group discussion lasted for about one and half hours.

The fishermen were asked to sketch a map of the natural resources around their respective forests; including rice fields, gardens, community forests, community conserved or sacred forests, protected forests as identified by the district and provincial authorities or other projects, rivers, streams and lakes. The elderly and village authorities were asked to sketch a village map including houses and other important structures and places in the village; including spiritual houses, ritual houses, ceremony practitioners, temples, schools, dispensaries, and houses for the poor.

The sketched maps were then used to initiate discussions with the different groups of participants mentioned earlier, on issues related to the community management of natural resources, environmental problems and threats to the community conservation area, community rules for managing natural resources, compliance and enforcement of the rules, land boundaries and rights, community networks in environmental issues, and partnerships with government agencies and NGOs in community conservation of natural resources.



Guiding questions for group discussions are in Annex 1.

## **2.2 Household Interviews**

Ten per cent of households in the surveyed villages were interviewed by the second team of two enumerators. Stratified data sampling was applied for selection of the sample households to cover diversified information from the poor, middle income, and wealthier households. Each interview lasted about one hour.

Questionnaires for the household interviews covered data on the number of household members, disaggregated by gender and age, their relationship with the household head, education level and employment; average household income disaggregated by sources of income; management of natural resources; environmental problems and threats to community conservation areas; community rules for managing the wetlands and compliance and enforcement of the rules.

Questionnaires for household interviews are in Annex 2.

## **2.3 GIS Mapping**

The enumerators were also trained in GIS mapping. After the focus group discussions in each village the village authorities accompanied the GIS mapping team to get coordinates of each conservation area for the surveyed villages. The time for GIS mapping in each village varied from two to four hours, depending on the area of conservation. During this fieldwork, semi-structured interviews were conducted to better understand how the sites are protected and managed. This also provided opportunities to collect more information on community protection by the village and to confirm or follow up on information obtained in the group discussion.

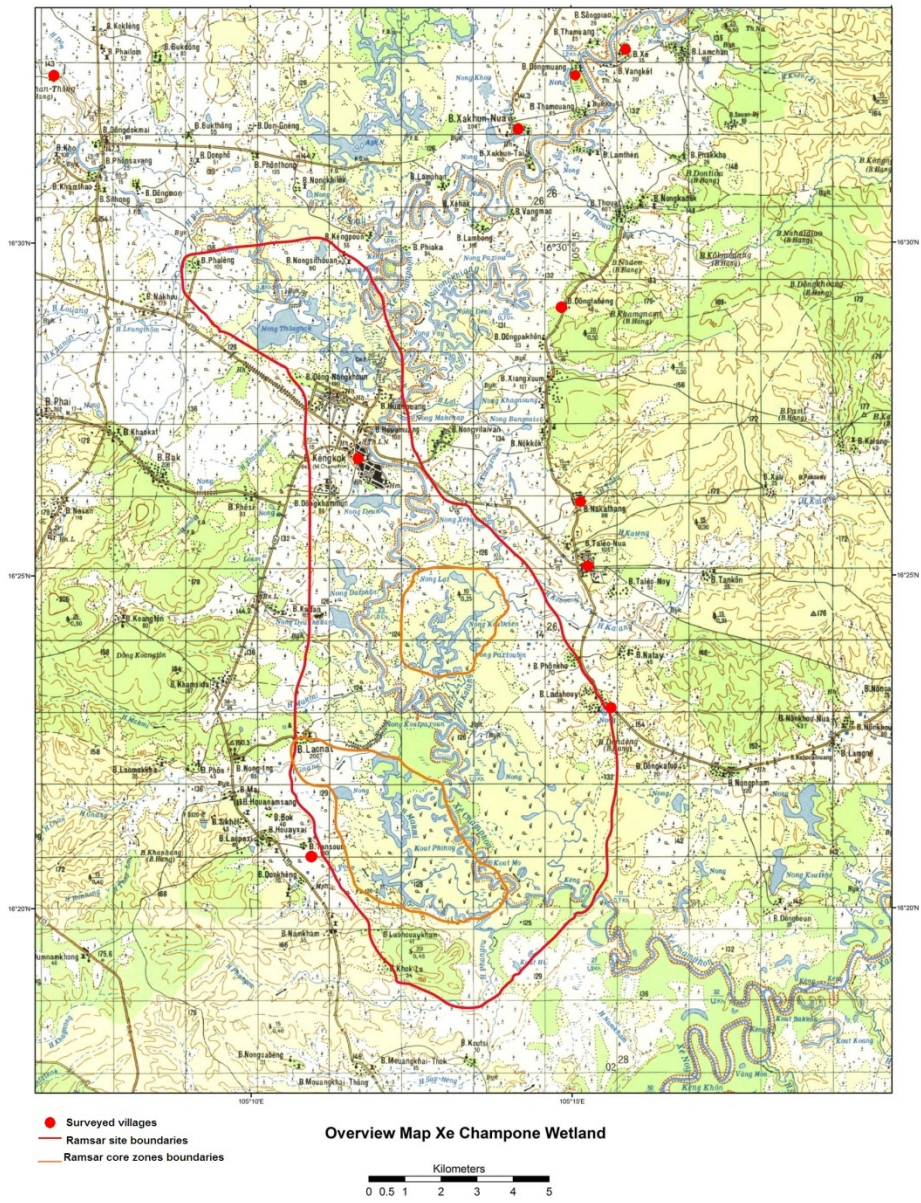
## **3 Socio-economic Profile**

This survey was undertaken only in Champhone District, where the majority of the people are subsistence farmers. That is, they rely on the natural resources in and around the wetlands for their basic needs, and have done so for many generations. They have a distinct interest in maintaining the eco-system in the Xe Champhone wetlands area. Fishing, livestock grazing, two crops of paddy rice cultivation, collection of non-timber forest products and tourism are the important sources of income in this area.

### **3.1 Location**

The Xe Champhone wetlands are located in two districts: Champhone and Xonbuly districts of Savannakhet Province. According to the information from the Ministry of Environment and Natural Resources, the main portion of the wetlands is about three kilometres south of Kengkok-Dong village in Champhone District, between Road No. 9 and Road No. 11. The southern end of the site is adjacent to Xonbuly District. See Figure 1 below.

Figure 1: Map of the surveyed villages



### 3.2 Natural Resources Characteristics

The Xe Champhone wetlands are fed by two rivers: Xe Champhone and Xe Xangxoy, tributaries to the larger Xe Banghiang River that has a catchment area of around two million hectares and covers the entire eastern part of Savannakhet province (Wiszniewski and Lertsirivorakul 2007). Various lakes, ponds and streams in the area provide a vital habitat for fish and other aquatic and wildlife species, including Siamese crocodiles and water birds. In addition, they are also the sources of water for irrigation, drinking and other household use.

Forests around the wetlands play an important role in livelihood strategies, as they provide wood for construction, road and bridge work, farming tools, furniture, fuel and charcoal. They are also the sources of important non-timber forest products such as bark, Nhan (Siam benzoin), natural dyes, rattan, bamboo and medicinal plants. Insects, such as crickets and ant larvae, bamboo shoots, small wild animals, mushrooms and other edible plants are significant sources of food for people in the area.

### 3.3 Awareness of Community Conserved Area

Household interviews revealed that about 89% of the sample households were aware of community conserved area and 69% stated that the boundaries of the community conserved area were clearly defined.

Amongst the surveyed villages Nanokkhian (Makong ethnic) and Xe (Lao Lum Lao) seem to be most aware of the community conserved areas.

**Table 2: Awareness of community conserved area**

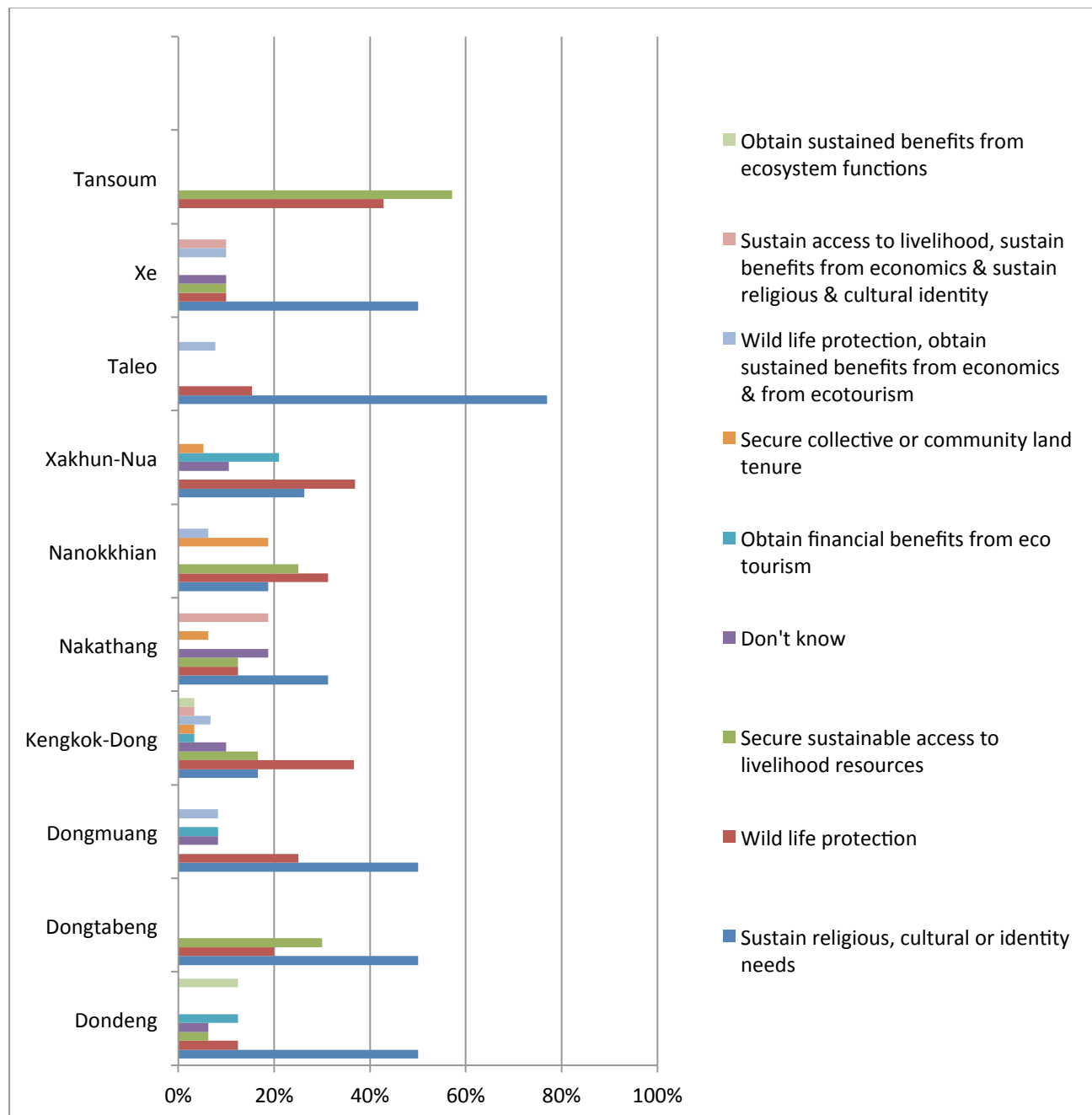
	Aware of community conserved area (per cent)	Boundaries clearly defined (per cent)
Dondeng	88	88
Dongtabeng	92	58
Dongmuang	92	92
Kengkok-Dong	90	70
Nakathang	82	76
Nanokkhian	100	82
Xakhun-Nua	75	40
Taleo	88	69
Xe	100	80
Tansoum	88	25
<b>Total</b>	<b>89</b>	<b>69</b>

When asked about motivation for creation of community conserved areas, about 35% of the respondents mentioned that they serve a purpose in sustaining religious, cultural or identity needs of the villagers. This was strongly believed in Taleo village (Phouthai ethnic group). However, in Tansoum village—of the same Phouthai ethnic group as in Taleo—no respondents believed that the areas contributed to religious and cultural sustainability.

Approximately 26% of respondents replied that the establishment of community conserved areas was for wildlife protection. This was particularly mentioned by 43% of the respondents in Tansoum village and by 31 to 37% in Nanokkhian, Xakhun-Nua and Kengkok-Dong.

Figure 2 below also reveals that about 13% of the respondents saw the importance of having community conserved areas to secure sustainable access to livelihood resources. However, respondents in Taleo, Dongmuang and Xakhun-Nua gave priority to community conserved areas for sustaining religious and identity needs rather than for securing their livelihoods as mentioned above.

**Figure 2: Motivation for establishing community conserved area**



Type of eco-systems managed by each surveyed village included forest, wetlands, lakes and river as shown in Table 3 below.

**Table 3: Types of eco-systems managed by the villages (percentage of respondents)**

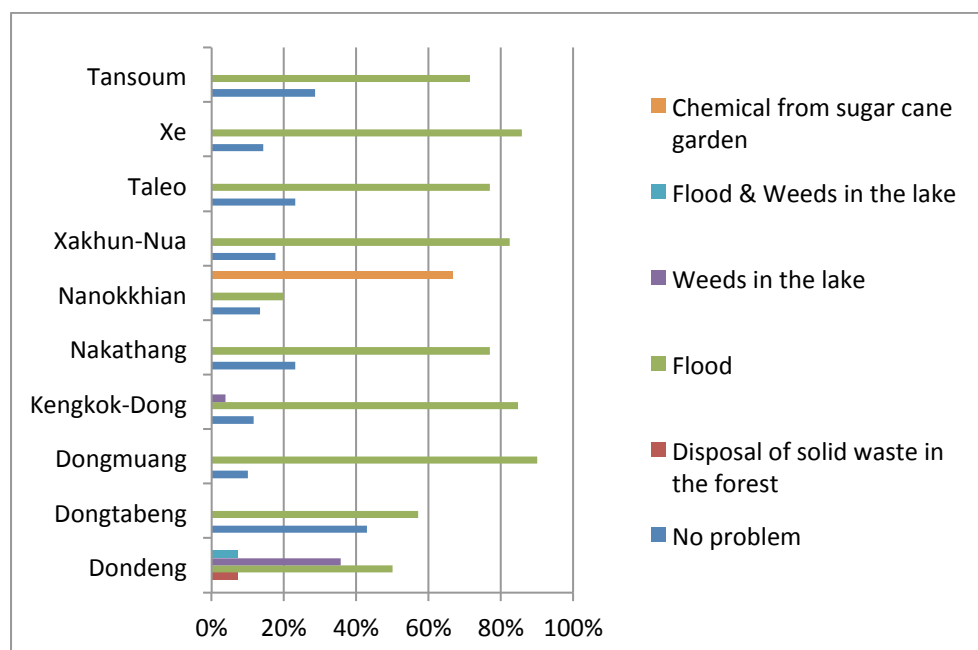
	Forest (per cent)	Forest, wetlands, lake & river (per cent)	Kout/Soui/Nong/lake/river (per cent)
<b>Dondeng</b>	18	35	47
<b>Dongtabeng</b>	0	83	17
<b>Dongmuang</b>	33	42	25
<b>Kengkok-Dong</b>	10	14	76
<b>Nakathang</b>	14	14	71
<b>Nanokkhian</b>	63	38	0
<b>Xakhun-Nua</b>	22	6	72
<b>Taleo</b>	50	43	7
<b>Xe</b>	10	60	30
<b>Tansoum</b>	25	13	63
<b>Total</b>	<b>24</b>	<b>31</b>	<b>45</b>

### 3.4 Threats to Natural Resources

The threats to natural resources obtained from the group discussions and from the household surveys can be summarized as follows:

- more floods experienced in the area, revealed by 80% of the households interviewed;
- extensive use of chemical pesticides and fertilizer by a large sugar cane plantation upstream from the lake, affecting the quality of the water and thus the health of the people and domestic animals in downstream communities;
- dumping of solid waste around the lakes and ponds (Nong Pou Ta, Soui in Xakhun-Nua);
- wild spread of invasive species such as Mimosa Pigra, Pista, Salvinid in the lakes and ponds;
- hunting and logging in the community and spiritual unprotected forests around the wetlands (while the forests are technically 'unprotected', it is against customary law to hunt or log there); and
- spread of cherry snails from the rice fields to the reservoir or Soui in the area of Xakhun-Nua village is threatening native species, which currently represent one the main sources of income for Champhone District.

**Figure 3: Main environmental problems**



Most households revealed that these environmental problems, particularly the floods, have affected the livelihood of the villagers for more than 10 years. Na Nok Kian village, located downstream of the sugar cane plantation, has been affected by chemical residue for about 2 to 6 years.

**Table 4: Existence of environmental problems (percentage of respondents)**

	Less than 2 years (per cent)	2 to 4 years (per cent)	4 to 6 years (per cent)	6 to 8 years (per cent)	8 to 10 years (per cent)	Over 10 years (per cent)
<b>Dondeng</b>	7.1	7.1	14.3	0	0	71.4
<b>Dongtabeng</b>	0	0	0	0	0	100.0
<b>Dongmuang</b>	0	0	22.2	33.3	0	44.4
<b>Kengkok-Dong</b>	4.2	4.2	16.7	4.2	0	70.8
<b>Nakathang</b>	0	0	0	0	10.0	90.0
<b>Nanokkhian</b>	7.7	23.1	38.5	15.4	7.7	7.7
<b>Xakhun-Nua</b>	14.3	14.3	0	0	0	71.4
<b>Taleo</b>	0	10.0	0	0	0	90.0
<b>Xe</b>	14.3	14.3	14.3	0	14.3	42.9
<b>Tansoum</b>	60.0	0	0	20.0	0	20.0
<b>Total</b>	<b>8.2</b>	<b>8.2</b>	<b>12.7</b>	<b>6.4</b>	<b>2.7</b>	<b>61.8</b>

### 3.5 Population

The total population of Champhone District is 111,118, of whom 57,878 are female. This district is comprised of 102 villages, 14 kum bans or cluster villages and 18,580 households and 19,301 families.<sup>1</sup>

The main ethnic groups living in and around the Xe Champhone wetlands are Phouthai and Lao (97%); Makong and Katang people (3%) also live in the area.

The 159 sample households have a total population of 1061 of whom about 50.10% are female. The Katang and Makong ethnic groups represented about 17% and 13% respectively of the total samples as shown in Table 2.

**Table 5: Ethnic groups in the sample households**

	Sex		Total	Percentage
	Male	Female		
Lao Lum Lao	288	293	581	55%
Phouthai	81	84	165	16%
Katang	98	82	180	17%
Makong	62	73	135	13%
<b>Total</b>	<b>529</b>	<b>532</b>	<b>1061</b>	<b>100%</b>

The majority of the sample population is occupied by farming. The proportion of dependents across all ethnic groups is quite significant, representing about 29% amongst the Phouthai group and 47% amongst the Makong ethnic group. Other occupations include migrant workers in Thailand, day labourers, traders and government officers.

**Table 6: Occupation in the past 12 months of household members**

	Ethnicity			
	(per cent)			
	Lao Lum Lao	Phouthai	Katang	Makong
Farmer	51	55	57	49
Working in Thailand	4	4	6	2
Daily labour	4	4	1	1
Trader	3	0	0	0
Government officer	2	7	2	0
Private sector employee	1	2	0	0
Student & child	30	25	31	44
Retired/monk	3	2	2	3
Home duties	1	2	1	1
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

<sup>1</sup> Champhone District Administrative Office (2010). *Champhone District Annual Report*.



Approximately 27% and 19% of the Katang and Makong ethnic group aged over six years have never attended school, while the Lao Lum and Phouthai have more opportunities and access to school.

**Table 7: Percentage of people over six years of age who have ever attended school**

	Ethnicity (per cent)			
	Lao Lum Lao	Phouthai	Katang	Makong
<b>Yes</b>	90	89	73	81
<b>No</b>	10	11	27	19

### 3.6 Social Organizations

Social organizations for safeguarding customary laws in the Xe Champhone wetlands were found in every surveyed village. The village authorities recognized by the government are comprised of: a village head, two deputies, a village militia, a village security guard and a representative of each of three mass organizations: Lao Women’s Union, Lao Youth Union and Lao Front for National Construction. In addition, there are also religious leaders who are well-respected by the community members such as Buddhist monks, leaders of local churches and Kuan Cham Bans (spirits mediators/ritual ceremony organizers). Some villages have fortune-tellers who provide consultation and advice to the community members on maintaining customary laws. Village authorities and Kuan Cham Bans are the key people who help to enforce customary laws. However, the main factors for maintaining and enforcing customary laws are the community members’ beliefs and practices, which were created by their ancestors and passed down through the generations.

### 3.7 Economic Activities

The main economic activities evident in and around the Xe Champhone wetlands are paddy rice cultivation; raising livestock supplemented by fishing; gathering of non-timber forest and wetland products; and to some extent, tourism.

#### 3.7.1 Agriculture

Rice is the main agricultural product in Champhone District. During the fiscal year 2010-2011, the total rice production in this district was about 127,685 tonnes, with a yield of 4.84 tonnes/ha and 4.46 tonnes/ha for dry season and wet season rice respectively. In addition to rice, sugarcane plantations are also found in the northern area of the district. Only four households practice pig farming, with total production of 8,945 pigs. The export of snails to Viet Nam was about 33 tonnes in 2011.<sup>2</sup>

#### 3.7.2 Services

The district has two permanent markets and nine mobile outreach markets.

#### 3.7.3 Industries

Champhone District exports gypsum to Viet Nam and salt to domestic markets. The total exports in 2011 were 131, 934.341 tonnes of gypsum and 1,800 tonnes of salt.<sup>3</sup>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

### 3.7.4 Main sources of income

The figures presented in Table 9 are estimates of cash income over the past 12 months prior to the interview, as recalled by the respondents. Internally-consumed value by each household was not included. Household interviews revealed that all ethnic groups living in and around the wetlands very much relied on the natural resources of the wetlands for income, with about 77% of their income derived from rice farming, raising livestock, and non-timber forest and wetlands products as indicated in Table 9.

Farm products, particularly paddy rice farming and raising livestock, represented about 28% and 29% respectively of the total income.

Gathering non-timber forest and wetlands products, and trade and services represented about 20% of total income. Non-timber forest and wetlands products such as bamboo shoots, mushrooms, wild vegetables, crickets, ant larva, fish, shrimp, snails and crabs were gathered mainly for household consumption and only 3% of households used these for both consumption and income generation.

**Table 8: Purposes for gathering of non-timber forest and wetlands products**

	Household consumption (per cent)	Household consumption & income generation (per cent)
<b>Dondeng</b>	100	0
<b>Dongtabeng</b>	100	0
<b>Dongmuang</b>	92	8
<b>Kengkok-Dong</b>	100	0
<b>Nakathang</b>	81	19
<b>Nanokkhian</b>	100	0
<b>Xakhun-Nua</b>	100	0
<b>Taleo</b>	100	0
<b>Xe</b>	89	11
<b>Tansoum</b>	100	0
<b>Total</b>	<b>97</b>	<b>3</b>

It was also reported that anybody in the community could collect non-timber forest products and fish in the wetlands area and could sell the products to anybody including traders from other areas. However, if outsiders want to fish or collect NTFP they first needed to obtain permission from the village authorities.

Wild animals were rarely available for hunting in the area and the villagers mainly trapped rats, squirrels, lizards and birds. Animals found in the sacred forests or lakes such as crocodiles, turtles and monkeys were considered to be the guardians of the spirits so these animals are well protected by customary laws.

**Table 9: Proportion of annual household income (kip) from different sources**

Source of Income	Mean	Median	Total	Percentage of Total Income
<b>Cropping</b>	6,383,597	3,505,000	1,014,992,000	28
<b>Livestock</b>	6,703,654	500,000	1,065,881,062	29
<b>Non-timber forest products</b>	864,739	380,000	137,493,500	4
<b>Fisheries and aquaculture</b>	1,388,651	545,000	220,795,500	6
<b>Food, drinking water &amp; tobacco processing</b>	726,266	0	114,750,000	3
<b>Wages and salaries</b>	1,137,579	0	180,875,000	5
<b>Trade and service</b>	2,227,673	0	354,200,000	10
<b>Other income</b>	3,597,799	0	572,050,000	16
<b>Total annual income</b>	<b>23,100,610</b>	<b>11,380,000</b>	<b>3,672,997,062</b>	<b>100</b>

Food processing, and wages and salaries made up about 3% and 5% respectively of the total income. Wages were mainly related to remittance from family members who were migrant workers in Thailand.

Compared to other sample villages, the villagers in Nanokkhian seem to be more dependent on the wetlands for both agricultural practices, including raising livestock, and gathering of non-timber forest products. Table 10 shows that the median income in Nanokkhian from cropping and livestock was 7 million and 4 million kip respectively. Their median income from non-timber forest products was also higher than in other villages.

For income, the villagers in Dondeng were not highly dependent on raising livestock or gathering non-timber forest and wetlands products. The villagers in Taleo, Nakathang and Kengkok-Dong were most active in generating income from fishing and aquaculture while those in Tansoum were least reliant on fishing for income generation. The variation of income sources amongst the sample villages may be a consequence of their proximity to different types of natural resources around the wetlands.

**Table 10: Median annual household income (kip) from main income sources**

	<b>Cropping (including rice cultivation)</b>	<b>Livestock</b>	<b>Non- timber forest products</b>	<b>Fishing and aquaculture</b>
<b>Dondeng</b>	3,000,000	75,000	25,000	62,500
<b>Dongtabeng</b>	1,735,000	-	855,000	482,500
<b>Dongmuang</b>	3,825,000	2,225,000	245,500	350,000
<b>Kengkok-Dong</b>	4,000,000	662,500	102,000	1,017,500
<b>Nakathang</b>	2,590,000	1,680,000	725,000	1,200,000
<b>Nanokkhian</b>	7,000,000	4,050,000	965,000	530,000
<b>Xakhun-Nua</b>	4,000,000	1,495,000	220,000	680,000
<b>Taleo</b>	3,887,000	1,100,000	347,500	1,530,000
<b>Xe</b>	3,255,000	137,500	435,000	137,500
<b>Tansoum</b>	770,000	250,000	656,000	-

### 3.8 Understanding Poverty in Xe Champhone

Poor households identified in this report are based on Decree No. 285/PM, issued on 13 October 2009, relating to poverty and development criteria for 2010–2015. This decree provides a definition and criteria for identifying poverty and development at the household, village and district level. Poverty is the lack of basic needs for a daily active healthy life, such as lack of food to provide 2,100 calories per person per day, lack of necessary clothes, no permanent dwelling, the inability to afford medical expenses, the inability to afford basic education, and a lack of access to the networks of basic infrastructure services in the society. The poverty line is set at 180,000 kip per person per month for rural areas and 240,000 kip in urban areas. As Champhone is a rural district, this report is based on a poverty line of 180,000 kip per person per month.

Table 11 below indicates that about 57% of the sample households are below the poverty line set by the government. This figure may be misleading as it has already been mentioned that most households may not recall their annual income over 12 months, and may have reported a lower figure on their income. However, Table 11 provides an indication of the poor ethnic groups in and around the wetlands. Dongmuang, Xakhun-Nua and Tansoum seem to have fewer poor households than the other sample villages while Dongtabeng, Dondeng and Xe have more poor households.

**Table 11: Poverty level in the sample villages**

	Monthly income/head <180,000 kip (per cent)	Monthly income/head ≥180,000 kip (per cent)
<b>Dondeng</b>	82	18
<b>Dongtabeng</b>	83	17
<b>Dongmuang</b>	25	75
<b>Kengkok-Dong</b>	53	47
<b>Nakathang</b>	71	29
<b>Nanokkhian</b>	53	47
<b>Xakhun-Nua</b>	35	65
<b>Taleo</b>	50	50
<b>Xe</b>	80	20
<b>Tansoum</b>	38	63
<b>Total</b>	<b>57</b>	<b>43</b>

## 4 Customary Laws Governing Natural Resources in Xe Champhone Wetlands

### 4.1 Different types of Protected Areas around the Wetlands

Protected areas around Xe Champhone wetlands can be classified as i) non-spiritual communal protected areas identified by the village and district authorities, or by ancestral regulations to sustain access to livelihood resources and wildlife protection; and ii) spiritually protected areas to sustain religious or cultural beliefs and needs.

### 4.2 Non-Spiritual Communal Protected Areas

Non-spiritual communal protected areas can be found in some surveyed villages. The Pa Souang Pa Dang Forest in Taleo Village is protected because of its underground water source that provides the main source of water for the community during the dry season. In this forest, big trees cannot be cut, but it is permissible to cut small ones. Small trees can be cut for individual use, but cannot be used for commercial purposes. Hunting big animals is not permitted, but hunting small animals is.

Recently, the district and village authorities, in consultation with the community members, have also identified community protected areas for sustaining their livelihoods. For example, the 100 ha of community protected forest in Nanokkhian village that was protected by the villagers from land concession to a private company for sugar cane plantation. The villagers raised the land concession issue to the National Assembly and it was agreed that the company must preserve 100 ha of forest for livelihood activities of the surrounding communities. Nong Kan in Kengkok-Dong village and parts of Soui (reservoir) in Xakhun-Nua village are protected as fish breeding habitats.

### 4.3 Spiritually Protected Areas

Religious beliefs have created customary laws that work directly and indirectly in favor of natural resource protection around the Xe Champhone wetlands. Stories have been used to illustrate and elaborate on customary laws to make them clearer. Sacred forests, sacred ponds and cemeteries in many surveyed villages are still conscientiously guarded by the villagers as places of prayer and homes to spirits or nagas (dragons). It is believed that the water and forest spirits will punish those who encroach or hunt forbidden animals, and live an immoral life. Therefore, many lakes and ponds and forests in the wetlands have become breeding places for aquatic and terrestrial animals. Some

examples are sacred forests or Dong Mahesak in Dongmuang and Kengkok-Dong villages, sacred ponds in Kengkok-Dong and Dondeng villages, and cemeteries in many of the surveyed villages.

#### 4.4 Management Mechanisms of Protected Areas

An analysis of the group discussions in ten different ethnic villages reveals that mechanisms for the management of both non-spiritual and spiritual protected areas are quite similar, both for the majority of Lao ethnic and the minority groups around the Xe Champhone wetlands. The village authorities, security guards and militias guard the non-spiritual areas while the spirits, through fortune tellers and Kuan Cham Ban, guard spiritual areas.

Approximately 86% of respondents revealed that the laws they practice are customary laws. All respondents in 6 out of 11 villages seem to follow customary laws more than the statutory laws, while respondents in 5 villages also acknowledged statutory laws. See Table 12.

**Table 12: Practice of customary laws**

	Customary law (per cent)	Statutory law (per cent)
<b>Dondeng</b>	71	29
<b>Dongtabeng</b>	100	0
<b>Dongmuang</b>	75	25
<b>Kengkok-Dong</b>	83	17
<b>Nakathang</b>	100	0
<b>Nanokkhian</b>	100	0
<b>Xakhun-Nua</b>	53	47
<b>Taleo</b>	100	0
<b>Xe</b>	100	0
<b>Tansoum</b>	100	0
<b>Total</b>	<b>86</b>	<b>14</b>

##### 4.4.1 Management of Non-spiritual communal protected Areas

Non-spiritual communal protected areas are managed by the village authorities; particularly by the village security guards and village militia.

##### 4.4.2 Management of Spiritual Protected Areas

Sacred forests, or Dong Mahesak, are believed to be the place of the guardian spirits that protect all community members everywhere. As such they are to be respected and left untouched. This kind of sacred forest is usually located near a pond, at the source of a stream, or on the bank of a large river. For example, Mahesak forest in Na Nok Kian is located near Kout Xeng (Xeng pond); Kengkok-Dong village is adjacent to Nong Pou Ta (Pou Ta lake); and Dondeng Village is located near Nong Luang, the famous Turtle Lake of Champhone District.

It is forbidden to hunt animals in these sacred forests because the villagers believe that these animals are the protectors of the guardian spirits. This is evident in the monkeys in Dongmuang village, and the turtles in Nong Pou Ta of Kengkok-Dong village and Nong Luang of Dondeng village. Every year the villagers organize a ritual ceremony led by the Kuan Cham Ban to pay respect to the guardian spirits in Mahesak forest. Animals such as chickens or pigs are slaughtered during the ceremony. The wealthier villages slaughter a buffalo every three years for the spirits in Mahesak forest.

The enforcement is done primarily by self policing due to fear of angering the spirits. The Kuan Cham Ban organizes ritual ceremonies but doesn't get involved in management or protection.

**Table 13: Animals that cannot be hunted**

	All animals (per cent)	Lizard, wild chicken & monkey (per cent)	Turtle, lizard, muntag, wild pig & snake (per cent)	Lizard, bird, wild pig, wild chicken, snake (per cent)	Crocodile & turtle (per cent)
<b>Dondeng</b>	40.0	0	0	0	60.0
<b>Dongtabeng</b>	22.3	0	11.1	66.6	0
<b>Dongmuang</b>	0	27.3	72.7	0	0
<b>Kengkok-Dong</b>	96.7	0	0	0	3.3
<b>Nakathang</b>	100.0	0	0	0	0
<b>Nanokkhian</b>	35.2	0	53.0	11.8	0
<b>Xakhun-Nua</b>	66.6	11.2	22.2	0	0
<b>Taleo</b>	75.0	6.3	6.3	0	12.5
<b>Xe</b>	33.3	11.2	55.5	0	0
<b>Tansoum</b>	0	0	0	0	100.0
<b>Total</b>	<b>58.5</b>	<b>4.8</b>	<b>19.0</b>	<b>5.5</b>	<b>12.2</b>

Many villages with a sacred forest have a Kuan Cham Ban as the communicator with the spirits, as well as the organizer of ritual ceremonies, and fortune tellers who provide consultation to the villagers about what has caused problems in their family and what they need to do in order to overcome their bad luck. Those villages that share the same sacred forest, for instance Dongmuang and Xakhun-Nua have two Kuan Cham Bans but only the one who lives in Xakhun-Nua can organize the master annual ritual ceremony, and the one in Dongmuang can organize only small ritual ceremonies for those who have been disturbed by the spirits.

The different roles of Kuan Cham Ban and fortune tellers are summarized in Table 14 below.

**Table 14: Roles of Kuan Cham Ban and Fortune Teller**

<b>Kuan Cham Ban (ritual ceremony organizer)</b>	<b>Fortune Teller</b>
<ul style="list-style-type: none"> <li>• Warns the villagers about the punishment of the spirits if somebody has done something wrong affecting the spirits in the sacred forest</li> <li>• Organizes ritual ceremonies and helps communicate with the spirits in the Mahesak forest when somebody wants to worship the spirits to overcome their bad luck.</li> <li>• They are selected by the spirit in Mahesak forest and this is mostly inherited amongst family members. However, there are a few exceptions, for instance the new Kuan Cham Ban in Kengkok-Dong is a lady who has no family relationship with the previous one who passed away.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides consultation to the villagers when their family members or animals are affected by sicknesses or other misfortunes.</li> <li>• Provides advice to the affected families on how to mitigate or resolve their problems and what kind of animals should be slaughtered for the spirits, but cannot organize ritual ceremony.</li> <li>• Disregard of advice from the fortune teller is to risk one’s life.</li> <li>• Anybody can learn to be the fortune teller.</li> </ul>

The punishments by the spirits in Mahesak forest are primarily related to sickness or bad luck for the community members. The misfortune can fall on anyone—no matter whether that family has breached the rules or not. When a family experiences sickness they will consult fortune tellers to get advice and then they will seek assistance from the Kuan Cham Ban to pay respect to the spirits based on advice from the fortune tellers.

Everybody must follow the advice of the fortune tellers; to disregard their advice is to risk their life. One story told about a punishment involving two Vietnamese soldiers who took monkeys from Dongmuang forest, and on the way to their camp they shot themselves. A more recent story told within the communities involves a construction worker of the new temple in Dongmuang Village who beat a monkey that had stolen his food. At night he became very sick and bled, and finally died in the provincial hospital. The villagers say that if these people had followed the advice of the fortune tellers, and given an apology to the spirits in Mahesak forest, they would not have died. In most cases those who have breached the rules will be asked to slaughter animals for the spirit and the value of the punishment is very much dependent on the seriousness of the crime, ranging from chicken, to pig, to cow and buffalo. After the ceremony the meat of the animals is shared by the villagers.

At the protected pond in Kengkok-Dong, Nong Mea Hang (Divorced Woman’s Pond) fishing and hunting crocodiles has been forbidden for generations and the village authorities are responsible for the enforcement of this customary law. If somebody is caught fishing in this pond, he or she is fined a buffalo or the cash equivalent. This punishment is applied to all encroachers including outsiders.

The sacred pond in Kengkok-Dong, Nong Pou Ta is located adjacent to the Mahesak forest. The villagers cannot take turtles from the pond as it is believed that the turtles are the guards of the spirits in the sacred forest. So far, no punishment by the village authorities has been undertaken as nobody has breached this rule. However, the villagers are allowed to fish in the pond. During the survey it was observed that one side of the pond was used as a dumping area for solid waste.

In the sacred pond of Kout Seng located in Mahesak forest of Nanokkhan village, fishing is permitted only from December, after the annual ritual ceremony to worship the guardian spirits, until



July. However, the villagers only dare to communally fish in this sacred forest on the ritual ceremony day. They will not take turtles or snakes from the pond.

Nong Luang, or Turtle Lake, in Dondeng village is protected because it is inhabited by turtles. The first turtle was seen in 1954 and they have been there since before the village was established. There are hundreds of turtles living in the lake at present, though the population has never been counted. The turtles generally breed in the month of June and lay their eggs on the banks of the lake. There is one main species, though other turtles can also be found. Merchants travelling through the area were caught by the provincial authority at the border carrying twelve turtles, which were later set free in this lake and can still be seen. About 20–30 years ago, there were white turtles in the lake which were believed to be the most sacred, but they have not been seen in recent times.

The villagers believe that the spirits protect the turtles, and that they are inside of the turtles, symbolising that the turtles host the spirits. Due to this spiritual belief, one is not allowed to hunt in the lake nor go by boat, but fishing is sometimes allowed for communal use. Villagers may not hunt in the forest surrounding the lake either, but may collect vegetables from the 10 m wide perimeter if permission has been asked from the spirits by the collectors. On the other hand, children are allowed to play and swim in the lake and people are allowed to touch the turtles.

If the laws are broken the punishments will be spiritual, as there are no established village punishments. Spiritual punishments include sickness and death. There was once a family that took one turtle to another area and that family organized a ritual ceremony to ask for permission from the spirit, but after a few months that turtle was returned to the lake.

The lake has become a tourist attraction in the province and a new source of income for the village. For 2000 kip people may cross the new bridge built two years ago which leads to a little temple in the middle of the lake. Tourists can pay a small fee to children playing in the area, who will sing a traditional song. The turtles will then come up to the surface of the water, waiting to be fed snacks sold at the entrance. This provides valuable income for the village, but villagers are worried about exploitation of the turtles from tourism and people coming from bordering countries. In order to control the area, the villagers have erected a fence around the lake and nominated volunteers to guard it.



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